King County

KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

December 8, 2008

Motion 12893

Proposed No. 2008-0642.1 **Sponsors** Lambert, Constantine, Hague, Gossett and Patterson

A MOTION authorizing the chair of the council to enter into a contract for the design, installation, training and maintenance of a constituent relationship management software system.

WHEREAS, the King County council sets policies, enacts laws, helps constituents and adopts the annual county budget.

WHEREAS, the council is divided into nine council districts, with approximately 200,000 constituents in each district, and

WHEREAS, in order to carry out their required duties, councilmembers receive and send communications their constituents. At the present time, each councilmember has developed his or her own method of saving constituent information and the outcomes of constituent requests, and

WHEREAS, the council desires to acquire a constituent relationship management software system that will standardize the retention of constituent information, and

12893

ATTACHMENT A

2008-642

ATTACHMENT G

to

Contract No. XXXXXXX

SOFTWARE LICENSE AGREEMENT

1. Entire Agreement.

This Software License Agreement, as an Attachment to the Contract and all documents referenced herein, constitutes the entire agreement between Licensor and the County with respect to Software licensed to the County and supersedes all proposals, oral and written, between the parties on this subject.

2. License.

2.1 Licensor hereby grants the County a nonexclusive, nontransferable and perpetual license to use the _____ Intranet Quorum Software (hereinafter "Software") as described in Attachment A, Price, related Documentation under each program element. The Software shall include in its meaning, in addition to the description contained in Attachment A, Price, any improvements, additions, or modifications of the version or versions of the Software licensed to the County to use and materials related thereto and all materials, Documentation and technical information provided to the County in written form or identified in Attachment A, Price for use in connection with the Software. The software includes computer programs that are owned by and proprietary to LMDSI and computer programs developed by third parties that are licensed to LMDSI and sublicensed to Licenses by LMDSI under this License, including all modifications, translations, adaptations, upgrades, and enhancements thereto.

2.2 The County may utilize the Object Code version of the Software as required by County on equipment owned or leased by the County.

2.3 The County may use and copy Documentation pertaining to the Software as supplied by Licensor as required to exercise the license granted herein.

2.4 The County shall be permitted to make back up copies of the Software and Documentation in accord with the back up procedures followed by the County. The County may copy, reproduce, modify, adapt, or translate the Documentation, as it deems necessary provided that such copies are used in accord with the License granted herein and any such copies of the Documentation are utilized solely by County.

3. **Delivery and Installation; Modification of Software and Source Code.**

4. **Licensor shall deliver the Software at the time, place, and order of delivery as described in the Scope of Work to the Contract. Licensor shall install the Software and Provide necessary support services, as specified in the contract. Licensor shall make available and upon mutual agreement, install any improvements, additions, or modifications to the licensed software at the same time any such modifications of the same are made available to any of Licensor's customers. Licensor may charge fees for increased remote implementation costs if these are due to acts of Licensee or third parties. Acceptance Testing**

   shall be as described in the Scope of Work of the Contract.

5. **Payment.**

   In consideration of the License granted to the County by this Agreement, the County shall pay to Licensor the License Fee as identified in Attachment A, Price, of the Contract.

6. **Improvements and Other Modifications.**

   6.1 Improvements in the Software, including any additions or modifications made by the Licensor to or in the Software at any time after Acceptance testing, which improve the efficiency and effectiveness of the basic program functions and which do not change the agreed upon functions, shall be made available to the County at no additional charge so long as a valid support and maintenance contract is in effect.

   6.2 If, after Acceptance testing, the Licensor shall develop improvements or changes to the Software which change the basic program functions or add new program functions, the County shall have the right to obtain such program changes upon payment as follows: a) the Contract prices as described in Attachment A, Price, or b) the difference between the then current price of the Software including such changes and the applicable fees and charges for the Software reflected herein. The warranties in this Software License Agreement shall apply to any improvements or changes to the Software obtained by the County after Acceptance testing.

7. **Termination.**

   The termination provisions of the Contract shall be applicable to the termination of this Software License Agreement.

8. **Warranties.**

   The Warranty provisions of the Contract shall be applicable to this Software License Agreement.

9. Indemnification, Hold Harmless, Defense and Limitation of Liability

The indemnification, hold harmless, defense, and limitation of liability provisions of the Contract shall be applicable to this Software License Agreement.

10. Miscellaneous.

10.1 The terms and conditions of the Contract shall have precedence and control over any term and condition of this Software License Agreement, which may be in conflict with the Contract. To the extent that this Software License Agreement is silent with respect to terms and conditions in the Contract or uses capitalized terms not defined herein, the terms, conditions, and definitions in the Contract shall control.

10.2 Severability. Any invalidity, in whole or in part, of any provision of this Software License Agreement shall not affect the validity of any other of its provisions.

IN WITNESS WHEREOF, the parties have caused this Software License Agreement to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of this Software License Agreement duly authorized by all necessary and appropriate corporate action to execute this Software License Agreement.

LICENSOR	KING COUNTY
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

ATTACHMENT H -2

to

Contract No. xxxxxxx

SOFTWARE MAINTENANCE AGREEMENT

1. Entire Agreement

This Maintenance Agreement, as an Attachment to the Contract, and all documents referenced herein, constitutes the entire agreement between Contractor and County, with respect to the Software licensed pursuant to the Software License Agreement, Attachment ___ to the Contract and supersedes all proposals, oral and written, between the parties on this subject.

2. The Services

In consideration of the payments to be made to the Contractor, the Contractor agrees to provide the Services described in this Maintenance Agreement or in any attachment hereto, with respect to the Software.

The Services shall be performed as specified in the Contract, including any Attachments.

3. Applicability to Software License Agreement

When the Software is operating during the warranty period, all of the provisions of this Maintenance Agreement shall be applicable to the Software without additional charge to the County.

4. Service Responsibilities of the Contractor

4.1 Maintenance. Contractor shall maintain the Software so that it operates in conformity with all descriptions and specifications herein and the applicable Software License Agreement and the Contract or any amendments thereto. Contractor shall correct all Errors discovered by the County.

4.2 Support and Response Time: In the event that County detects any Error, defect or nonconformity in the Software or equipment, Contractor shall furnish complete off-site telephone support, in the form of consultations, assistance and advice on the use or maintenance of the Software, within four (4) business hours of County's request. In the event that such problem in the Software is not corrected within twenty-four (24) business hours of the initiation of such off-site telephone support, County shall submit to Contractor a listing of the output and all such other data which Contractor reasonably may request in order to reproduce operating

conditions similar to those present when the Error, defect or nonconformity was discovered. Contractor shall implement temporary workaround procedures and shall demonstrate to County the good faith and diligent initiation and prosecution of corrective measures for all such problems involving the Software within twenty four (24) hours of the commencement of such off-site Services. Contractor business hours are Monday through Friday 8:00 am through 7:00 pm ET.

4.3 In the event it is determined that the problem was due to County error in the use of the Software or equipment, as opposed to an Error, defect or nonconformity in the Software or equipment itself, County shall pay the time and materials hourly rates as described in Attachment A, Price, to the Contract for all on-site Service plus Contractor's actual travel and per diem expenses, provided that this paragraph shall only be applicable if Contractor makes an on-site repair visit to a King County location. All travel and per diem expenses shall be consistent with King County Code 3.24.

5. Notification Process

5.1 The County shall notify the Contractor within one business day following the discovery of any Error, defect, or nonconformity in the Software. The period within which Contractor is obligated herein to provide telephonic off-site support shall not commence until such time as the Contractor receives the County's notification of the Error, defect or nonconformity.

5.2 The County, upon detection of any Error, defect or nonconformity in the Software or equipment, shall, if requested to do so by the Contractor under paragraph 4.2, submit to the Contractor a listing of output and any such other data which Contractor reasonably may request in order to reproduce operating conditions similar to those present when the Error occurred or the defect or nonconformity was discovered.

6. Charges

Computation. Charges for all Services provided under this Maintenance Agreement shall be as stated in Attachment A, Price.

7. Warranties

The warranty provisions of the Contract shall be applicable to this Maintenance Agreement.

8. Termination

The termination provisions of the Contract shall apply to this Maintenance Agreement, and shall also include the following provisions:

8.1 Termination of Software License Agreement. If either the Licensor of the Software or the County terminates the Software License Agreement for any reason provided therein, County shall have the right, without additional charge, to terminate this Maintenance Agreement at the same time.

8.2 Rights and Obligations of the Parties on Termination. In the event that this Maintenance Agreement is terminated as a result of the occurrence of a Force Majeure, or other cause except default by the Contractor, each party shall return to the other all data, materials, and other properties of the other party then in its possession. County may retain for a reasonable period such materials as may facilitate securing the services of another Contractor if the termination is due to Contractor's default.

9. Indemnification, Hold Harmless, Defense and Limitation of Liability

The indemnification, hold harmless, defense, and limitation of liability provisions of the Contract shall apply to this Maintenance Agreement.

10. Miscellaneous

10.1 The terms and conditions of the Contract shall have precedence and control over any term and condition of this Maintenance Agreement, which may be in conflict with the Contract. To the extent that this Maintenance Agreement is silent with respect to terms and conditions in the Contract or uses capitalized terms not defined herein, the terms, conditions and definitions in the Contract shall control.

10.2 Severability. Any invalidity, in whole or in part, of any provision of this Maintenance Agreement shall not affect the validity of any other of its provisions.

IN WITNESS WHEREOF, the parties have caused this Maintenance Agreement to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of this Maintenance Agreement duly authorized by all necessary and appropriate corporate action to execute this Maintenance Agreement.

CONTRACTOR:	KING COUNTY:
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Contract No. _____

2008-642

Part B
Technology Contract

King County

Department of Executive Services
Finance and Business Operations Division
Procurement and Contract Services Section
206-263-9400 TTY Relay: 711
Fax 206-296-7676

THIS CONTRACT, made this Day of , 200 , by and between King County, Washington, a home rule charter county and a political subdivision of the State of Washington (hereinafter "County") and with its principal place of business at (hereinafter "Contractor").

WITNESSETH:

WHEREAS, the County has caused Contract documents for:

ATTACHMENT A

Contract No. : _____

Contract Title :Constituent Management Relationship Software to be prepared for certain Work as described therein; and

WHEREAS, the Contractor has assured the County that it has the specialized expertise and experience necessary to properly Provide the goods and Services in a timely manner and that its proposal includes all of the functions and features required for the goods and Services; and

WHEREAS, the County has accepted the Contractor's offer to provide the goods and Services in accordance with the Contract's terms, Scope of Work and proposal documents; and

WHEREAS, by executing this Contract, the Contractor represents that the waiver of the Contractor's immunity under industrial insurance, Title 51 RCW, as set forth in the Contract documents was mutually negotiated by the parties; and

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the Contractor hereby agrees to supply the goods and Services at the price and on the terms and conditions herein contained, and to assume and perform all of the covenants and conditions herein required of the Contractor, and the County agrees to pay the Contractor the Contract price provided herein for the supply of the goods and Services and the performance of the covenants set forth herein.

THE FURTHER TERMS, CONDITIONS AND COVENANTS of the Contract are set forth in the following exhibit parts each of which is attached hereto and by this reference made a part hereof in the following order of precedence: **(1)** Contract Amendment; **(2)** the Contract Document which includes: Definition of Words and Terms, Standard Contractual Terms and Conditions, Specific Contractual Terms and Conditions, Insurance Requirements, Scope of Work, and Attachments A) Price, B) Equal Benefits Declaration and Worksheet, C) Personnel Inventory Report, D) Affidavit and Certificate of Compliance, E) Contractor's Statement of Union or Employee Referral Agency, F) 504/ADA Assurance of Compliance, G) Software License Agreement, H) Maintenance Agreement, J) Contractor's Insurance Forms; **(3)** RFP Addenda; **(4)** Request for Proposals; **(5)** Best and Final Offer; and **(6)** Contractor's Proposal.

COMPANY NAME	KING COUNTY
_____	_____
Authorized Signature	Authorized Signature
_____	_____
Name and Title (Print or Type):	Name and Title (Print or Type):
_____	_____
Date:	Effective Date:
	Approved as to form only: _____

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DEFINITION OF WORDS AND TERMS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: Written Documentation of the county's determination that the Contractor's Work has been completed in accordance with the Contract.

Buyer: Individual designated by the county to conduct the Contract solicitation process, draft and negotiate Contracts, resolves contractual issues and supports the Project Manager during Contract performance.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms or Scope of Work, signed by both parties, with or without notice to the sureties.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between the County and the Contractor for completion of the Work under the Contract as set forth on Page 2 of this document.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the county for the performance of Services or Work under the Contract.

Cost Analysis: The review, evaluation and verification of cost data and the evaluation of the specific elements of costs and profit. Cost Analysis is the application of judgment utilizing criteria to project from the data to the estimated costs in order to form an opinion on the degree to which proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency.

County: King County and its officers, employees, agents, contractors, and subcontractors.[1]

Day: Calendar Day.

Documentation: Technical publications and/or documentation relating to the use of the Software or Services to be Provided and delivered by Contractor under this Contract, such as reference manuals, training manuals, user manuals, maintenance manuals, installation, systems administration and technical guides designed to instruct the county on the features, uses, and functions of the Software or Services.[2]

Effective Date: The date the Contract is countersigned by the county.

Enhancement: Technical or functional additions to the Software to improve Software Functionality and/or operations. Enhancements are delivered with new releases of the Software.

Error: An unanticipated Software problem resulting in program behavior not following the Software's logical design and/or the Contract.

Final Acceptance: The point when King County acknowledges that the Contractor has performed the entire Work in accordance with the Contract.

Object Code: The executable, machine-readable, form of a software program. Object code is instruction code in machine language produced as the output of a compiler or an assembler.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Price Analysis: The process of examining and evaluating a price without evaluating its separate cost elements and proposed profit.

Project Manager: The individual designated by the county to manage the project on a daily basis and who may represent the county for Contract administration. This Contract may be part of a larger county project.

Provide: Furnish without additional charge.

RCW: The Revised Code of Washington.

Scope of Work (SOW): A section of the Contract consisting of written descriptions of Services to be performed, or the goods to be provided or the technical requirements to be fulfilled under this Contract contained within Scope of Work Section.

Services: The furnishing of labor, time or effort by a Contractor, including Software Maintenance or Support, custom Software, or consulting but not involving the delivery of any specific manufactured goods.

Software: All or any portion of the then commercially available version(s) of the computer Software programs and Enhancements thereto, including Source Code, localized versions of the computer Software programs and Enhancements thereto, including Source Code and Documentation licensed and delivered by Contractor to the County.

Source Code: A set of instructions, written in a programming language, that must be translated to machine instructions before the program can run on a computer. These instructions must be compiled into Object Code before the computer can understand them.

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

Update: . All published revisions to the Documentation and copies of the new release of the Software, which are not designated by Contractor as new products.

Upgrade: Subsequent releases of the Software and Documentation that generally have a new major version number, i.e. version 6.3 to version 7.0, not 6.3 to 6.4.

Virus: Software code that is intentionally and specifically constructed for the purpose of destroying, interrupting or otherwise adversely impacting other code or data in a computer, such as replicating itself or another program many times without any useful purpose.

Work: Everything to be Provided and done for the fulfillment of the Contract and shall include all Software, Hardware and Services specified under this Contract, including Contract Amendments and settlements.

SECTION 1 STANDARD CONTRACTUAL TERMS AND CONDITIONS

1.1 Administration

This Contract is between the county and the Contractor who shall be responsible for providing the Work described herein. The county is not party to defining the division of Work between the Contractor and its Subcontractors, if any, and the Scope of Work has not been written with this intent.

The Contractor represents that it has or shall obtain all personnel, materials and equipment required to perform Work hereunder.

The Contractor's performance under this Contract may be monitored and reviewed by county personnel. Reports and data required to be Provided by the Contractor shall be delivered to the county as described herein.

1.2 Contract Amendment

All changes to the Contract shall be through a Contract Amendment. No oral order or conduct by the county shall constitute a change to the Contract. If any Contract Amendment causes an increase or decrease in the cost of, or the time required for performance of any part of the Work under this Contract, the Contract may be modified if agreed to in writing by both parties. Contract Amendments may require a Cost/Price Analysis to determine the reasonableness of the proposed adjustments to the Contract.

Ref: KC CON 7-8-1 (AEP).

1.3 Termination for Convenience/Default/Non-Appropriation

A. Termination for Convenience

The county for its convenience may terminate this Contract, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Contractor. After receipt of a Notice of Termination ("Notice"), and except as directed by the county, the Contractor shall immediately stop Work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor shall be paid its costs, including necessary and reasonable Contract closeout costs and profit on that portion of the Work performed and Accepted up to the date of termination as specified in the notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to the county, the Contractor shall account for the same and dispose of it in the manner the county directs. All termination payment requests may be subject to Cost or Price Analysis.

B. Termination for Default

If the Contractor does not deliver Work in accordance with the Contract, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the county may terminate this Contract, in whole or in part, for default as follows:

1. A "Notice to Cure" shall be served on the Contractor by certified mail (return receipt requested) or delivery service capable of providing a receipt. The Contractor shall have ten (10) Days to cure the default or Provide the county with a detailed written plan, which indicates the time and methods needed to bring the Work into compliance and cure the default.

2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the county, the county may terminate the Contract. Termination shall occur by serving a Notice of Termination by certified mail (return receipt requested) or delivery service capable of providing a receipt on the Contractor setting forth the manner in which the Contractor is in default and the effective date of termination.

3. The Contractor shall only be paid for Work delivered and Accepted, less any damages to the county caused by or arising from such default. All termination payment requests are subject to Cost or Price Analysis.

4. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the county hereunder in any manner.

C. Termination for Non-Appropriation

If expected or actual funding is withdrawn, reduced or limited in any way during the Contract term or in any Contract Amendment hereto, the county may, upon written notice to the Contractor, terminate this Contract in whole or in part.

In accordance with King County Code 4.04.040B.5, payment shall not exceed the appropriation for the year in which termination is effected. If the Contract is terminated for non-appropriation:

1. The county shall be liable only for payment in accordance with the terms of this Contract for Services performed and Accepted prior to the effective date of termination; and,

2. The Contractor shall be released from any obligation under this Contract (including any related purchase order) to Provide further Work pursuant to the Contract.

Funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the county Council of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

1.4 Force Majeure

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances causing the inability to perform the requirements of this Contract. If a party is rendered unable, wholly or in part, by a force majeure event or any other cause not within such party's control, to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the county shall be entitled to exercise any remedies otherwise provided for in this Contract, including Termination for Default. Whenever a force majeure event causes the Contractor to allocate limited resources between or among the Contractor's customers, the county shall receive no less priority in respect to such allocation than any of the Contractor's other customers.

1.5 Washington State Sales Tax

The county shall make payment directly to the State of Washington for all applicable State sales taxes if the Contractor is not registered for payment of sales taxes in the State of Washington. If the Contractor

is so registered, it shall add the sales tax to each invoice and upon receipt of payment from the county, promptly remit appropriate amounts to the State of Washington.

1.6 Taxes, Licenses, and Certificate Requirements

This Contract and any of the Work Provided hereunder is contingent and expressly conditioned upon the ability of the Contractor to Provide the specified goods or Services consistent with applicable federal, state or local laws and regulations. If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the county immediately of such condition in writing.

The Contractor and Subcontractor(s) shall maintain and be liable for all taxes (except sales/use taxes), fees, licenses, permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to Provide the Work under this Contract.

1.7 Assignment

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender so long as King County Policy Fin10-1 (AP), paragraph 6.1.3 is followed. An assignment shall be accepted by either party upon the posting of all required bonds, securities and the like by the assignee and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

A. Patent and Copyright Indemnity

The Contractor shall protect, indemnify, defend and save harmless the county from any and all claims or lawsuits alleging a violation of a third party's copyright or patent rights. So long as the county gives Contractor prompt notice of any infringement claim brought against the county regarding the Software and the county gives Contractor information, reasonable assistance, and sole authority to defend or settle any infringement claim, then, in the defense or settlement of an infringement claim, Contractor shall, in its reasonable judgment and at its option and expense: (i) obtain for the county the right to continue using the Software; (ii) replace or modify the Software so that it becomes noninfringing while giving equivalent performance; or (iii) if Contractor cannot obtain the remedies in (i) or (ii), the parties may proceed to a court of competent jurisdiction to determine the amount of fees that shall be returned to the county. Before final payment is made on this Contract, the Contractor shall, if requested by the county, furnish acceptable proof of a proper release from all such fees or claims. Contractor shall have no liability to indemnify or defend the county to the extent the alleged infringement is based on: (i) a modification of the Software the county or others authorized by the county but not by the Contractor; or (ii) use of the Software by other than in accordance with the Documentation. If the county is required to defend itself or enter into a settlement agreement due to Contractor's failure to defend, Contractor shall indemnify the county for its costs and expenses as well as any judgment entered against the county.

B. Indemnification For All Other Actions

Contractor shall protect, defend, indemnify and save harmless the county, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages for injuries to Persons and/or damage to tangible property, arising out of or in any way resulting from the acts or omissions of the Contractor its officers, employees, Subcontractors and/or agents. Contractor's indemnification obligation shall include but is not limited to, all claims against the county by an employee or former employee of the Contractor or its Subcontractors, and the Contractor expressly waives by mutual negotiation, with respect to the county only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In the event the county incurs any costs including attorneys' fees to enforce the provisions of this subsection, all such costs and fees shall be recoverable from the Indemnitor.

C. Limitation of Liability

Except for the county's intentional and willful violations of Contractor's intellectual or proprietary rights, which can be attributed to the county management, and injuries to persons by either party, neither party shall be liable for any indirect, incidental, special or consequential damages, including but not limited to lost data or profits, however arising, even if it has been advised of the possibility of such damages. Excluding damages incurred under the paragraphs A and B, either party's liability for damages to the other under this Contract shall be limited to (__ X times) the value of the Contract or one million dollars whichever is greater. The parties agree to the allocation of liability of risk set forth in this subsection.

1.8 Applicable Law and Forum

This contract shall be governed by and construed according to the laws of the State of Washington, including but not limited to, the Uniform Commercial Code, Title 62A RCW. Any claim or suit concerning this Contract may only be filed and prosecuted in either the King County Superior Court or U.S. District for the Western District of Washington, in Seattle, Washington.

1.9 Conflicts of Interest and Non-Competitive Practices

A. Conflict of Interest

By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest in the Contract, and that it shall not acquire any interest that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the county. The county shall require that the Contractor take immediate action to eliminate the conflict up to and including termination for default.

B. Contingent Fees and Gratuities

By entering into this Contract to perform Work, the Contractor represents that:

1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.

2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of the county or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

3. Any Person having an existing Contract with the county or seeking to obtain a Contract who willfully attempts to secure preferential treatment in his or her dealings with the county by offering any valuable consideration, thing or promise, in any form to any county official or employee shall have his or her current Contracts with the county canceled and shall not be able to enter into any other Contracts with King County for a period of two (2) years.

C. Disclosure of Current and Former County Employees

To avoid any actual or potential conflict of interest or unethical conduct:

1. County employees or former county employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the county or within one (1) year after leaving county employment if he/she participated in determining the Work to be done or processes to be followed while a county employee.

2. Contractor shall identify at the time of offer current or former county employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former county employees involved in this transaction may result in the county's termination of this Contract.

3. After Contract award, the Contractor is responsible for notifying the county of current or former county employees who may become involved in the Contract at any time during the term of the Contract.

Ref: K.C.C. 3.04.015, 3.04.20, 3.04.30, 3.04.035, 3.04.060.

1.10 Claims and Appeals

The Contractor shall address claims for additional time or compensation under the Contract in writing to the Buyer and Project Manager within ten (10) Days of the date in which the Contractor knows or should know of the basis for the claim. Claims shall be accompanied by supporting documentation and citation to applicable provisions in the Contract Documents. The county reserves the right to request additional documentation necessary to adequately review the claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. The Buyer and Project Manager shall ordinarily respond to the Contractor in writing with a decision issued jointly, but absent such written response, the claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager of the claim, or requested additional documentation, whichever is later.

In the event the Contractor disagrees with the determination of the Buyer and Project Manager, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Contract Services Section Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement and Contract Services Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Contract Services Section Manager on additional time or compensation claims shall be a condition precedent to litigation.

Pending final decision of a claim and appeal hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to the county.

1.11 Mediation

If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be resolved through the claims and appeal process set forth in the Claims and Appeals Section above, the parties may, upon mutual agreement, endeavor to settle the dispute in an amicable manner by mediation, or other agreed form of ADR process, prior to commencing litigation.

1.12 Maintenance Of Records

A. Retention of Records

The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles for governmental entities. The Contractor shall retain all financial information, data and records for all Work under the Contract for six (6) years after the date of final payment.

B. Audit Access

1. Federal, state or county auditors shall have access to Contractor's and its Subcontractors" records for the purpose of inspection, Cost or Price Analysis, audit or other reasonable purposes related to this Contract. Federal, state or county auditors shall have access to records and be able to copy such records during the Contractor's normal business hours. The Contractor shall Provide proper facilities for such access, inspection and copying.

2. Audits may be conducted during or after the Contract period for purposes of evaluating claims by or payments to the Contractor and for any other reason deemed appropriate and necessary by the county. Audits shall be conducted in accordance with generally accepted accounting principles for governmental entities and'/or federal, state or county audit procedures, laws or regulations. The Contractor shall fully cooperate with the auditor(s).

3. Proof of Compliance with Contract

The Contractor shall, upon request, provide the county with satisfactory documentation of the Contractor's compliance with the Contract.

In addition, the Contractor shall permit the county and if federally funded, the Comptroller General of the United States, or a duly authorized representative, to inspect all Work, materials, payrolls and other data and records involving the Contract.

Ref: KCC 2.20.035, 2.20.040, 2.20.050, RCW 43.09.050, 43.88, 42.40.020, 42.40.040m 42.160.

1.13 Other Public Agency Orders

Other federal, state, county and local entities may utilize the terms and conditions established by this Contract if agreeable to all parties. The county does not accept any responsibility or involvement in the purchase orders or Contracts issued by other public agencies.

1.14 Recycled Products Policy

Contractors able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them.

The Contractor shall use recycled paper for all printed and photocopied documents related to the submission of this solicitation and fulfillment of the Contract and shall, whenever practicable, use both sides of the paper.

Reference: KCC 10.16 and King County Executive Policy CON 7-1-2.

1.15 Nondiscrimination and Equal Employment Opportunity

A. Nondiscrimination in Employment and Provision of Services

During the performance of this contract, neither the Contractor nor any party subcontracting under the authority of this Contract shall discriminate or tolerate harassment on the basis of race, color, sex, religion, national origin, marital status, creed, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract. King County Code ("KCC") Chapter 12.16, 12.17 and 12.18 are incorporated herein by reference, and such requirements shall apply to this Contract.

B. Equal Benefits to Employees with Domestic Partners

Pursuant to Ordinance 14823, King County's "Equal Benefits" (EB) ordinance, and related administrative rules adopted by the County Executive, as a condition of award of a contract valued at $25,000 or more, the Contractor agrees that it shall not discriminate in the provision of employee benefits between employees with spouses, and employees with domestic partners during the performance of this Contract. Failure to comply with this provision shall be considered a material breach of this Contract, and may subject the Contractor to administrative sanctions and remedies for breach.

When the contract is valued at $25,000 or more, the Contractor shall complete a Worksheet and Declaration form for County review and acceptance prior to Contract execution. The EB Compliance forms, Ordinance 14823 (which is codified at KCC Chapter 12.19), and related administrative rules are incorporated herein by reference. They are also available online at: http://www.metrokc.gov/procurement/services/eb.aspx

C. Nondiscrimination in Subcontracting Practices

During the term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in county contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, age, national origin, creed, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

D. Compliance with Laws and Regulations

The Contractor shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, RCW Chapter 49.60, Titles VI and VII of the Civil Rights Act of 1964, the American with

Disabilities Act and the Restoration Act of 1987. The Contractor shall further comply fully with any affirmative action requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.

E. Small Contractors and Suppliers and Minority and Women Business Enterprises Opportunities

King County encourages the Contractor to utilize small businesses, including Small Contractors and Suppliers (SCSs), as defined below, and minority-owned and women-owned business enterprises in county contracts. The county encourages the Contractor to use the following voluntary practices to promote open competitive opportunities for small businesses, including SCS firms and minority-owned and women-owned business enterprises:

1. Inquire about King County's Contracting Opportunities Program. King County has established a Contracting Opportunities Program to maximize the participation of Small Contractors and Suppliers (SCS) in the award of King County contracts. The Program is open to all SCS firms certified by the King County Business Development and Contract Compliance Office (BDCC). As determined by BDCC and identified in the solicitation documents issued by the county, the Program will apply to specific contracts. However, for those contracts not subject to the Program or for which the Contractor elected not to participate in the Program during the solicitation stage, the Contractor is still encouraged to voluntarily inquire about available firms. Program materials, including application forms and a directory of certified SCS firms, are available at the following Web-site address: http://bdcc.metrokc.gov/bred/Lists/SCS Certified Contractors/Public View1.htm. Telephone 206-205-0700, TTY: Relay 711, for more information

   The term "Small Contractors and Suppliers" (SCS) means that a business and the person or persons who own and control it are in a financial condition which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Program is set at fifty percent (50%) of the Federal Small Business Administration (SBA) small business size standards using the North American Industry Classification System and Owners' Personal Net Worth less than $750K dollars.

2. Contact the Washington State Office of Minority and Women's Business Enterprises (OMWBE) to obtain a list of certified minority-owned and women-owned business enterprises by visiting their website at http://www.omwbe.wa.gov/ or by telephone 360-704-1181

3. Use the services of available community organizations, consultant groups, local assistance offices, the county, and other organizations that provide assistance in the recruitment and placement of small businesses, including SCS firms and minority-owned and business-owned enterprises.

F. Equal Employment Opportunity

The Contractor will implement and carry out the obligations in its Affidavit and Certificate of Compliance regarding equal employment opportunity, and all other requirements as set forth in the Affidavit and Certificate of Compliance.

G. Record-Keeping Requirements and Site Visits

The Contractor shall maintain, for at least 6 years after completion of all work under this Contract, the following:

1. Records of employment, employment advertisements, application forms, and other pertinent data, records and information related to employment, applications for employment or the administration or delivery of services or any other benefits under this Contract; and

2. Records, including written quotes, bids, estimates or proposals submitted to the Contractor by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payments to subcontractors and suppliers in this Contract, including employment records.

The county may visit, at any time, the site of the work and the Contractor's office to review the foregoing records. The Contractor shall provide every assistance requested by the county during such visits. In all other respects, the Contractor shall make the foregoing records available to the county for inspection and copying upon request. If this Contract involves federal funds, the Contractor shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the Contract.

H. Sanctions for Violations

Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of contract, for which the Contractor may be subject to damages, withholding payment and any other sanctions provided for by contract and by applicable law.

I. Required Submittals Upon Completion of Work

Upon completion of work and as a condition precedent to final payment, the Contractor shall submit a Final Affidavit of Amounts Paid to King County Business Development and Contract Compliance Section. Identify amounts actually paid, and any amounts owed, to each subcontractor and/or supplier (if applicable) for performance under this Contract. Failure to submit such affidavits may result in withholding of payments or the final payment. The Contractor may contact the King County Business Development and Contract Compliance section for assistance with the requirements of this subsection at 206-205-0700. TTY: Relay 711.

Other assistance is available by contacting the King County Procurement and Contract Services Section at the address below:

Procurement and Contract Services Section
M/S CNK-ES-0320
401 – Fifth Avenue, 3rd Floor
Seattle, WA 98104
Phone: 206-263-9400 TTY: Relay 711

J. Compliance with Section 504 of the Rehabilitation Act of 1973

For all Contracts providing consulting, maintenance, training or other services, the Contractor shall complete a Disability Self-Evaluation Questionnaire. The 504/ADA Disability Assurance of Compliance will cover all programs and Services offered (including any Services not subject to this Contract) for compliance with Section 504 of the Rehabilitation Act of 1973, as amended ("504"), and the Americans with Disabilities Act of 1990 ("ADA"). The Contractor shall complete a 504/ADA Disability Assurance of Compliance.

Ref: KCC 12.16.060 D.

1.16 Severability

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision. If it is not possible to modify the provision to render it legal, valid and enforceable, then the provision shall be severed from the rest of this Contract. The invalidity, illegality or unenforceability of any provision shall not affect the validity, legality or enforceability of any other provision of this Contract, which shall remain valid and binding.

1.17 No waiver of Breach

No action or failure to act by the county shall constitute a waiver of any right or duty afforded to the county under the Contract; nor shall any such action or failure to act by the county constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the county in writing.

SECTION 2 SPECIFIC CONTRACTUAL TERMS AND CONDITIONS

2.1 Execution of the Contract

The documents constituting the Contract between the county and the Contractor are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract documents, they shall take precedence as listed on the Contract, page 2. Upon the Effective Date, the county shall issue purchase orders directing the Work to be performed.

The Contract may be executed in counterparts, any of which shall be deemed an original and which shall together constitute one Contract.

2.2 Contract Term

The initial term of this Contract shall from implementation through acceptance and may be extended for an additional one-year period, commencing on the Effective Date of the Contract and subject to the termination provisions at subsection 1.3, Termination for Convenience/Default/Non-Appropriation. The Warranty Period begins at Final Acceptance and continues for a period of twelve (12) months. Upon the completion of the Warranty Period, the Maintenance Agreement begins and continues from year to year unless terminated as described in this Contract. This contract may be extended by written agreement signed by all parties. The Software License shall be perpetual.

2.3 Notices

All notices or documentation required or provided pursuant to this Contract shall be in writing and shall be deemed duly given when delivered to the addresses set forth below.

For Project Management related notices, questions or documentation:

KING COUNTY	CONTRACTOR
Project Manager -	
Seattle, WA	
206-	
xxxxxx@kingcounty.gov	

For Contract related notices, questions or documentation contact:

King County Procurement and Contract Services Section	
M.S. CNK-ES-0340	
Chinook Building, 3rd Floor	
401 Fifth Avenue	
Seattle, WA 98104	
Buyer – Kathleen Hilliard	
(206) 263-9296	
Kathleen.hilliard@kingcounty.gov	

2.4 Payment Procedures

A. Invoices

The Contractor for Work Accepted by the county shall furnish invoices to:

King County Accounts Payable
M/S CNK-ES-0320
Chinook Building, 3rd Floor
401 – Fifth Avenue
Seattle, WA 98104

Important – When a purchase order is issued against this Contract that has the potential for multiple or partial deliveries, a separate invoice shall be generated for each completed delivery Accepted by the county. All invoices shall include the following information: purchase order number, requester's name and phone number, date of invoice, invoice number and invoice total. For each item in the Contract, provide: item number, quantity, description, Contract price and when applicable provide the manufacture, list price and discounts. For Services, invoices shall identify either milestones Accepted, hours worked and Contract hourly rates, or authorized fees.

The county will not be bound by prices contained in an invoice that are higher than those in this Contract. The invoice may be rejected and returned to the Contractor for a correct invoice.

FAILURE TO COMPLY WITH THESE REQUIREMENTS OR TO PROVIDE AN INVOICE IN CONFORMANCE WITH THE CONTRACT MAY DELAY PAYMENT.

B. Payments

Within thirty (30) Days after receipt of an invoice, the county shall pay the Contractor for Accepted Work, upon acceptance of payment Contractor waives any claims for the Work covered by the Invoice.

C. Subcontractor Prompt Payment

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its Subcontract within thirty (30) Days from the receipt of each payment the Contractor receives from the county.

2.5 Advance Payment Prohibited

No advance payment shall be made for the Work furnished by Contractor pursuant to this Contract.

Ref: Article VIII, § 7 of the Washington State Constitution.

2.6 Purchase Orders

Purchase orders shall be issued referencing this Contract number. Purchase order(s) shall define and authorize the Work by the Contractor based on the prices contained in this Contract. The purchase orders issued by the county may reflect agreed to modification(s) of Contract terms, funding or other matters subject to subsection 1.2, Contract Amendment.

2.7 Pricing

Prices shall be as stated in the Contract Price, and shall remain firm during the initial term. Any price adjustments shall be addressed in accordance with paragraph 1.2.

2.8 Shipping Charges

All prices shall include freight FOB to the designated delivery point. The county shall reject requests for additional compensation for freight charges.

2.9 Acceptance Process

The county may Accept Work by phase or milestone as specified in the Scope of Work. The Contractor will give the county "notice of completion" of Work related to a specific milestone following the Contractor's completion of all such Work in accordance with the requirements in the Contract.

A. Acceptance Process Upon completion of the milestone deliverables, the Contractor will notify the county and the Acceptance process will commence. Acceptance shall be based on conformance with the Scope of Work. After notice by Contractor of completion of the milestone, county will issue a written notice of milestone Acceptance or provide Contractor with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining items not in compliance with the deliverable guidelines.

B. Correction of Deficiencies Process If a deliverable is rejected, Contractor will have a commercially practicable time to correct items documented in the county's notification of rejection. Following the delivery of Contractors' notice that the Work has been corrected, the county will issue a written notice of Acceptance or provide Contractor with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining Work not in compliance with the milestone. The project schedule will be adjusted accordingly in the event that a dispute regarding the method or accuracy of the correction causes a delay. If the deliverable(s) fails to comply with the milestone after Contractor's second attempt to correct the Work and no clear plan can be agreed upon between the county Project Manager and the Contractor's Project Manager, the county will determine the appropriate corrective actions.

2.10 Final Acceptance Process

The county shall begin the Final Acceptance process in accordance with the Contract as follows:

A. The parties shall agree on the start date for the Acceptance test.

B. The Acceptance test shall include thirty (30) Days of continuous operation of the Work without material defect in accordance with the Contract in the county's fully implemented production environment.

C. If the county Accepts the Work, the county will send a notice of Final Acceptance to the Contractor.

D. If county determines that the Work is not Acceptable, the county shall notify the Contractor in writing, describing the deficiencies.

E. The Contractor shall either Provide a detailed, written plan to achieve Final Acceptance or to make corrections or replacements within a mutually agreed upon time period. The parties shall mutually agree on a start date for beginning another Acceptance test.

F. Another thirty (30) Day successful operation period shall follow any corrections or replacements to the Work. Two (2) or more thirty (30) Day operation Acceptance test periods can occur if mutually agreed to by the parties.

G. If the county Accepts the Work following a second or subsequent Acceptance test the county will send a notice of Final Acceptance to the Contractor.

H. If the Contractor does not correct or replace the unacceptable Work the county may declare a breach of Contract.

2.11 Warranty Provisions

A. No Waiver of Warranties and Contract Rights Conducting of tests and inspections, review of Scope of Work or plans, payment for Work, or Acceptance or Final Acceptance of the Work by the county shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve the Contractor from its warranty/guarantee responsibility.

B. Warranty Term The Contractor warrants that the Work performed under this Contract shall be free from defects in material and workmanship, and shall conform all requirements of this Contract, for a period of twelve (12) months from date of Final Acceptance of such Work by the county. Any Work corrected shall be subject to this subsection to the same extent as the Work initially provided.

C. Warranty Applicable to Third Party Suppliers, Vendors, Distributors and Subcontractors The Contractor shall ensure that the warranty requirements of this Contract are enforceable through and against the Contractor's suppliers, vendors, distributors and Subcontractors. The Contractor is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to the county by the Contractor and those extended to the Contractor by its suppliers, vendors, distributors and Subcontractors. Such inconsistency or difference shall not excuse the Contractor's full compliance with its obligations under this Contract. The Contractor shall cooperate with the county in facilitating warranty related Work by such suppliers, vendors, distributors and Subcontractors.

2.12 Express Warranties for Services

A. Contractor warrants that the Services shall in all material respects conform to the requirements of this Contract.

B. Contractor warrants that qualified professional personnel with in-depth knowledge shall perform the Services in a timely and professional manner; and that the Services shall conform to the standards generally observed in the industry for similar Services.

C. Contractor warrants that the Services shall be in compliance with all applicable laws, rules and regulations.

D. Contractor warrants that the performance of the Services and any Software Provided is free from intentional Viruses, disabling code or other intentional programming defects. Prohibited intentional programming defects include, but are not limited to, features such as "backdoor shutdown mechanisms", "time bombs", "automatic unauthorized connection to outside systems", programming that responds to or Provides information to outside systems' "pinging", and features that can "retire", "shut down", "cripple" or "stop" the Software. Contractor further warrants that neither the Software alone or through contact with the Contractor is capable of electronic self-help that may deprive the county of the use of the licensed Software.

THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.13 Express Warranties for Software

A. Contractor warrants that on the date of Final Acceptance, the Software Provided hereunder shall be free from significant programming Errors and when used in accordance with this Contract shall operate and conform to the Scope of Work, performance capabilities, functions and other descriptions and standards as identified in this Contract and all supplemental information Provided by Contractor.

B. Contractor warrants that it has full power and authority to license or sublicense the Software to the county without the consent of any other Person.

C. Contractor warrants that the Software, the License to the county to use the Software, instructions for use of the Software, Documentation and the performance by Contractor of the Services, shall be in compliance with all applicable laws, rules and regulations.

D. Contractor warrants the tapes, CD's, DVD's or other media delivered to the county to be free of defects in materials and workmanship under normal use for sixty (60) Days from the date of receipt by the county.

E. Contractor warrants that the Software provided is free from intentional Viruses, disabling code or other intentional programming defects. Prohibited intentional programming defects include, but are not limited to, features such as "backdoor shutdown mechanisms", "time bombs", "automatic unauthorized connection to outside systems", programming that responds to or Provides information to outside systems' "pinging", and features that can "retire", "shut down", "cripple" or "stop" the Software. Contractor further warrants that neither the Software alone or through Contract with the Contractor is capable of electronic self-help that may deprive the county of the use of the licensed Software.

F. Contractor warrants that future maintenance or Software releases shall not degrade the Software, cause a breach of any other warranty or require the county to purchase new or additional hardware or Software for continued operation of the Software so long as the installed system configuration has not been changed by the county.

G. The Contractor warrants functionality as described in the Contractor Proposal and represents that the Software will operate as specified in the recommended hardware and software configuration.

Contractor shall be responsible for providing and implementing the Software system as proposed into the existing system environment of the county on the hardware and software configuration

recommended by Contractor in its proposal. THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.14 Warranty Remedies

A. If at any time during the twelve (12) month period immediately following Final Acceptance of any Work covered by this Contract, Contractor or the county discovers one or more material defects or Errors in the Work or any other aspect in which the Work materially fails to meet the provisions of the warranty requirements herein Contractor shall, at its own expense and within thirty (30) Days of notification of the defect by the county, determine whether it agrees that there is a the defect, error, or failure of the Work to meet warranty requirements and so notify the county. If contractor so determines, Contractor shall within thirty (30) days after such notice correct the defect, Error or nonconformity by, among other things, making additions, modifications or adjustments to the Software as may be necessary to keep the Software in operating order in conformity with the warranties herein. Failure of Contractor to so agree or notify shall not relieve the Contractor of responsibility for curing any such defect, error, or failure of the Work in the event that a court of competent jurisdiction ultimately finds that such defect, error, or failure exists. Any Work corrected shall be subject to this subsection to the same extent as the Work initially provided.

B. During the sixty (60) Day media warranty period, the county may return defective media to Contractor and it shall be replaced without charge to the county.

C. In order to qualify for remedial action under these warranties, the county shall report a warranty failure to the Contractor in writing within thirteen (13) months from the date of Final Acceptance. The Contractor shall not be responsible for remedial action under this warranty to the extent the failure to meet the warranty is caused by modification to the product(s) by the county or anyone other than the Contractor or its Subcontractors, unless under Contractor's or its Subcontractor's direction.

D. The Contractor is responsible for all costs of repair or replacement in order to restore the Work to the applicable Contract requirements or Scope of Work, including shipping charges, for Work found defective within the warranty period.

2.15 Defective Work

Prior to Final Acceptance, when and as often as the county determines that the Work, furnished under the Contract is not fully and completely in accordance with any requirement of the Contract, it may give notice and description of such non-compliance to the Contractor. Within seven (7) Days of receiving such written notification, the Contractor shall supply the county with a detailed, written plan which indicates the time and methods needed to bring the Work in compliance with the Contract. The county may reject or accept this plan at its discretion. If the county rejects the plan the Contractor may be determined to be in material default of the Contract. This procedure to remedy defects is not intended to limit or preclude any other remedies available to the county by law, including those available under the Uniform Commercial Code, Title 62A RCW.

2.16 Software Warranty Process

During the warranty period, Software support shall be as described in the Maintenance Agreement, Attachment G.

2.17 Software Maintenance

After the warranty period, Software Maintenance support shall be as described in the Maintenance Agreement, Attachment H.

2.18 Independent Status of Contractor

In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent Contractor relationship shall be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit, which would accrue, to an employee under chapter 41.06 RCW or Title 51 RCW.

2.19 Non-Disclosure of Data

Data provided by the county either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the county data in any form without the express written approval of the county.

2.20 Non-Disclosure Obligation

While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, Software, Documentation, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the county or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the county's or the third party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the county of such requirement prior to disclosure.

2.21 Public Disclosure Requests

This Contract shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, Chapter 42.56 RCW (the "Act").

If the Contractor considers any portion of any record provided to King County under this Contract, whether in electronic or hard copy form, to be protected under law, the Contractor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such portion, the county will determine whether the material should be made available under the Act. If the county determines that the material is subject to disclosure, the county will notify the Contractor of the request and allow the Contractor ten (10) business days to take whatever action it deems necessary to protect its interests. If the Contractor fails or neglects to take such action within said period, the county will release the portions of record(s)

deemed by the county to be subject to disclosure. King County shall not be liable to the Contractor for inadvertently releasing records pursuant to a disclosure request not clearly identified by the Contractor as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET."

2.22 Pricing of Spare Parts

The county may, in its discretion, conduct a Cost or Price Analysis on specific spare parts, including but not limited to if pricing appears to be in excess of standard industry pricing for similar parts.. The county is not required to purchase spare parts under this Contract if it can purchase the same item(s) from another source under terms that are more advantageous to the county.

2.23 Product Return

The county reserves the right to return to the Contractor, those parts and supplies determined to be surplus and no longer required by the county. Parts and supplies eligible for return to the Contractor shall have been purchased for inventory or as spares, be unused, and in the same general condition as when received. The county shall advise the Contractor in writing of its intention to return any parts and supplies before the Contract closes.

The Contractor shall only be authorized a restocking fee if agreed to at the time of Contract execution and as described in Attachment A, Price, for the return of parts and supplies. The Contractor shall, at the county's option, issue a credit for the dollar value of the merchandise returned or refund that dollar amount (less any restocking fee) to the county.

This subsection does not apply to any merchandise made to order for the county.

2.24 No Prototype Components

All Work shall be in production and be used by customers comparable to the county at the time of the Contract Effective Date. Test or prototype items shall be clearly identified as such. A sufficient inventory of the Work shall be available to meet delivery requirements.

2.25 Industrial and Hazardous Waste

The Contractor shall comply with all applicable local ordinances, state and federal statutes, and supporting rules and regulations governing the discharge of industrial waste to a public sewer, private sewer, or side sewer tributary to the metropolitan sewerage system.

Contractor shall handle and dispose of all hazardous wastes in compliance with all applicable local, state and federal laws and regulations, including the Resource Conservation and Recovery Act, the Washington Hazardous Waste Management Act, and applicable rules and regulations of the Environmental Protection Agency and the Department of Ecology governing the generation, storage, treatment, transportation or disposal of hazardous wastes.

2.26 Changed Requirements

New federal, state and county laws, regulations, ordinances, policies and administrative practices may be established after the Contract Effective Date is established and may apply to this Contract. To achieve compliance with changing requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well. Changed requirements shall be implemented through subsection 1.2, Contract Amendment.

2.27 Software License

Subject to the terms and conditions set forth in this Contract and the Software License Agreement, Attachment G, including payment of the license fees by county to Contractor, Contractor hereby grants to county a perpetual, non-exclusive, non-transferable license to use the Software, including any Software and Source Code, as well as any Documentation and training materials.

2.28 Disaster Recovery

In the event a disaster is declared at any county site(s), Contractor will allow the county the right to use the Software in accordance with the Software License Agreement, Attachment G, at the recovery site identified by the county, at no additional cost to the county for the Services or maintenance thereof.

2.29 Authorized Users

Only employees, agents, and Contractors who need to use the Software in the performance of their duties for the county and who are authorized and enabled by the county may access and utilize the Software.

2.30 HIPAA – Protecting Patient Privacy

The Work under this Contract may require compliance with "The Health Insurance Portability and Accountability Act of 1996" (HIPAA). Information on this Act can be found at the U.S. Office of Civil Rights website: http://www.hhs.gov/ocr/hipaa/.

SECTION 3 INSURANCE REQUIREMENTS

3.1 Evidence and Cancellation of Insurance

A. Prior to the delivery of services underf the Contract, the Contractor shall file with the county evidence of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance shall be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the county shall receive notice at least thirty (30) Days prior to the effective date of any cancellation, lapse or material change in the policy.

B. In the event of a claim, the Contractor shall, upon demand of the county, deliver to the county all such policies of insurance, and all endorsements and riders, and the receipts for payment of premiums thereon.

C. Failure to Provide such insurance in a timeframe acceptable to the county shall enable the county to suspend or terminate the Contractor's Work hereunder in accordance with Contract provisions regarding "Termination for Convenience/Default/Non-appropriation." Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligations hereunder.

3.2 Insurance Requirements

A. The Contractor shall obtain and maintain the minimum insurance set forth below.

By requiring such minimum insurance, the county shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage shall apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained with this provision shall affect and/or alter the application of any other provision contained with this Contract.

For all coverages:

Each insurance policy shall be written on an "occurrence" form; excepting insurance for professional liability/errors and omissions. Professional liability/errors and omissions when required, may be acceptable on a "claims made" form.

If coverage is approved and purchased on a "Claims Made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Contract.

B. <u>Minimum Scope of Insurance</u>

Coverage shall be at least as broad as:

1. General Liability

Insurance Services Office form number (CG 00 01 current edition) covering COMMERCIAL GENERAL LIABILITY.

2. Automobile Liability

Insurance Service form number (CA 00 01 current edition) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8 and 9.

3. Professional Liability

Professional Liability, Errors and Omissions coverage.

In the event that services pursuant to this Contract either directly or indirectly involve or require professional Services, Professional Liability, Errors and Omissions coverage shall be provided.

4. Workers' Compensation

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this Work by applicable federal or "Other States" State Law.

5. Employers Liability or "Stop Gap":

The protection provided by the Workers Compensation Policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability policy.

C. Minimum Limits of Insurance

3.3 The Contractor shall maintain limits no less than, for:

A. General Liability: $1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a $2,000,000 aggregate limit.

B. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage.

C. Professional Liability, Errors and Omissions: $1,000,000 per Claim and in the Aggregate.

D. Workers' Compensation: Statutory requirements of the state of residency.

E. Employers Liability Stop Gap: $1,000,000.

F. Deductibles and Self-Insured Retentions

The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the county and shall be the sole responsibility of the Contractor.

G. Other Insurance Provisions

The insurance policies required in this Contract are to contain, or be endorsed to contain the following provisions:

1. Liability Policies:

The county, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Use the above exact language on the Endorsement Form. (CG 20 10 current edition or its equivalent)

To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the county, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the county, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way.

The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

H. Acceptability of Insurers

Unless otherwise approved by the county:

Insurance is to be placed with insurers with a Bests' rating of no less than A-, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time one of the foregoing policies shall fail to meet the above stated requirements, the Contractor shall, upon notice to that effect from the county, promptly obtain a new policy, and shall submit the same to the county, with the appropriate certificates and endorsements, for approval.

I. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. **Insurance coverages Provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.**

J. Work Site Safety

The Contractor shall have the "right to control" and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable Federal, State and Local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for the Subcontractor's compliance with these provisions.

K. Endorsements

Additional Insured Endorsement shall be included with the certificate of insurance. If additional insured status is afforded by blanket language in the policy, then a copy of the page of the policy indicating such is required. **The county requires this Endorsement to complete the Contract.**