NOTICE OF AWARD OF CONTRACT

TO: CITILABS, INC.
1211 MICSOSUKEE ROAD
TALLAHASSEE, FLORIDA 32308

DATE ISSUED: 11/24/2014
CURRENT CONTRACT NO: 538-15

CONTRACT TITLE: DES - CUBE SOFTWARE

PRIOR CONTRACT NO: N/A

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

Your firm is awarded the above referenced contract. The contract term covered by this Notice of Award is effective immediately and expires on SEPTEMBER 30, 2019.

The contract documents consist of the terms and conditions of Agreement No. 538-15, including any exhibits, attachments, or amendments thereto.

ATTACHMENTS: AGREEMENT NO. 538-15

CONTRACT PRICING: REFER TO AGREEMENT 538-15

ALL PO’S COVERING WORK UNDER THIS CONTRACT MUST BE APPROVED IN ADVANCE BY A PURCHASING REPRESENTATIVE.

EMPLOYEES NOT TO BENEFIT:
NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

CONFLICT OF INTEREST:
PRIOR TO PLACING AN ORDER FOR GOODS OR SERVICES UNDER THIS CONTRACT, EMPLOYEES ARE RESPONSIBLE FOR ENSURING THAT THEY NOT PROHIBITED FROM PARTICIPATING IN THE CONTRACT UNDER THE RULES SET FORTH IN ARTICLE 9-103 OF THE ARLINGTON COUNTY PURCHASING RESOLUTION.

VENDOR CONTACT: KATIE STRICKLAND
TELEPHONE NO.: 850-298-8838

VENDOR PAYMENT TERMS: NET 30 DAYS
EMAIL ADDRESS: KSTRICKLAND@CITILABS.COM

COUNTY CONTACT: PRASAD PULAGUNTLA
TELEPHONE NO.: 703-228-3780

EMAIL ADDRESS: PPULAGUNTLA@ARLINGTONVA.US

CONTRACT AUTHORIZATION

Krystyna J. Hepler, CFPB
Procurement Officer

11/25/2014 Date
ARLINGTON COUNTY, VIRGINIA

STANDARD FORM AGREEMENT NO. 538-15

THIS AGREEMENT ("Agreement" or "Main Agreement") is made on the date of execution by the County between the COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA ("County") and:

NAME/ADDRESS: Citilabs, Inc.; 1211 Miccosukee Road, Tallahassee, Florida 32308 ("Contractor"), collectively "the Parties."

1. The Contractor agrees to provide the following goods and services:
   - Cube Base software (Seat 1 – one license)
   - Cube Voyager software (Seat 1 – one license)
   - Maintenance and Support for Cube Base and Cube Voyager software in accordance with Exhibit C (Citilabs Software Maintenance Agreement).

   The County may purchase additional products from the Contractor in accordance with the provisions of paragraph 5 below.

   The goods and services under this Agreement shall be provided in accordance with Exhibit A (Citilabs Software Maintenance Agreement) and Exhibit B (Citilabs End User Software License Agreement for Citilabs Software – Cube) (collectively "Contract Documents").

   Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents and the remaining Contract Documents shall be complementary to each other and if there are any conflicts the most stringent terms or provisions shall prevail.

2. The Contractor's provision of these goods or services shall be subject to review and approval by the County's Project Officer ("Project Officer"), assigned by the Director of the County's Department of Environmental Services – Transportation Engineering and Operations.

3. The Contractor shall provide the goods or service designated in Paragraph 1 and any attachments beginning upon the execution of the Agreement by the County, and, unless terminated as provided below, shall continue until September 30, 2019.

4. For services rendered or goods provided by the Contractor and accepted by the Project Officer, the County shall pay the Contractor in accordance with pricing listed in Exhibit C (Cube Price Guide 2013). The prices listed in Exhibit C shall be valid until June 30, 2015. Any purchase of software made after this date shall be made in accordance with the Contractor's current price list. The annual price for maintenance services for all software purchased shall be 18% of the software purchase price. The annual maintenance fee shall be due net thirty (30) days from receipt by the County of a correct invoice from the Contractor. An invoice's correctness will be determined by the Project Officer. If such payment is not received by the 30th day, the County will be deemed to have elected not to purchase the maintenance services for the upcoming
term; however, such nonpayment will not terminate the remaining portion of the Agreement between the County and the Contractor.

5. It is understood and agreed by the parties that the Contractor is an independent contractor separate from the County, and the County will not withhold from the compensation paid to the Contractor any federal or Virginia unemployment taxes, federal or Virginia income taxes, Social Security tax, or any other amounts for benefits to the Contractor or its agents or employees; further, the County will not provide any insurance coverage or other benefits normally provided by the County for its general employees to the Contractor.

6. The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Agreement:

   a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Agreement;
   or
   b. Notify the County and the subcontractor, in writing, of the Contractor’s intention to withhold all or a part of the subcontractor’s payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to any subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Agreement, except for amounts withheld as allowed in section b., above. Unless otherwise provided under the terms of this Agreement, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as those contained in this Agreement with respect to each lower-tier subcontractor.

The Contractor’s obligation to pay an interest charge to a subcontractor pursuant to the above provisions may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

7. This Agreement may be terminated upon written notice to the Contractor fifteen (15) days before the date of termination by the Arlington County Purchasing Agent whenever the Purchasing Agent shall determine that such termination is in the County’s best interest. The Contractor will be entitled to receive compensation for all Contract goods or services satisfactorily performed by the Contractor and accepted by the County prior to such termination notice.

8. The County shall have the right to terminate this Agreement if the Contractor fails to provide satisfactory goods or services, in the sole determination of the Project Officer. In the event of such termination, the County will give the Contractor written notice forty-eight (48) hours before the effective date and time of termination. Such notice shall be effective upon being mailed by the County to the Contractor. In the event this Agreement is terminated by the County due to the Contractor’s failure to provide satisfactory goods or services, the Contractor shall be entitled to receive compensation only for goods or services satisfactorily performed and accepted by the Project Officer prior to the mailing by the County of such termination notice.
notice. Upon any termination pursuant to this section, the Contractor shall be liable to the County for all costs incurred by the County after the effective date of termination including costs required to be expended by the County to complete the Work covered by the Contract, including costs of delay in completing the Project or the cost of repairing or correcting any unsatisfactory or non-compliant work. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to the County upon demand by the County.

9. It is mutually understood and agreed that time is of the essence and the Contractor agrees that failure to provide timely service under this Agreement shall render this Agreement null and void, and the County will be relieved of all obligations hereunder.

10. The Contractor shall provide the below insurance coverages before the start of work and shall provide a certificate of insurance evidencing such coverages.

- Workers Compensation-Standard Virginia Workers Compensation Policy.
- Commercial General Liability (CGL)- $500,000 combined single limit with $1,000,000 aggregate coverage to include Personal Injury, Completed Operations, Contractual Liability and, where applicable to the services, Products and Independent Contractors. "The County Board of Arlington County, Virginia, and its officers, employees and agents" must be additional named insureds on the CGL policy.

11. The Contractor agrees as follows:

- a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, disability or any other basis prohibited by Virginia or federal law related to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth this nondiscrimination clause.
- b) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that it is an Equal Opportunity Employer.
- c) Notices, advertisements and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d) The Contractor shall include the provisions of the foregoing paragraphs a), b), and c) in every subcontract or Purchase Order in excess of $10,000.00, so that the provisions will be binding upon each subcontractor and/or supplier.

12. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990, which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in publicly- and privately-provided services and activities.

13. During the performance of this Agreement, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of marijuana or any other controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the
foresgoing clauses in every subcontract or purchase order in excess of $10,000.00, so that the provisions will be binding upon each subcontractor or supplier. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with this Agreement.

14. In accordance with § 2.2-4311.1 of the Code of Virginia, the Contractor acknowledges that it does not, and shall not during the performance of this Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

15. This Agreement is governed, in part, by all applicable provisions of the Arlington County Purchasing Resolution, which is hereby incorporated by reference into this Agreement. The time limit for decision by the County Manager in Contractual Disputes, as that term is used in the Purchasing Resolution, is fifteen (15) days.

16. This Agreement shall not be effective until a valid County Purchase Order is issued to the Contractor covering the amount of the Agreement.

17. All funds for payments by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County. In the event of nonappropriation of funds by the County Board for Arlington County for the goods and/or services provided under this Agreement or substitutes for such goods or services which are as advanced or more advanced in their technology, the County will terminate the Agreement, without termination charge or other liability to the County, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Agreement, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Agreement beyond the date of termination specified in the County's written notice.

18. This Agreement incorporates by reference Article 9 of the Arlington County, Virginia, Purchasing Resolution, as well as any Virginia or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia (§ 18.2-438 et seq.), as amended.

19. No employee of the County shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom.

20. The County does not discriminate against faith-based organizations.

21. The Contractor agrees that it shall hold all County information and data obtained as a result of its work under this Contract confidential in accordance with the Nondisclosure and Data Security Agreement attached hereto as Exhibit D. If individual employees or subcontractors of the Contractor are performing work under this Contract on County-owned property, then such individual employees or subcontractors shall be required to sign a separate Nondisclosure and Data Security Agreement attached hereto as Exhibit E, which shall be incorporated by reference into this Contract, prior to performing any work or being allowed access to County data.

22. The Contractor agrees to comply with the provisions of Chapter 11 of the Arlington County Code covering business licenses insofar as those provisions may apply to this Agreement.
23. The Contractor shall be and remain authorized to transact business in the Commonwealth of Virginia during the term of this Agreement.

24. This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia and no other state, and the jurisdiction and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court or jurisdiction.

25. The Contractor covenants for itself, its employees, and subcontractors to save, cefend, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "County" for purposes of this section) from and against any and all claims made by third parties or by the County for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of its work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this paragraph, the Contractor shall be liable for and reimburse the County for any and all expenses, including but not limited to, reasonable attorneys' fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Agreement.

26. Notwithstanding any other provision of this Agreement, nothing in this Agreement or any action taken by the County pursuant to this Agreement shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the County. The parties intend for this provision to be read as broadly as possible.

27. All notices and other communications hereunder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO THE CONTRACTOR:

Citilabs, Inc.
Arthur Leung
1211 Miccosukee Road
Tallahassee, Florida 32308

TO THE COUNTY:

The County Project Officer
Prasad Pulaguntla
2100 Clarendon Boulevard
Suite 900
Arlington, Virginia 22201

AND

538-15
5
28. The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. The County or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Contract Term. If the Contractor wishes to destroy or dispose of records (including confidential records to which the County does not have ready access) within five (5) years after final payment, the Contractor shall notify the County at least thirty (30) days prior to such disposal, and if the County objects, shall not dispose of the records.

29. This Agreement expressly incorporates any and all attachments and/or exhibits referenced hereinabove by reference. Where the terms and provisions of this Agreement vary from the terms and provisions of any attachments or exhibits, the terms and provisions of this Agreement shall take precedence.

30. The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement, or of any or all of its right, title or interest therein, without prior written consent of the County.

31. This Agreement shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and the County.

32. All remedies available to the County under this Agreement are cumulative and no remedy hereunder shall be exclusive of any other remedy available to the County at law or in equity.

33. The sections, paragraphs, sentences, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph or section of this Agreement shall be declared invalid by a valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Agreement.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE AFFIXED THEIR SIGNATURES.

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

SIGNED: Krishma Hepler
PRINTED NAME: RICHARD D. WARREN, JR.
PRINTED TITLE: PURCHASING AGENT
DATE: 11/25/2014

CITILABS, INC.

SIGNED: Katie Strickland
PRINTED NAME: Regional Sales Manager
PRINTED TITLE: Regional Sales Manager
DATE: 11/29/14

538-15
6
AGREEMENT NO. 538-15
EXHIBIT A

CITILABS SOFTWARE MAINTENANCE AGREEMENT

This Software Maintenance Agreement ("Maintenance Agreement") is between the County and the Contractor.

WHEREAS, the Contractor is owner of certain software and documentation packages and the Contractor has the right to combine selected components and operating system versions of such software and documentation into a comprehensive system ("System"), and to license and sublicense the System; and

WHEREAS, the Contractor has licensed to the County a system as set forth in the Software License Agreement ("SLA"); and

WHEREAS, the Contractor and the County wish to provide for the maintenance of the System by the Contractor,

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

1. Technical Contact.
The technical contact for the County will be as set forth in Paragraph 27 of the Main Agreement (hereinafter "Technical Contact").

2. Responsibilities of the Contractor.

2.1. The Contractor shall provide all labor and pay all direct expenses necessary to maintain the System, except for the replacement or repair of lost hardware locks (dongles), throughout the term of this Agreement. An original dongle will be sent as part of the software purchase. If a replacement dongle is needed due to loss or damage, a replacement dongle can be requested by the County. At times, remedies may consist of temporary procedures to be followed by the County during the period when a permanent remedy is being sought. The Contractor shall maintain a current version of the System in digital format, and emergency program maintenance will be provided by telephone, fax, e-mail and/or digital media interchange, at County’s option.

2.2. The Contractor shall perform all maintenance provided pursuant to the Maintenance Agreement during Contractor’s prime period of maintenance (hereinafter "PPM"), defined as 8:30 AM to 5:00 PM ET, Monday through Friday, and shall respond promptly to a request for remedial maintenance made by the Technical Contact or coordinated with the Technical Contact during the PPM.

2.3. The Contractor shall also maintain the System by preparing updates that ensure performance to original product specifications.

2.4. The Contractor shall provide the Technical Contact with all System updates as they become available at no additional cost to the County.
2.5. Maintenance for the System consists of updates and other benefits such as access to technical support. The Contractor supports licensed users under maintenance with the installation and maintenance of Contractor’s Software, assistance in solving problems arising from the use of the Software, hardware interfacing of peripheral devices, and reporting of enhancement requests and bugs reports submitted by the user.

3. Responsibilities of the County.

3.1. The County will apply all appropriate fixes and updates received from the Contractor in a timely fashion, and make and distribute copies of the System updates to all other licensed sites of the County.

3.2. The County will provide the Contractor access to the System in order to perform maintenance and/or technical support services upon request of the County. The Contractor shall not access to the System without prior authorization from the County.

3.3. If on-site work is required, the County will provide working space, utilities and facilities within a reasonable distance from the System as required by Contractor’s personnel.

3.4. The County will provide access to, and use of, all information and facilities determined necessary by the Contractor to maintain the System. In such situations the Contractor shall proceed with the Work in accordance with the provisions of Exhibits C and D to this Agreement. If such information and facilities contain proprietary or classified information, the Contractor shall use its commercially reasonable efforts not to disclose such information to any other person, unless compelled to do so by judicial or administrative process.

3.5. If on-site work is required, the County will provide operating supplies and consumables, including, but not limited to paper, ink/toner and digital media.

4. Conditions of Service.

4.1. The Contractor shall be under no obligation to furnish any maintenance service under this Agreement, if repair is required because of any occurrence over which the Contractor has no control, including, but not limited to, the following: 1) improper use of the System; 2) natural disaster, including but not limited to, flood or earthquakes; 3) strikes, riots, acts of war or nuclear disaster; 4) program changes and modifications made by other than Contractor’s personnel; 5) improper functioning of the hardware on which the System is run; 6) improper operation of the System by operators; 7) failure of the operators to follow all instructions given by the Contractor; and 8) unusual shock or electrical damage, accident, fire or water damage, neglect, air-conditioning failure, humidity control failure, damage during transportation by the County or other causes other than ordinary use. If maintenance service is requested by the County as a result of the causes stated above, such service, if provided, shall be invoiced separately, with labor invoiced at the Contractor’s then effective standard rates and direct expenses invoiced at actual cost, however, the Contractor shall clearly identify in advance when such services will not be covered under the Main Agreement and obtain an express authorization of the County Project Officer prior to providing any such services.

4.2. The County shall not be held responsible for failure to perform its duties and responsibilities imposed by the Agreement if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God.
beyond control of the County that make performance impossible or illegal, unless otherwise specified in this Agreement.

4.3 The Contractor shall not be required to render service under this Agreement if the County has failed to pay any amount due in accordance with provisions of the Main Agreement or is otherwise in breach of this Agreement and/or the SLA.

5. Charges.

5.1. The County will pay the Contractor (a) an annual fee for PPM service and software updates in the amount set forth in Paragraph 4 of the Main Agreement, and (b) other charges as set forth in this Agreement for all other services.

5.2. Unless otherwise stated, all charges are exclusive of federal, state or local excise, sales, or similar taxes, now or hereinafter enacted, which apply to the charges, the services rendered, or the parts supplied. Such taxes, when applicable, will be additional charges to the County.

6. Term of Agreement.

6.1. Notwithstanding the provisions of Section 6.1, if the Contractor is at any time in breach of its obligations pursuant to this Agreement and fails to begin to remedy such breach within ten (10) days after the Contractor has received the County's demand in writing to that effect, the County shall have the right to terminate this Maintenance Agreement and employ such other qualified persons as may be required to perform the services referred to in this Maintenance Agreement in accordance with Paragraph 8 of the Main Agreement.

6.2. The Contractor may terminate this Agreement if:

a. The County breaches any of its obligations pursuant to this Agreement and fails to remedy such breach within ten (10) days after the Contractor has made a demand in writing to the effect; or

b. The County violates the terms of the SLA; or

c. The County fails to make payments hereunder when due and continues to fail to make payments within thirty (30) days after the Contractor has made a demand in writing that such payments be made, provided that the Contractor shall not be required to provide any maintenance services during the period of delinquent payment.

7. Warranty.

7.1. The warranty provided in the SLA shall remain in effect as long as this Agreement is in force. The Contractor warrants the operation of all Software for the term of this Agreement and will provide all revisions, updates, upgrades, and minor releases to both the Software and supporting Documentation during that warranty term as long as this Agreement remains effective.
7.2. The foregoing states the exclusive warranties of the Contractor with respect to all aspects of this Agreement, except copyright and patent infringement as provided for in the SLA, and 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.

8. Limitation on Liability.

8.1. The Contractor will not be liable for any lost profits or consequential damages, even if the Contractor has been advised of the possibility of such damages, or any claim or demand against the County by any other party arising out of the County's use or inability to use the system. Notwithstanding anything set forth above, the Contractor will not have any liability for any modifications which are made to the System the County, or a third party or the impact of such modifications on the original system.


9.1. Headings. All headings used throughout this Agreement are for reference only and shall not be considered a substantive part of the Agreement.

9.2. Waiver. No waiver of any breach of this Agreement shall constitute a waiver of any other breach, whether of the same or any other covenant, term, or condition. The subsequent performance of any of the terms, covenants or conditions of this Agreement shall not constitute a waiver of any preceding breach, regardless of the other party's knowledge of the preceding breach at the time of subsequent performance, nor shall any delay or omission of either party's exercise of any right arising from any such default affect or impair the parties' rights as to the same or future default.

9.3. Binding on Heirs and Assigns. This Agreement shall inure to the benefit of and be binding upon the heirs, successors, and assigns of each of the parties hereto.
AGREEMENT NO. 538-15
EXHIBIT B

CITILABS END USER SOFTWARE LICENSE AGREEMENT FOR CITILABS SOFTWARE - CUBE

THE SOFTWARE PRODUCT IS PROTECTED BY U.S. COPYRIGHT LAWS AND INTERNATIONAL COPYRIGHT TREATIES, AS WELL AS OTHER INTELLECTUAL PROPERTY LAWS AND TREATIES. THE CONTRACTOR IS AND SHALL REMAIN THE OWNER OF ALL INTELLECTUAL PROPERTY RIGHTS IN THE SOFTWARE. THE SOFTWARE PRODUCT IS LICENSED TO THE COUNTY ON A NON-EXCLUSIVE, NONASSIGNABLE, NON-TRANSFERABLE, LIMITED BASIS, NOT SOLD.

1. LICENSE

Subject to the terms and conditions of this End User Software License Agreement ("Software License Agreement"), the Contractor grants the County a NON-EXCLUSIVE, NON- ASSIGNABLE, NON-TRANSFERABLE, LIMITED license to utilize the Software and Documentation for County's internal use.

(a) General Use. The County may install and use one copy of the SOFTWARE on up to the Permitted Number of compatible Computers as long as, when required by the SOFTWARE, the County installs valid hardware lock for each copy. An original hardware lock ("dongle") will be sent as part of the software purchase. If a replacement dongle is needed, due to loss or damage, a replacement dongle can be requested by the County;

(b) Distribution from Server. The County may copy an image of the SOFTWARE onto file server(s) within the Internal Network for the purpose of downloading and installing the SOFTWARE onto Computers within the same Internal Network for use as permitted by Section 1.a; and

(c) Server Use. The County may install the SOFTWARE on Computer file server(s) within the Internal Network only for use of the SOFTWARE initiated by an individual from a Computer within the same Internal Network as permitted by Section 1.a. The total number of users (not the concurrent number of users) able to use the SOFTWARE on such Computer file server(s) may not exceed the Permitted Number.

By way of example, the foregoing does not permit the County to install or access (either directly or through commands, data or instructions) the SOFTWARE:

(i) for enabling web hosted workgroups or services available to the public,
(ii) by an individual or entity to use, download, copy or otherwise benefit from the functionality of the SOFTWARE unless licensed to do so by the Contractor,
(iii) as a component of a system, workflow or service accessible by more than the Permitted Number of users, or
(iv) for operations not initiated by an individual user (e.g., automated server processing).

(d) Backup Copy. The County may make a reasonable number of backup copies of the SOFTWARE, provided the County's backup copies are not installed or used for other than archival purposes.

2. DEFINITIONS
(a) "Computer" means a virtual or physical computer device that accepts information in digital or similar form and manipulates it for specific result based on a sequence of instructions.

(b) "Documentation" means any user manuals or printed instructions provided to the County with the Software.

(c) "Package" means any disks, CD-ROMs, Documentation and other related materials, including any security protection devices required to install and access the Software, accompanying this Software License Agreement.

(d) "SOFTWARE PRODUCT" or "SOFTWARE" means use of a copy of computer software identified above and associated media and a copy of the printed materials, and may include "online" or electronic documentation as well as licensed third party Content.

(e) "License Fee" means the cost for the Software.

(f) "Internal Network" means a private, proprietary network resource accessible only by employees and individual contractors (i.e., temporary employees) of a specific corporation or similar business entity. Internal Network does not include portions of the Internet or any other network community open to the public, such as membership or subscription driven groups, associations and similar organizations.

(g) "Permitted Number" means the number of licenses purchased by the County under this Agreement.

(h) "Maintenance" means the Software Maintenance Agreement between the Contractor and the County providing technical support and Software revisions and updates included in the Main Agreement as Exhibit A.

3. COPYRIGHT NOTICE, PROPRIETARY RIGHTS & CONFIDENTIALITY

(a) Software and Documentation copyright ©2001-2013 Citilabs, Inc. All rights reserved. Under United States and international copyright laws, the County may not copy, photocopy, reproduce, translate, reduce to any electronic medium or machine readable form, in whole or in part, this Software or the accompanying Documentation without the express written permission of the Contractor, except as necessary for system backup and disaster recovery in accordance with this Agreement. Unless otherwise noted, all title in and copyrights in and to the Software and Documentation are wholly owned by the Contractor and protected by copyright laws of the United States and international treaty provisions. Certain subcomponents of the software are property of their respective copyright holders.

(b) Except for the license rights granted to the County hereunder, the Contractor retains all rights in the Software, including any rights under the patent, trademark, copyright and trade secret laws and this Agreement does not grant to the County any intellectual property rights in the Software. The structure, organization and code underlying the Software are the valuable intellectual property of the Contractor. The County agrees that it will not take any action to jeopardize, limit or interfere in any manner with such ownership by the Contractor and will not disclose to any third party Intellectual property of the Contractor and will take all reasonable precautions necessary to protect the confidentiality of such intellectual property.

538-15
12
4. Permitted Uses

Subject to receipt by the Contractor of the license fee for the Software (the "License Fee") and the termination provisions herein, the County is granted a nonexclusive license to the following:

(a) The County may install the Software on a computer under the County's control. The County may access and use the Software on such computer so long as only one copy of the Software is in operation. The primary user of the computer on which the Software is installed may make a second copy for back-up or disaster recovery purposes.

(b) In addition, the County may store, install and access the registered version of the Software through an internal network, provided that the County obtains and pays for a license for each workstation or computer that will access the Software concurrently through the network. For example, if 5 different workstations will access the Software on the network and up to 3 use the Software at the same time, the County must have 3 paid-up licenses for the Software.

(c) The County may use the software installed on a computer under the County's control through any of the remote access methods in use by the County.

(d) Software licensed for demonstration or evaluation purposes may only be used for sixty (60) days and may not be used for revenue generating purposes.

(e) Software licensed for instructional purposes can only be used for the term indicated on the license information included with the Software and may not be used for revenue generating or non-instructional purposes.

(f) Software licensed for research purposes can only be used for the term indicated on the license information included with the Software and may not be used for non-academic research related purposes.

5. Non-Permitted Uses

The Software and Documentation owned by or licensed to the Contractor are protected by United States copyright laws and international treaty provisions. The County cannot distribute any copyrighted material provided with any the Contractor's product without the prior written consent of an authorized representative of the Contractor.

Furthermore, the County may not:

(a) Copy the Documentation in any way except for internal use.

(b) Copy the Software (except as authorized in Section 4).

(c) Modify, translate, convert or merge the Software with any other software unless prior written approval is obtained from an authorized representative of the Contractor.

(d) Reverse engineer, reverse assemble, or decompile the Software or its source code, or attempt to do any of the foregoing.
(e) Sub-license, rent, assign, transfer, pledge, lease, share or distribute all or any portion of the Software or the Documentation.

6. Limited Warranty

The Contractor warrants that the Software will perform substantially as specified in the Documentation for the Software, provided that the County uses it on the computer hardware and operating system for which it was designed. The Contractor will have no obligations under this limited warranty if the County alters, modifies or misuses the Software, violates the terms of this Agreement or fails to notify the Contractor in writing of any claim under this limited warranty. The immediate remedy for breach of this limited warranty shall be, at the County’s sole discretion, upon receipt by the Contractor of a notice of such breach:

(a) To receive from the Contractor or its designated agent repaired or corrected Software;

(b) To receive from the Contractor or its designated agent instructions as to how the County may achieve substantially the same functionality with the Software as described in the Documentation;

(c) To receive a refund of the License Fee paid by the County for the defective copy of the Software, upon which the County must return the Software and Documentation and the license shall immediately terminate.

7. Third Party Intellectual Property Rights

The Contractor indemnifies the County against any loss, liability, cost or expense arising from or connected with any claims, actions, or demands relating to the Software infringing the intellectual property rights of a third party, provided that:

(i) the County promptly notifies the Contractor in writing of the claim;

(ii) the County gives control of the defense of any actions and negotiations related to the defense or settlement of any claim to the Contractor; and

(iii) the County cooperates with the Contractor in relation to the claim.

If the Software is found to infringe a third party's intellectual property rights the Contractor, at its own expense, may either:

(i) obtain a right for the County to continue to use the Software; or

(ii) modify the Software such that it no longer infringes but still has substantially the same functionality.

If neither alternative is commercially reasonable, the County may return the Software and obtain a pro rata refund of any license fees paid to the Contractor.

The indemnity is not applicable to the extent that the claims actions or demands allege the infringement of a third party's intellectual property rights due to:
(i) the combination of or integration of the Software with software not supplied by the Contractor;

(ii) any amendment to the Software by anyone other than the Contractor or persons acting on behalf of the Contractor; or

(iii) use of the Software after the County has been notified of the potential infringement.

8. Limited Liability

EXCEPT FOR INDEMNITY OBLIGATIONS PURSUANT TO SECTION 7. OF THIS SOFTWARE LICENSE AGREEMENT (THIRD PARTY INTELLECTUAL PROPERTY RIGHTS), IN NO EVENT SHALL THE CONTRACTOR, ITS AFFILIATES OR RESELLERS BE LIABLE TO THE COUNTY FOR ANY DAMAGE OR LOSS, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS OR OTHER ECONOMIC LOSS, ARISING OUT OF THE COUNTY’S POSSESSION OF, USE OF, OR INABILITY TO USE THE SOFTWARE OR DOCUMENTATION, EVEN IF THE COUNTY HAS ADVISED THE CONTRACTOR OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES OR LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, AND THIS SECTION 8 WILL NOT APPLY TO THE EXTENT THAT APPLICABLE LAW REQUIRES LIABILITY NOTWITHSTANDING THE FOREGOING LIMITATION OR EXCLUSION.

9. United States Government Restricted Rights

The Software and Documentation are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the United States Government is subject to restrictions set forth in subparagraph (b)(3) of The Rights in Technical Data and Computer Software clause at 48 CFR 252.227-7014 (Rights in Noncommercial Computer Software Documentation) or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights clause at 48 CFR 52.227-19, or its successor provisions, as applicable. The contractor/manufacturer for such purpose is Citilabs, Inc., 1211 Miccosukee Road, Tallahassee, FL 32308 USA

10. Termination

In event of termination, the County must immediately destroy the Software and related materials, or return them in their entirety to the Contractor. Sections 7 and 8 hereof shall survive the termination of this Agreement.
AGREEMENT NO. 538-15
EXHIBIT D

NONTISCLOSURE AND DATA SECURITY AGREEMENT
(CONTRACTOR)

The undersigned, an authorized agent of the Contractor and on behalf of Citilabs, Inc. (Contractor) hereby agree that the Contractor will hold County provided information, documents, data, images, records and the like (hereafter "information") confidential and secure and to protect it against loss, misuse, alteration, destruction or disclosure. This includes but is not limited to the information of the County, its employees, contractors, residents, clients, patients, taxpayers and property as well as information that the County shares with Contractor for testing, support, conversion or other services provided under Arlington County Agreement No. 538-15 (the "Project" or "County Agreement" as applicable) or which may be accessed through other County owned or controlled databases (all of the above collectively referred to herein as "information" or "County information").

In addition to the DATA SECURITY obligations set in the County Agreement, the Contractor agrees that it will maintain the privacy and security of the County information, control and limit internal access and authorization for access to such information and not divulge or allow or facilitate access to County information for any purpose or by anyone unless expressly authorized. This includes but is not limited to information that in any manner describes, locates or indexes anything about an individual including, but not limited to, his/her (hereinafter "his") Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, address, phone number or that affords a basis of inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, and the record of his presence, registration, or membership in an organization or activity, or admission to an institution (also collectively referred to herein as "information" or "County information").

Contractor also agree that it will not directly or indirectly use or facilitate the use or dissemination of information (whether intentionally or by inadvertence, negligence or omission verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly associated with its work under the Project. Contractor acknowledges that any unauthorized use, dissemination or disclosure of information is prohibited and may also constitute a violation of Virginia or federal laws, subjecting it or its employees to civil and/or criminal penalties.

The Contractor agrees that it will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person, for any purpose, of any information obtained directly, or indirectly, as a result of its work on the Project. Contractor shall coordinate closely with the County Project Officer to ensure that its authorization to its employees or approved subcontractors is appropriate, tightly controlled and that such person/s also maintain the security and privacy of information and the integrity of County networked resources.

Contractor agrees to take strict security measures to ensure that information is kept secure, properly stored, that if stored that it is encrypted as appropriate, stored in accordance with industry best practices and otherwise protected from retrieval or access by unauthorized persons or unauthorized purpose. Any device or
media on which information is stored, even temporarily, will have strict security and access control. Any information that is accessible will not leave the Contractor’s work site or the County’s physical facility, if working onsite, without written authorization of the County Project Officer. If remote access or other media storage is authorized, Contractor is responsible for the security of such storage device (or paper files).

Contractor will ensure that any laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices, as approved by the County, and connected to the County network are secure and free of all computer viruses, or running the latest version of an industry standard virus protection program. Contractor will ensure that all passwords used by its employees or subcontractors are robust, protected and not shared. No information may be downloaded expect as agreed to by the parties and then only onto a County approved device. Downloading onto a personally owned device is prohibited. Contractor agrees that it will notify the County Project Officer immediately upon discovery, becoming aware or suspicious of any unauthorized disclosure of information, security breach, hacking or other breach of this Agreement, the County Contract, County policy, Contractor’s security policies, or any other breach of Project protocols. The Contractor will fully cooperate with the County to regain possession of any information and to prevent its further disclosure, use or dissemination. The Contractor also agrees, if requested, to promptly notify others of a suspected or actual breach. Contractor agrees that all duties and obligations enumerated in this agreement also extend to its employees, agents or subcontractors who are given access to County information. Breach of any of the above conditions by Contractor’s employees, agents or subcontractors shall be treated as a breach by Contractor. Contractor agrees that it shall take all reasonable measures to ensure its employees, agents and subcontractors are aware of and abide by the terms and conditions of this Agreement and related data security provisions in the County Agreement.

It is the intent of this NonDisclosure and Data Security Agreement to ensure that the Contractor has the highest level of administrative safeguards, disaster recovery and best practices are in place to ensure confidentiality, protection, privacy and security of County information and County networked resources and to ensure compliance with all applicable local, state and federal law or regulatory requirements. Therefore, to the extent that: this NonDisclosure and Data Security Agreement conflicts with the County Agreement or with any applicable local, state, or federal law, regulation or provision, the more stringent County Contract requirement, law, regulation or provision shall control.

At the conclusion of the Project, Contractor agrees to return all County information to the County Project Officer. These obligations remain in full force and effect throughout the Project and shall survive any termination of the County Agreement.

Authorized Signature: 

Printed Name and Title: Katie Erickland/Regional Sales Manager

Date: 11/24/14
AGREEMENT NO. 538-15
EXHIBIT E

NONDISCLOSURE AND DATA SECURITY AGREEMENT
(INDIVIDUAL)

I, the undersigned, agree that I will hold County provided information, documents, data, images, records and the like (hereafter "information") confidential and secure and protect it against loss, misuse, alteration, destruction or disclosure. This includes but is not limited to the information of the County, its employees, contractors, residents, clients, patients, taxpayers, and property as well as information that the County shares with my employer or prime contractor for testing, support, conversion or the provision of other services under Arlington County Agreement No. 538-15 (the "Project" or "County Agreement", as applicable) or which may be accessed through County owned or controlled databases (all of the above collectively referred to herein as "information" or "County information").

I agree that I will maintain the privacy and security of County information and I will not divulge or allow or facilitate access to County information for any purpose or by anyone unless expressly authorized to do so by the County Project Officer. This includes but is not limited to information that in any manner describes, locates or indexes anything about an individual including, but not limited to, his/her (hereinafter "his") Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings, education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth or that otherwise affords a basis of inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, and the record of his presence, registration, or membership in an organization or activity, or admission to an institution (as also collectively referred to herein as "information" or "County information").

I agree that I will not directly or indirectly use or facilitate the use or dissemination of information (whether intentionally or by inadvertence, negligence or omission verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly authorized and associated with my designated duties on the Project. I understand and agree that any unauthorized use, dissemination or disclosure of information is prohibited and may also constitute a violation of Virginia or federal law/s, subject to civil and/or criminal penalties.

I also agree that I will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person for any purpose of the information obtained directly, or indirectly, as a result of my work on the Project. I agree to view, retrieve or access County information only to the extent concomitant with my assigned duties on the Project and only in accordance with the County's and my employer's access and security policies or protocols.

I agree that I will take strict security measures to ensure that information is kept secure, properly stored, that if stored that it is encrypted as appropriate, stored in accordance with industry best practices, and otherwise protected from retrieval or access by unauthorized persons or unauthorized purpose. I will also ensure that any device or media on which information is stored, even temporarily, will have strict security and access control and that I will not remove, facilitate the removal of or cause to be removed any information from my employer's worksite or the County's physical facility without written authorization of the County Project Officer. If so authorized, I understand that I am responsible for the security of the electronic equipment or paper files on which the information is stored and agree to promptly return such information upon request.
I will not use any devices, laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices ("Device") during my work on the Project without pre-approval. I will ensure that any Device connected to the County network shall be free of all computer viruses or running the latest version of an industry standard virus protection program. I will also ensure that my password, if any, is robust, protected and not shared. No information may be downloaded except as authorized by the County Project Officer and then only onto a County-approved Device. Downloading onto a personally owned Device is prohibited.

I agree that I will notify the County Project Officer immediately upon discovery, becoming aware of or suspicious of any unauthorized disclosure of information, security breach, hacking or other breach of this Agreement, County policy, my employer's security system or any other breach of Project protocols. I will fully cooperate with the County to help regain possession of any information and to prevent its further disclosure, use or dissemination.

It is the intent of this NonDisclosure and Data Security Agreement to ensure that the highest level of administrative safeguards and best practices are in place to ensure confidentiality, protection, privacy and security of County information and County networked resources and to ensure compliance with all applicable local, state and federal law or regulatory requirement. Therefore, to the extent that this NonDisclosure and Data Security Agreement conflicts with the underlying County Agreement or any local, state or federal law, regulation or provision, the more stringent County Contract provision, law, regulation or provision shall control.

Upon completion or termination of my work on the Project, I agree to return all County information to the County Project Officer. I understand that this Agreement remains in full force and effect throughout my work on the Project and shall survive my reassignment from the Project, termination of the above referenced Project or my departure from my current employer.

Signed: [Signature]
Printed Name: Katie Strickland
Date: 11/24/14
Witnessed: [Signature] 11/24/14

Contractor's Project Manager: ________________________________
Printed Name: ______________________________________________
Date: ______________________________________________________

TO BE COMPLETED PRIOR TO BEGINNING WORK ON THE PROJECT