ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201

NOTICE OF AWARD OF CONTRACT

TO: KBACE Technologies, Inc.
   6 Trafalgar Square
   Nashua, NH 06063

DATE ISSUED: 02/27/2015
CURRENT CONTRACT NO: 564-15

CONTRACT TITLE: KBACE Technologies, Inc.

PRIOR CONTRACT NO: ----

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 in accordance with the response submitted by you on 02/06/2015. The contract term covered by this Notice of Award is effective 02/27/2015 and expires on 06/30/2016.

This is the first year award notice of a possible three (3) year contract.

The contract documents consist of the terms and conditions of Agreement No. 564-15, including any exhibits, attached or amendments thereto.

CONTRACT PRICING:

1) REFER TO Exhibit B (ATTACHED)

2) PRICE ADJUSTMENTS FOR EXTENSION OPTIONS BASED ON Clause #4

ATTACHMENTS:

Contract Documents

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: Michael F. Peterson
TELEPHONE NO.: 603-821-7117
VENDOR PAYMENT TERMS: NET 30 DAYS
EMAIL ADDRESS: contracts@kbace.com

CONTRACT AUTHORIZATION
Robert W. Jenkins CPPB
Asst. Purchasing Agent

DISTRIBUTION
VENDOR: 1
BID FOLDER: 2
ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201

AGREEMENT NO 564-15

THIS AGREEMENT (hereinafter “Agreement”) is made, on the date of its execution by the County, between KBASE Technologies, Inc., 6 Trafalgar Square, Nashua, New Hampshire 03063 (“Contractor”), a Nevada Corporation authorized to transact business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia (“County”). The County and the Contractor, for the consideration and quantity(ies) specified herein or specified in a County Purchase Order referencing this Agreement, agree as follows:

1. CONTRACT DOCUMENTS
The Contract Documents consist of this Agreement and Exhibit A (Scope of Services and Support Agreement), Exhibit B (Pricing), Exhibit C (End User Software License Agreement), Exhibit D (Nondisclosure Agreement “Contractor”). Collectively, “Contract Documents” or “Contract.”

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.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties’ agreement which is not contained in the Contract Documents. The Contract Documents may be referred to herein below as the “Contract” or the “Agreement.”

2. SCOPE OF WORK
The Contractor agrees to perform the goods and services described in the Contract Documents (hereinafter “the Work”). The primary purpose of the Work is to provide software and technical consulting support services and to grant to the County (“Licensee”) a non-exclusive End User License to use the software in perpetuity in order to enhance the County’s extraction of Oracle Applications tax payroll data. The Contract Documents set forth the minimum Work estimated by the County and the Contractor. It shall be the Contractor’s responsibility, at the Contractor’s sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor’s responsibility to manage the details and execution of the Work.
3. **CONTRACT TERM**
The Work shall commence upon execution of this Agreement, and the Work shall be completed no later than June 30, 2016("Initial Contract Term"), subject to any modifications as provided for in the Contract Documents. Upon satisfactory performance by the Contractor and with the concurrence of the Contractor, the County may authorize continued operations of the Contractor for not more than two (2) additional twelve (12) month periods from July 01, 2016 to September 09, 2018. Each such period shall be referred to as a "Subsequent Contract Term."

4. **CONTRACT AMOUNT**
The County will pay the Contractor in accordance with the terms of the Payment paragraph below, at the rates set forth in Exhibit B for Work provided by the Contractor, as described and required in the Contract Documents and accepted by the County. In the event of a price adjustment, the Contractor shall notify the County and the adjustment must be approved by the County Purchasing Agent through a formal amendment signed by the County and the Contractor. The annual support fee for services cannot increase more than 5.00% annually for any Subsequent Contract Term. The Contractor shall not be compensated for any goods or services provided except those included in Exhibit A and included in the Main Agreement unless those goods or services are covered by a written amendment to this Contract signed by the County and the Contractor, and a County Purchase Order is issued covering the expected cost of such services.

5. **PAYMENT**
Payment will be made by the County to the Contractor within thirty (30) days after receipt by the County Project Officer of an invoice for work done which is reasonable and allocable to the Contract and which has been performed to the satisfaction of the Project Officer. Amounts on invoices shall not include amounts allocated to tasks on which no work has been done. The Project Officer will either approve the invoice or require corrections. The number of the County Purchase Order pursuant to which authority goes or services have been performed or delivered shall appear on all invoices.

If the County fails to make payment to the Contractor within the term specified above, KBACE reserves the right to render the Software inoperable such as by refusing to issue another temporary software key or a permanent software key.

6. **REIMBURSABLE EXPENSES**
No reimbursable expenses are allowed under this Contract. The Contract Amount includes all expected costs and expenses of providing to the County the services described in this Contract.
7. **PROJECT OFFICER**
The performance of the Contractor is subject to the review and approval of the County Project Officer ("Project Officer") who shall be appointed by the Director of the Arlington County department or agency requesting the work under this Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work pursuant to the Contract Documents.

8. **PROJECT STAFF**
The County will, throughout the Initial Contract Term and any Subsequent Contract Term, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If the County reasonably rejects staff or subcontractors pursuant to this section, the Contractor must provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's employees, and employees of any of its subcontractors, shall be the sole responsibility of the Contractor.

9. **ADJUSTMENTS FOR CHANGE IN SCOPE**
The County may order changes in the Work within the general scope of the Work consisting of additions, deletions or other revisions. No claim may be made by the Contractor that the scope of the work or that the Contractor's services have been changed requiring adjustments to the amount of compensation due the Contractor unless such adjustments have been made by a written amendment to the Contract signed by the County and the Contractor. If the Contractor believes that any particular work is not within the scope of the Work or is a material change or otherwise will call for more compensation to the Contractor, the Contractor must immediately notify the Project Officer after the change or event occurs and within ten (10) calendar days thereafter must provide written notice to the Project Officer. The Contractor's notice must provide to the Project Officer the amount of additional compensation claimed, together with the basis therefor and documentation supporting the claimed amount. The Contractor will not be compensated for performing any work unless a proposal complying with this paragraph has been submitted in the time specified above and a written Contract amendment has been signed by the County and the Contractor and a County purchase order is issued covering the cost of the services to be provided pursuant to the amendment.

10. **PAYMENT OF SUBCONTRACTORS**
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 Contract:

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 Contract; 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.

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The Contractor is obligated to pay interest to the 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 Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section 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.

11. NON-APPROPRIATION
All funds for payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia. In the event of non-appropriation of funds by the County Board of Arlington County, Virginia for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the County will terminate the Contract, 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 Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, 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 Contract beyond the date of termination specified in the County's written notice.

12. COUNTY PURCHASE ORDER REQUIREMENT
County purchases are authorized only if a County Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering agency. The County will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by the County Purchasing Agent. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense.

13. SUPERVISION BY CONTRACTOR
The Contractor shall at all times enforce strict discipline and good order among the workers performing under this Contract, and shall not employ on the work any person not reasonably proficient in the work assigned.
14. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED
During the performance of this Contract, the Contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state 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 the provisions of this nondiscrimination clause.

B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor 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 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 both publicly and privately provided services and activities.

E. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

15. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED
In accordance with §2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

16. TO BE MAINTAINED BY CONTRACTOR
During the performance of this Contract, 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 a controlled substance or marijuana 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 foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by Arlington County in accordance with the Arlington County

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Purchasing Resolution, the employees of which contractor are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

17. **WARRANTY**

The Contractor warrants to furnish the services described herein at the times and places and in the manner and subject to the conditions set forth. The Contractor shall enter upon and complete the performance of services with all due diligence and dispatch and shall exercise the highest degree of skill and competence.

18. **UNSATISFACTORY WORK**

If any of the work done, or material or equipment provided, by the Contractor is unsatisfactory to the County, the Contractor shall, on being notified by the County, immediately remove at the Contractor's expense such unsatisfactory work or material or equipment and replace the same with work or material or equipment satisfactory to the County and, in the event the Contractor fails within fifteen (15) days after receipt of written notice to remove improper or unsuitable work or material or equipment and replace it with suitable and satisfactory work or material or equipment, the County shall have the right, but not the obligation, to remove the rejected work or material or equipment and replace it with proper work or material or equipment at the expense of the Contractor. This paragraph applies during the Initial Contract Term, any Subsequent Contract Term, and during any warranty or guarantee period. The County shall be entitled to offset such expense against any sums owed by the County to the Contractor under this Contract. If the Project Officer and the County deem it expedient not to require correction or replacement of the work which has not been done in accordance with the Contract, an appropriate adjustment to the Contract Amount may be made therefor.

19. **TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE**

The Contract shall remain in force for the Initial Contract Term or any Subsequent Contract Term(s) and until the County determines that all of the following requirements and conditions have been satisfactorily met: the County has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, the County shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by the County in its discretion.

The Contractor shall have the right to terminate this Contract upon thirty (30) days’ written notice (the “notice period”) to County if the County is in breach or default under Section 6 - Payment and the County fails to cure the breach or default before the end of the notice period.

If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect (“Cure Period”). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Contract may be terminated for the Contractor’s failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and

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accepted by the County prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the County Project Officer within fifteen (15) days after the expiration of the Cure Period. The County may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from the County to the Contractor (unless the County in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

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 Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. 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. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to the County, and the County shall be entitled to recover, all damages to which the County is entitled by this Contract or by law, including, and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by the County to the Contractor under the Contract and all attorney fees and costs incurred by the County to enforce any provision of this Contract.

Except as otherwise directed by the County in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontractors and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

20. **Termination for the Convenience of the County**
The performance of Work under this Contract may be terminated by the County’s Purchasing Agent in whole or in part whenever the Purchasing Agent shall determine that such termination is in the County’s best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination and any
other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

If this Agreement is terminated by either party, the County shall return all full or partial copies of the Software and accompanying documentation in the County’s possession or under its control to KBACE within fifteen (15) of the date of receipt of the notice of termination or other date specified in the notice, including any in-house copies the County may have produced for archival purposes.

21. INDEMNIFICATION
The Contractor covenants for itself, its employees, and subcontractors to save, defend, 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 the 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 section, 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 Contract.

22. INTELLECTUAL PROPERTY INDEMNIFICATION
The Contractor warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask rights and trademark) of third parties are infringed or in any manner involved in or related to the services provided hereunder.

The Contractor further covenants for itself, its employees, and subcontractors to save, defend, hold harmless, and indemnify the County, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney’s fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by the County,

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provided, however, that this indemnity shall not extend to any claim of infringement to the extent resulting from: (1) infringement by County's specifications provided to Contractor, (2) modification of the Deliverables and/or Services not made by Contractor, (3) use or incorporation of the Deliverables and/or Services in violation of the specifications provided to Contractor, or (4) use or combination of the Deliverables and/or Services with items or materials or third-party software not provided by Contractor. If the Contractor, or any of its employees or subcontractors, uses any design, device, work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the Work. 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 section, 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 Contract.

23. OWNERSHIP AND RETURN OF RECORDS
This Contract confers no ownership rights to the Contractor nor any rights or interests to use or disclose the County's data or inputs.

The Contractor agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of the County's request for services under this Contract, are the exclusive property of the County ("Record" or "Records"), and all such Records shall be provided to and/or returned to County upon completion, termination, or cancellation of this Contract. The Contractor shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of the County. Additionally, the Contractor agrees that the Records are confidential records and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or his or her designee for response.

At the County's request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at the County's request, shall destroy all computer records created as a result of the County's request for services pursuant to this Contract.

The Contractor agrees to include the provisions of this section as part of any contract or agreement the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract.

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No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section of the Contract.

24. CONFIDENTIAL INFORMATION
The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all County information obtained as a results of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement and the requirements set forth in Exhibits D and E.

The County shall not reproduce, duplicate, copy or otherwise disclose, distribute or disseminate software code for the Software in any media except for the County’s own internal use by the County’s permanent employees and on-site consultants on a need-to-know basis on the County’s premises, and for only those purposes allowed under this Agreement. The County has executed or will execute appropriate agreements with its employees and consultants sufficient to enable it to comply with all the provisions of this Agreement.

25. ETHICS IN PUBLIC CONTRACTING
This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any state 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, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

26. COUNTY EMPLOYEES
No employee of Arlington County, Virginia, shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

27. FORCE MAJEURE
The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond control of the Contractor, and outside and beyond the scope of the Contractor’s then current, by industry standards, disaster plan, that make performance impossible or illegal, unless otherwise specified in the Contract.
The County shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract 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 the Contract.

28. AUTHORITY TO TRANSACT BUSINESS
The Contractor shall pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without any cost or expense, at the sole option of the County.

29. RELATION TO COUNTY
The Contractor is an independent contractor and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Furthermore, the County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.

30. ANTITRUST
By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the County all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the County under this Contract.

31. REPORT STANDARDS
Reports or written material prepared by the Contractor in response to the requirements of this Contract or a request of the Project Officer shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with these requirements shall be borne by the Contractor.

When submitting documents to the County, the Contractor shall comply with the following guidelines:

- All submittals and copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;
- All copies shall be double-sided;

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• Report covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);
• The use of plastic covers or dividers should be avoided; and
• Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper (e.g. separate title sheets or chapter dividers) should be avoided.

32. **AUDIT**
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 Initial Contract Term and any Subsequent 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.

33. **ASSIGNMENT**
Neither Party shall assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the other party.

34. **AMENDMENTS**
This Contract shall not be amended except by a written amendment executed by persons duly authorized to bind the Contractor and the County.

35. **ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES**
Notwithstanding any provision to the contrary herein, no provision of the Arlington County Purchasing Resolution or any applicable County policy is waived in whole or in part.

36. **DISPUTE RESOLUTION**
All disputes arising under this Agreement, or its interpretation, whether involving law or fact, or extra work, or extra compensation or time, and all claims for alleged breach of Contract shall be submitted to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after final payment. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, incorporated herein by reference, and available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court.

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37. **APPLICABLE LAW, FORUM, VENUE AND JURISDICTION**
This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

38. **ARBITRATION**
It is expressly agreed that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

39. **NONEXCLUSIVITY OF REMEDIES**
All remedies available to the County under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the County at law or in equity.

40. **NO WAIVER**
The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

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

42. **NO WAIVER OF SOVEREIGN IMMUNITY**
Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the County pursuant to this Contract 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.

43. **SURVIVAL OF TERMS**
In addition to any numbered section in this Agreement which specifically state that the term or paragraph survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; INTELLECTUAL PROPERTY INDEMNIFICATION; WARRANTY; CONFIDENTIAL INFORMATION; AND DATA SECURITY.

44. **HEADINGS**
The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

45. **AMBIGUITIES**
Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting Sole Source Agreement 564-15
this Agreement. The language in this Agreement shall be interpreted as to its
fair meaning and not strictly for or against any party.

46. NOTICES
Unless otherwise provided herein, all notices and other communications
required by this Contract 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:

KBACE Technologies, Inc.
Michael F. Peterson
6 Trafalgar Square
Nashua, NH 03063

TO THE COUNTY:

Will Rose, Project Officer
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 600
Arlington, Virginia 22201

AND

Richard D. Warren, Jr., Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

47. NON-DISCRIMINATION NOTICE
Arlington County does not discriminate against faith-based organizations.

48. INSURANCE REQUIREMENTS
The Contractor shall provide to the County Purchasing Agent a Certificate of
Insurance indicating that the Contractor has in force the coverage below
prior to the start of any Work under this Contract and upon any contract
extension. The Contractor agrees to maintain such insurance until the
completion of this Contract or as otherwise stated in the Contract Documents.
All required insurance coverages must be acquired from insurers authorized to
do business in the Commonwealth of Virginia, with a rating of "A-" or better
and a financial size of "Class VII" or better in the latest edition of the
A.M. Best Co. Guides, and acceptable to the County. The minimum insurance
coverage shall be:

a. Workers Compensation - Virginia Statutory Workers Compensation (W/C)
coverage including Virginia benefits and employers liability with
limits of $100,000/100,000/500,000. The County will not accept W/C
coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
b. Commercial General Liability - $1,000,000 combined single limit coverage with $2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.

c. Business Automobile Liability - $1,000,000 Combined Single Limit (Owned, non-owned and hired).

d. The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for injuries arising out of errors or omissions in the rendering, or failure to render services or perform work under the contract, in the amount of $1,000,000.

e. Additional Insured - Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insureds on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.

f. Cancellation - If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor's notification from the insurer. It is the Contractor's responsibility to notify the County upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and the County notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.

g. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.

h. Contract Identification - The insurance certificate shall state this Contract's number and title.


The Contractor must disclose the amount of any deductible or self insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies required herein, if any. The County reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, the County

Sole Source Agreement 564-15
may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for the County.

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers’ Compensation insurance in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors’ certificates of insurance to the County immediately upon request by the County.

No acceptance or approval of any insurance by the County shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity and the alternative coverages are submitted to and acceptable to the County. The Contractor must also provide its most recent actuarial report and provide a copy of its self insurance resolution to determine the adequacy of the insurance funding.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

AUTHORIZED SIGNATURE: ____________________________

NAME AND TITLE: RICHARD D. WARREN, JR.
DATE: 6/27/17

KBACE TECHNOLOGIES, INC.

AUTHORIZED SIGNATURE: ________________

NAME AND TITLE: Michael F. Peterson
DATE: 2/4/15

President & COO

Sole Source Agreement: 564-15
Exhibit A

SCOPE OF SERVICES AND SUPPORT AGREEMENT

1. SCOPE OF SERVICES
The County ("Licensee") is to continue its current use of a KBX Software License (Exhibit C) for extraction and reporting of Oracle Applications. Initial fees have already been paid to the Contractor. The County will purchase Version 4.0 of the KBX Data Management Suite, Payroll Datastore, Payroll Toolkit, and Support Services for Covered Software, including but not limited to: Web Site support, Email support, Toll Free Phone Support, Product Updates, Bug Fixes, Dial-In Requirements, Severity Definitions, and other required Software procedures.

2. DEFINITIONS
   a. “Software” - The software sold under the trademarks KBX, KBI or other KBACE marks, accompanying documentation and any customized program code provided by KBACE as part of the implementation/installation process.

   b. “Covered Software” - Only those items of software identified in Exhibit C. Unless otherwise specified, the Covered Software does not include any third-party software.

3. SUPPORT
Support Services include all modifications to the Covered Software that increase the speed, efficiency, or ease of use of the Covered Software or add additional capabilities or functionality to the Covered Software, including but not limited to all new versions, releases, upgrades, updates, fixes or modifications to the Covered Software.

Support also includes Remedial Support Service, meaning the diagnosis and correction of any malfunction in the Covered Software that prevents it from operating substantially in accordance with applicable KBACE Specifications or with Year 2000 Standards.

4. PROVISION OF SUPPORT SERVICES
Support Services shall be performed promptly, and at a minimum within reasonable commercial standards.

   a. Web Site - KBACE’s issue tracking system is accessed from the KBACE website: https://tracker.phaseware.com/KBace/Main.aspx. The County will receive a login to the site for tracking its specific needs. Features include: automatic email notifications when issues are logged, Knowledgebase with Solutions, FAQs, downloads and notices to help customers, automatic notifications when items are closed, resolution routing if other resources are required and customizable product Lists.

   b. Email Support - The Contractor shall also provide email support, which can be contacted at: kbxsupport@kbace.com.

   c. Toll Free Phone Support - The Contractor shall provide a special hotline for the County, which shall be staffed 24/7. The hotline number is: (800) 334-4470.

   d. Remote Access - If reasonably necessary for performance of Support Services, KBACE shall, upon a reasonable advance request by the County,
be provided dial-in or VPN remote access to the Covered Software via modem.

Dial-in access requirements can be coordinated with the support desk. If no dial-in access is available, on-site assistance is available at the County’s expense (Exhibit B - Pricing).

e. Severity Definitions - Requests for service will be classified by level of severity. KBACE reserves the right, in its sole discretion, to re-classify the severity level of a customer’s problem in the event that County has incorrectly identified the severity level.

i. Severity 1 - The problem is critical to business operations, i.e. the system is down. Particularly, payroll processing in Oracle production is unable to process due to the KBX Software.

ii. Severity 2 - The problem has a significant business impact where important features, such as error-free reports, are unavailable with no acceptable workaround.

iii. Severity 3 (Standard Priority) - The problem has a lesser business impact where (1) important system features are unavailable but a workaround is available, or (2) less significant features are unavailable with no reasonable workaround, or (3) client has questions regarding product features and functionality.

iv. Severity 4 - The problem has minimal business impact where the request is for information or enhancement or documentation clarification.

f. Severity Procedures: Depending on the severity level, the client should contact KBACE for service support in the following ways.

i. Severity 1 - Customer should always use the 800 number (800-334-4470) and open an incident on the KBACE Online Support Center website (https://tracker.phaseware.com/KBace/CreateIncident.aspx).

ii. Severity 2 - Customer should log the issue using either the 800 number (800-334-4470) or by opening an incident on the KBACE Online Support Center website

iii. Severity 3 - Customer should log the issue ONLY by opening an incident on the KBACE Online Support Center website.

iv. Severity 4 - Customer should log the problems ONLY by opening an incident on the KBACE Online Support Center website.

g. Priority Handling of Major Alarms - In the case of certain “major alarm” malfunctions in the Covered Software that seriously disrupt Licensee’s business activities, KBACE shall perform Support Services on a priority basis as quickly as reasonably possible, subject to the existing workload of other calls for priority service. Priority Support Services are predicated on the availability of adequate staff and resources. If all previous support tactics coordinated by KBACE’s support coordinator have not resolved the issue(s), and Licensee is unable or unwilling to provide remote access, KBACE will provide on-site Support Services, subject to a daily fee at the rate stated in Exhibit B and documented travel and direct expenses.
h. Product Updates - Contractor shall provide periodic product updates. This shall include all updated versions of KBX for HR and Payroll reporting needs.

i. Bug Fixes - Upon receipt of a report from the County of a bug in the Software, the Contractor shall respond by way of email or voicemail stating that Contractor Support is aware of the problem. The Contractor shall respond based on the severity of the problem experienced by the County. Response times shall be as follows: Severity 1: 30 minutes, Severity 2: 1 Business day, Severity 3: 2 Business days, and Severity 4: 5 Business days.

5. LICENSEE RESPONSIBILITIES
Licensee shall ensure that: (a) the Covered Software and any associated hardware and equipment are installed and operated according to applicable manufacturer specifications and recommendations; (b) all upgrades and releases to Covered Software or engineering changes to associated software and equipment specified or recommended by the applicable manufacturer have been procured by Licensee and properly installed; (c) a continuous, uninterrupted and suitable power supply and temperature, humidity and other environmental conditions recommended by the manufacturer or KBACE have been implemented and maintained; (d) suitable surge protection devices have been implemented; (e) no other equipment or software having an adverse impact on the Covered Software has been introduced; and (f) Licensee periodically makes and stores in a safe place archival copies of all Covered Software and all valuable data affected by the operation or malfunction of Covered Software.

6. FAILURE TO COMPLY
To the extent that any preventive or remedial Support Service is required because of Licensee's failure to comply with the Licensee Responsibilities, KBACE may refuse to provide Support or may charge hourly for such work at the fee stated in Exhibit B. KBACE agrees to notify Licensee in advance and in writing when it plans to charge hourly for any such work.
Exhibit B

PRICING

Quote Date: 3/27/2014
Quote Amount: $14,521.53

Quote To:
Arlington County Government
1425 N Courthouse Road
Arlington, VA 2201

Remit To:
KBACE Technologies, Inc.
PO Box 414131
Boston, MA 02241-4131
EIN # 88-0405287

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Solo Source Agreement 564-15
**Exhibit B**

**PRICING**

Initial License Fee: Already paid in full through Reseller DELL (Formerly ASAP Software).

Throughout the term of this agreement, the Contractor may submit a written request for an hourly rate of $185 for the following work:

- On-Site Support Services for priority alarms when the County is unable or unwilling to provide remote access.

- Work that is required as a result of Licensee’s failure to comply with the Licensee Responsibilities

KBACE may also submit a written request for reimbursement of documented direct and travel expenses incurred as a result of providing on-site Support Services.

KBACE shall use reasonable efforts to comply with the County’s internal expense guidelines, provided that such expense guidelines are reasonable and that the County provides KBACE with a copy of such guidelines at the commencement of the Work. KBACE’s failure to reasonably comply with such guidelines shall not abrogate the County’s responsibility to reimburse KBACE for reasonable expenses. In the event that the County does not have travel guidelines, KBACE corporate travel guidelines will be used.
Exhibit C
SOFTWARE LICENSE AGREEMENT

1. LICENSE GRANTS AND RESTRICTIONS
KBACE grants to Licensee a non-exclusive, non-transferable, non-assignable, 
paid-up license to use the Software. “Software” means the software sold under 
the trademarks KBX, KBI or other KBACE marks, accompanying documentation and 
any customized program code provided by KBACE as part of the 
implementation/installation process.

Licensee agrees and understands that the above grant is a conditional grant 
to use the Software. In its ordinary and customary course of business, KBACE 
provides Licensee with a temporary software key to allow operation of the 
Software upon signature of the Main Agreement and will provide Licensee a 
permanent software key for operating the Software within a reasonable time 
after KBACE’s receipt of payment from Licensee of the Initial License Fee 
under this Agreement.

Licensee shall not
   a) Sublicense the Software or any part of the Software;
   b) Distribute or provide copies of any programs or documentation to 
a third party;
   c) Reverse assemble, reverse compile, or otherwise translate the 
      Software or any part of the Software, or to allow any third party 
      to do the same;
   d) Install the Software at sites other than the designated 
      location(s) listed in the Software Supplement, except that in the 
      case of equipment failure at the designated location(s), Licensee 
      may use the Software on a backup machine and/or location;
   e) Move a designated location without providing KBACE written 
      notification;

All rights not expressly granted herein are reserved by KBACE.

2. OWNERSHIP
KBACE retains all right, title and interest in and to the Software and any 
Derived Technology. Derived Technology shall mean any translation (including 
translation into other computer languages), port, modification, correction, 
addition, extension, upgrade, improvement, compilation, abridgment, or other 
form in which an existing work may be recast, transformed or adapted for 
copyrightable or copyrighted material, (2) any improvement for patentable or 
patented material, and (3) any new material derived from existing material 
that is protected by trade secret.

All work product provided by KBACE to Licensee is not work-made-for-hire and 
Licensee has no rights in such work product other than what is expressly 
granted herein.

3. EXPORT CONTROL LAWS AND LICENSEE’S DUTIES
Licensee acknowledges that the Software is subject to the export control laws 
and regulations of the United States, and any amendments thereof. Licensee 
confirms that, with respect to the Software, it will not export or re-export 
them, directly or indirectly, either to

   a) Any countries that are subject to United States export restrictions 
      (currently including, but not necessarily limited to, Cuba, the
Federal Republic of Yugoslavia (Serbia and Montenegro), Iran, Iraq, Libya, North Korea, South Africa (military and police entities), Syria, and Vietnam;

b) any end user who Licensee knows or has reason to know will utilize it in the design, development or production of nuclear, chemical or biological weapons; or

c) any end user who has been prohibited from participating in the United States export transactions by any federal agency of the United States government. Licensee further acknowledges that the KBACE Code may include technical data subject to export and re-export restrictions imposed by United States law.

4. COPYRIGHT NOTICE
The documentation and the accompanying Software are ©2000-2004 by KBACE. All rights reserved. Printed in the United States of America. The software described in this document is furnished under a license agreement, and may be used or copied only per the terms of the Main Agreement and Exhibits.

5. WARRANTIES, DISCLAIMERS, EXCLUSIVE REMEDIES, AND LIMITATION OF LIABILITY
KBACE warrants that the program(s) will substantially operate as described in the applicable program documentation for one year after KBACE delivers them to the County. KBACE also warrants that technical support and services will be provided consistent with industry standards and warranted for a period of 30 days from performance of the service.

KBACE does not guarantee that the programs will perform without errors or interruptions (program errors), or that KBACE will correct all program errors. To the extent permitted by law, these warranties are exclusive and there are no other express or implied warranties or conditions, including warranties or conditions of merchantability and fitness for a particular purpose.

If KBACE cannot substantially correct a program error in a commercially reasonable manner, Licensee may end Licensee’s Program License, technical support or other services and recover the license fees, technical support fees or other services fees paid to KBACE under this license agreement for the relevant software, technical support or service.

Neither party shall be liable for any indirect, incidental, special, punitive, or consequential damages under this agreement, or any loss of profits, revenue, data, or data use. KBACE’s maximum liability for any damages under this agreement, whether in contract or tort, shall be limited to twice the price of the fees of license paid KBACE for the relevant software, technical support or other service under this agreement as specified in licensee’s purchase order. This is Licensee’s exclusive remedy. None of the above limitations apply with regard to IP indemnification, personal injury or death.
EXHIBIT D

NONDISCLOSURE AND DATA SECURITY AGREEMENT ("CONTRACTOR")

The undersigned, an authorized agent of the Contractor and on behalf of KBACE Technologies, 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. 564-15 (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

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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 except 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:  
Date:  

Sole Source Agreement 564-15