

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

NOTICE OF CONTRACT AWARD

SYBATECH INC. DBA CODEPAL
2709 JONATHAN PLACE
SPRINGFIELD, ILLINOIS, 62711

DATE ISSUED:

NOVEMBER 4, 2021

CURRENT REFERENCE NO:

22-FIR-SS-477

CONTRACT TITLE:

CODEPAL SOFTWARE

**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.**

The contract documents consist of the terms and conditions of AGREEMENT No. 19-808-SS including any attachments or amendments thereto.

EFFECTIVE DATE: January 22, 2022

EXPIRES: JANUARY 21, 2023

RENEWALS: NO RENEWALS

COMMODITY CODE(S): 92007

LIVING WAGE: N

PROFESSIONAL SERVICES: N

ATTACHMENTS:

AGREEMENT No. 22-FIR-SS-477

EMPLOYEES NOT TO BENEFIT:

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

VENDOR CONTACT: Pam Lee

VENDOR TEL. NO.:

(217) 787-1133

EMAIL ADDRESS: pam.lee@codepaltoolkit.com

COUNTY CONTACT: Charlene Gillis

COUNTY TEL. NO.:

(703) 228-4632

COUNTY CONTACT EMAIL: cgills@arlingtonva.us



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

AGREEMENT NO. 22-FIR-SS-477

THIS AGREEMENT is made, on 11/4/2021, between Sybatech Inc. DBA Codepal 2709 Jonathan Place, Springfield, Illinois 62711 ("Contractor") an Illinois Corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The "Contract Documents" consist of:

This Agreement
Exhibit A – Scope of Work
Exhibit B – Contract Pricing

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 will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will 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 party has made any representation or promise with respect to the parties' agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the "Contract" or the "Agreement".

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (the "Work"). As detailed in the "Scope of Work" (Exhibit A), the primary purpose of the Work is CodePal Software Support. It will be the Contractor's responsibility, at its 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 limits the Contractor's responsibility to manage the details and execution of the Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

4. CONTRACT TERM

Time is of the essence. Work under this Agreement will commence on January 22, 2022. All work defined in Exhibit A, must be completed no later than January 21, 2023. No work will be deemed complete until it is accepted by the County's Project Officer.

5. CONTRACT AMOUNT

The County will pay the Contractor in accordance with the terms of the Payment section below and of Exhibit B for the Contractor's completion of the Work as required by the Contract Documents. The Contractor will complete the Work for the total amount specified in this section ("Contract Amount").

The County will not compensate the Contractor for any goods or services beyond those included in Exhibit A unless those additional goods or services are covered by a fully executed amendment to this Contract. Additional services will be billed at the rates set forth in Exhibit B unless otherwise agreed by the parties in writing.

6. PAYMENT

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within forty-five (45) days after receipt of an invoice for completed work that is reasonable and allocable to the Contract and that has been performed to the satisfaction of the Project Officer. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

7. REIMBURSABLE EXPENSES

The County will not reimburse the Contractor for any expenses under this Contract. The amount in Exhibit B includes all costs and expenses of providing the services described in this Contract.

8. * PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment 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.

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 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 will accrue at the rate of 1% per month.

The Contractor must 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.

9. NO WAIVER OF RIGHTS

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

10. * NON-APPROPRIATION

All 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 ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

11. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; and the County is under no obligation to buy that or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The County may require more goods and/or services than the estimated annual quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this Contract. The items or services covered by this Contract may be or become available under other County contract(s), and the County may determine that it is in its best interest to procure the items or services through those contract(s).

12. * COUNTY PURCHASE ORDER REQUIREMENT

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

13. BACKGROUND CHECK

All employees or subcontractors whom the Contractor assigns to work on this Contract must pass the County's standard background check. The background check will include fingerprinting by the County Sheriff's Office and a credit check.

14. REPLACEMENT OF PERSONNEL AND SUBCONTRACTORS

The County has the right reasonably to reject staff or subcontractors whom the Contractor assigns to the project. The Contractor must then 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 and its subcontractors' employees is the sole responsibility of the Contractor.

The Contractor may not replace key personnel or subcontractors identified in its proposal, including the approved Project Manager, without the County's written approval. The Contractor must submit any request to remove or replace key personnel or subcontractors to the County Project Officer at least 15 calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and his or her qualifications.

If the approved Project Manager must be absent for an extended period, the Contractor must provide an interim Project Manager, subject to the County's written approval.

If the approved Project Manager resigns or is terminated by the Contractor, the Contractor will replace the Project Manager with an individual with similar qualifications and experience, subject to the County's written approval.

15. * EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability or on any other basis prohibited by state law. 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. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

16. * EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

17. * DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its 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 violating 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 more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

18. *SEXUAL HARASSMENT POLICY

If the Contractor employs more than five employees, the Contractor shall (i) provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the Contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the Contractor owns or leases for business purposes and (b) the Contractor's employee handbook.

19. COVID-19 VACCINATION POLICY FOR CONTRACTORS

Due to the ongoing COVID-19 pandemic, the County has taken various steps to protect the welfare, health, safety, and comfort of the workforce and public at large. As part of these steps, the County has implemented various requirements with respect to health and safety including policies with respect to social distancing, the use of face-coverings and vaccine mandates. To protect the County's workforce and the public at large, all employees and subcontractors of the Contractor who are assigned to this Contract, must be fully vaccinated against COVID-19. Any contractor employee or subcontractor who is not fully vaccinated should be following a weekly testing protocol as established by the Contractor, unless exempt pursuant to a valid reasonable accommodation under state or federal law.

20. TERMINATION

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

1. Termination for Unsatisfactory Performance. 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 them within 15 days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. The Contractor must submit any request for termination costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for termination costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek termination costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to termination costs, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

21. INDEMNIFICATION (Note: Virginia law does not permit the County to indemnify others; cross indemnity provisions are not acceptable to the County)

The Contractor covenants for itself, its employees and its 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 Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure 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 Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

22. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

23. COPYRIGHT

By this Contract, the Contractor irrevocably transfers, assigns, sets over and conveys to the County all rights, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor will execute any documents that the County requests to formalize such transfer or assignment.

The rights granted to the County by this section are irrevocable and may not be rescinded or modified, including in connection with or as a result of the termination of or a dispute concerning this Contract.

The Contractor may not use subcontractors or third parties to develop or provide input into any copyrightable materials produced pursuant to this Contract without the County's advance written approval and unless the Contractor includes this Copyright provision in any contract or agreement with such subcontractors or third parties related to this Contract.

24. OWNERSHIP OF WORK PRODUCT

This Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs.

All work product, in any form, that results from this Contract is the property of the County and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or allow others to use the work product for any purpose other than performance of this Contract without the written consent of the County.

The work product is confidential, and the Contractor may neither release the work product nor share its contents. The Contractor will refer all inquiries regarding the status of any work product to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all work product, including hard copies of electronic files, to the Project Officer and will destroy all electronic files.

The Contractor must include the provisions of this section as part of any contract or agreement related to this Contract into which it enters with subcontractors or other third parties.

The provisions of this section will survive any termination or cancellation of this Contract.

25. CONFIDENTIAL INFORMATION

The Contractor and its employees, agents and subcontractors will hold as confidential all County information obtained under this Contract. Confidential information includes, but is not limited to, nonpublic personal information; personal health information (PHI); social security numbers; addresses; dates of birth; other contact information or medical information about a person; and information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans and expertise. The Contractor must take reasonable measures to ensure that all of its employees, agents and subcontractors are informed of and abide by this requirement.

26. * ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including 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 proposal was made without collusion or fraud; 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.

27. * COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

28. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of

God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

29. * AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

30. * RELATION TO COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or 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 or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

31. ANTITRUST

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

32. REPORT STANDARDS

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, reports must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)
- avoid use of plastic covers or dividers
- avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

33. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years, or such period of time required by the County's funding partner(s), if any, whichever is greater, after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five

years after the final payment, or such period of time required by the County's funding partner(s), if any, whichever is greater, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

The Purchasing Agent may require the Contractor to demonstrate that it has the necessary facilities, ability, and financial resources to comply with the Contract and furnish the service, material or goods specified herein in a satisfactory manner at any time during the term of this Contract.

34. ASSIGNMENT

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County.

35. AMENDMENTS

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

36. * ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

37. * DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. 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 the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

38. * APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

39. ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

40. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

41. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

42. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

43. * ATTORNEY'S FEES

In the event that the County prevails in any legal action or proceeding brought by the County to enforce any provision of this Contract, the Contractor will pay the County's reasonable attorney's fees and expenses.

44. SURVIVAL OF TERMS

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP OF WORK PRODUCT; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND CONFIDENTIAL INFORMATION.

45. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

46. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

47. NOTICES

Unless otherwise provided in writing, all legal notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

TO THE CONTRACTOR:

Bob Lee – CodePal Product Manager
P.O. BOX 9047
Springfield, IL 62711-4901
Phone: (217) 787-1133
Email: bob.lee@codepaltoolkit.com

TO THE COUNTY:

Charlene Branch, Project Officer
2100 Clarendon Boulevard, Suite 400
Arlington, VA 22201
Phone: (703) 228-4632
Email: cbranch@arlingtonva.us

AND

Dr. Sharon T. Lewis, LL.M, MPS, VCO, CPPB

Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201
Phone: (703) 228-3294
Email: slewis1@arlingtonva.us

TO COUNTY MANAGER'S OFFICE (FOR PROJECT CLAIMS):

Mark Schwartz, County Manager
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 318
Arlington, Virginia 22201

48. ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060, or e-mail business@arlingtonva.us.

49. * NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

50. INSURANCE REQUIREMENTS

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are 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.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$500,000/500,000/500,000. 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 per occurrence, with \$1,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- a. Additional Insured – The County and its officers, elected and appointed officials, employees and agents must be listed as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.

- b. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- c. Claims-Made Coverage - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.
- d. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County's acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for 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 Work. The Contractor's insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is 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 whom the Contractor employs directly.

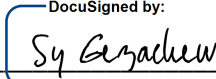
51. COUNTERPARTS

This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

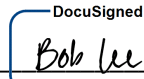
THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

SYBATECH INC. DBA CODEPAL

AUTHORIZED
SIGNATURE: 
DocuSigned by:
27FC198F4A6D475...
NAME: Sy Gezachew

TITLE: PROCUREMENT OFFICER

DATE: 11/4/2021

AUTHORIZED
SIGNATURE: 
DocuSigned by:
C1526549DDE0459...
NAME: Bob Lee

TITLE: President

DATE: 11/4/2021

Service Agreement



CodePal Toolkit Collaborative Service Agreement

Thank you for subscribing to the Codepal Toolkit product from CodePal. As our valued customer we provide you with the following support services:

1. Your Codepal Toolkit Components

The agreements in this SLA apply to the following Codepal Toolkit components. These components are:

Codepal Toolkit server subscription, Codepal Toolkit End User Access subscription, Codepal Toolkit Training, Codepal Toolkit Refresher Training, Codepal Toolkit Additional Setup and Analysis, Codepal Toolkit Online, Codepal Toolkit Hosting Solutions.

2. General Provisions: Initial Implementation and On-Going Support

a. Client Configuration and Management

i. Included in your subscription purchase are the following benefits: a). Detailed analysis of your needs; b) Initial configuration of the Codepal Toolkit tailored specifically to the way you do your work, based on our detailed analysis; c). Initial management and end user training; d). End user documentation tailored specifically to your end users workflow.

ii. Your subscription purchase entitles you to one (1) day(s) of free on-location configuration and management support each year. This support must be utilized each year from the date of your initial subscription purchase.

b. End User Access Subscription

i. Your end user access subscriptions entitle you to one (1) day(s) of free on-location end user training each year. This support must be utilized each year from the date of your initial end user subscription purchases.

ii. Updated documentation will be provided with each on-location end user training event.

3. Updates and Upgrades

Updates: In the unlikely event errors are uncovered in Codepal Toolkit, we will resolve these errors and provide you with an update to Codepal Toolkit. Updates will be provided incrementally, as they become available and will be supplied to Codepal Toolkit customers at the discretion of CP.

Upgrades: We are constantly improving Codepal Toolkit through Upgrades that contain changes suggested by you and other clients. These Upgrades will also be provided to Codepal Toolkit customers on an incremental basis, as they become available, and will be supplied at the discretion of CP. Upgrades to Microsoft SQL Server (any version) are not included in this CP TK Support Agreement.

As a valued customer your local Codepal Toolkit manager will be provided notice of the availability of updates and upgrades via Email or Newsletter. Codepal Toolkit updates and upgrades will be available through Internet download or direct installation by CP staff. One hour on-line training session will be available after each upgrade to review the new features in your Codepal Toolkit. This on-line training session is provided free of charge in your subscription purchase and does not count against the number of on-location days you are accruing each year.

4. Documentation

Codepal Toolkit comes with all the documentation you need, built in. You may access these documents through the Help menu item that is available when you log in to Codepal Toolkit. These documents may be saved, printed, or viewed at your discretion. Documentation will continually be updated.

5. Additional On-Location Support or Training

Purchasing CP Support brings you the option to purchase additional on-location support or training. This additional on-location support is separate from the on-location support you are accruing each year. CP agrees to provide additional software support and/or training at your site as needed. On-location support and/or training may be scheduled at any time convenient to you, with a minimum of five (5) business days' notice to us. For these services we will bill you at our current daily rate. There is a two day minimum for these purchases. Please call our Sales Team for current rates and to purchase this option.

6. Non-Refundable Software:

Your subscription to CP software is non-refundable.

7. If an Annual Service Level Agreement is NOT Paid within the terms of the Contract:

Access to the software will be discontinued and a backup copy of your database will be provided.

EXHIBIT B - CONTRACTOR PRICING



**CODEPAL RENEWAL
AGREEMENT**

*Codepal Toolkit,
by Sybatech, Inc.
PO Box 9047
Springfield, IL 62791*

*Telephone 217-787-1133
Facsimile 217-787-1171
www.Codepaltoolkit.com*

Subscriber's Business Name and Address	Arlington County Fire <u>Department</u> ATTN: Chief Fire Marshal, Mathew Cobb 1020 N. Hudson Street, 2 nd Floor Arlington, VA 22201	Primary Contact	Mathew Cobb
		Title	Fire Marshal
		Email Address	mcobb@arlingtonva.us
		Contact phone #	703-228-4644
Mailing Address (if different with an email address)	Same as above	Company Phone	703-228-4644
		Renewal Begin Date: January 15, 2022 Renewal End Date: January 14, 2023	

CODEPAL RENEWAL AGREEMENT

Subscriber and Codepal agree with this CODEPAL RENEWAL AGREEMENT, dated September 23, 2021.

			Totals		
	Codepal Annual Use and Maintenance Fees	Fee for Users plus Maintenance – 1 (one) year(s) at \$11400 (Eleven Thousand Four Hundred US Dollars) per year.			\$ 12900
	Microsoft Azure Government	Annual Database Hosting in the Azure Government Cloud – 1 (one) year(s) @ \$3600 (Three Thousand Six Hundred US Dollars) per year.			\$ 3600
	Estimated Total				\$ 16500
*** The fees listed herein are subject to change upon a Product Order Agreement, Contract or other written documentation duly executed by both parties (Subscriber and Codepal). ***					
Payment Terms			01/15/2022 To 01/14/2023	01/15/2023 To 01/14/2024	01/15/2024 To 01/14/2025
	Annual Fees Total	1 (One) year(s) at \$ 16500 (Sixteen Thousand Five Hundred US Dollars) per year. Period Coverage (January 15, 2022 through January 14, 2023)	\$ 16,500	\$ 16,500	\$ 16,500
There will be a 3% charge for credit card payments.					

Each of the signatories below represents that he/she, on behalf of SUBSCRIBER and CODEPAL respectively, has the right and authority to execute this CODEPAL RENEWAL AGREEMENT and each party agrees to be bound by the same. In entering into this document, neither SUBSCRIBER nor CODEPAL is relying on any representation not specified in this CODEPAL RENEWAL AGREEMENT.

SUBSCRIBER:			CODEPAL Inc.		
By: _____ Authorized Signature			By: <u>Robert E. Lee</u> Authorized Signature		
Printed Name:			Printed Name:	Robert E. Lee	
Title:		Date:	Title:	President	Date: 09/23/2021

ALL PRODUCT OFFERING DEFINITIONS

Below provide definitions for the items listed in this CODEPAL RENEWAL AGREEMENT. Any agreements for the purchase of Subscriptions or Services shall be made via a written CODEPAL RENEWAL AGREEMENT between the parties.

Subscription Term: Commences on the date of installation and runs annually on that date for Subscription Use and for Maintenance Support.

Agreement Term. The parties may agree to one (1), two (2), or three (3) year annual agreement terms.

1.1 Users Definitions.

- a) **Managing Administrative User.** Highest level user for the Subscriber, with privileges to create accounts, set privileges for the Standard User. Codepal installation team will assist in the initial analysis and set up with Standard User-defined privileges.
- b) **Standard Client User.** This is a Subscriber defined user level with privileges defined by a Managing Administrative User.
- c) **Concurrent User.** This is a group of users who will share Codepal license(s). The permissions for this group are defined by the Managing Administrative User.

1.2 Local Services.

- a. **Codepal.** It is a windows application that is installed on a subscriber's device. This will include a local installation of SQL Server Express and a connection to the Codepal database.
- b. **Codepal Annual Maintenance and Support.** This may include a phone call with Codepal personnel. Codepal support is available Monday thru Friday, except for holidays, from 8:00 am to 5:00 pm CST. Our support number is 217-787-1133. A remote connection to Subscriber's desktop or device for troubleshooting an issue resolution may be required. We do not utilize voice automation or third-party vendors' assistance to provide our support.

1.3 Web Services.

- a. **Home.** A Subscriber's personal dashboard. This is a future enhancement with no availability date.
- b. **Preplan Viewer.** A web module in Codepal Toolkit allowing users to view in a browser the preplan information associated with an address. This module was designed for fire departments to use during fire calls on any Internet-connected device. If your Codepal database is hosted in AZCOM or AZGOV you will receive this product free of charge. **Available now.**
- c. **Preplan Editor.** A web module in Codepal Toolkit allowing users to edit the preplan information that appears in the Codepal Preplan Viewer. Preplan Editor users can edit all preplan information using any Internet-connected device. To use Preplan Editor your Codepal database must be hosted in AZCOM or AZGOV. This module and Codepal database hosting may be purchased as a subscription bundle. Or, if your Codepal database is already hosted in AZCOM or AZGOV, you may subscribe to this module separately. **Available now.**
- d. **Codepal Forms Development.** A web module in Codepal Toolkit. This module presents Subscriber's applications and payment options to the general public and/or contractors. **Availability – January 1, 2020.**
- e. **Codepal Web.** The Codepal desktop version used, without installation, in an Internet browser. This module will provide all the functionality of the desktop version of Codepal and allows operation in all operating systems (OS) that allow Internet browsers. New functionality, upgrades to released functionality, and bug fixes will all take place seamlessly without the Subscribers intervention. **Selected functions will be available after January 1, 2020.**
- f. **Address Hotlist.** A module specifically designed to aide Fire Departments when they are called to a fire. This list will display in a browser multiple fire calls though out a city or region. When a call is clicked in the Address Hotlist the Codepal Preplan Viewer information for that address will be displayed in a browser tab. Many fire call Preplan Viewer pages may be open at any time. This module is currently in development. **Availability – January 1, 2020.**

1.4 Up Front Costs.

- a. **Analysis and On-Location Training.**
 - I. Initial analysis will include a two (2) day minimum at Subscriber Location. Codepal Team members prepare and interview, utilizing the Codepal Analysis and Configuration Methodology. This results in a detailed Analysis of Subscribers' needs. From this analysis, an Analysis and Recommendation Document will be created. Using this document Codepal will perform the Initial Configuration for your Codepal installation.
 - II. Initial training will include three (3) days minimum by Codepal Staff. Training will be conducted at Subscribers' Location with all Codepal users present.

- b. **Initial configuration and Set Up.** The Codepal Team will internally prepare the Initial configuration (based on the Analysis Phase [1.4.a]).
- I. **End-user documentation.** tailored specifically to your end-user's workflow. Additionally, the Codepal Toolkit software includes a Help Menu item and documentation built into the software.
- II. **End-User License Agreement.** may be found at URL: <https://tinyurl.com/y5guor92>.
- III. **Service Level Agreement (SLA).** may be found at URL: <https://tinyurl.com/yxq687ek>.

1.6 **Database Hosting.**

- a. **Local Client Server Support.** If the Subscriber chooses to host the Codepal database on an SQL server local to Subscriber's network, then Codepal will offer support for the local Codepal database at a rate quoted in this document. Codepal will not provide support for Subscriber's SQL server.
- b. **Azure Government Cloud.** Azure Government (AZGOV) is a government-community cloud (GCC) designed to support government scenarios that require speed, scale, security, compliance, and economics for U.S. government organizations along with the uptime and economic benefits of AZCOM. It is separate in all aspects from the Azure Commercial Cloud (AZCOM) discussed below. Your data will be hosted in AZGOV, shielded by higher-level security and compliance requirements. AZGOV is in four (4) dedicated, hyper-secure data centers across the continental U.S. Only Federal, State, and Local governmental agencies can access AZGOV. Before you can access AZGOV your organization must certify with Microsoft that it is a U.S. Government entity. Codepal may help you through this process. Your data is your data and will never be shared with any other entity.
- c. **Azure Commercial Cloud.** Azure Commercial (AZCOM) is a public cloud-hosted in Microsoft data centers located around the world. Guaranteed uptime for the hosting SQL server is 99.95%. Hosting your data in AZCOM will allow you to eliminate the cost of owning and managing your own server and purchasing an expensive Microsoft SQL subscription. Your data is your data and will never be shared with any other entity.
- d. **Azure Data Usage.** Azure charges for data downloaded from the cloud. This is a variable charge based on data usage by your agency. This base fee is to cover the initial estimated data usage for your agency.

Microsoft Azure Government and Microsoft Azure Commercial Subscriptions comparison chart go to URL: <https://tinyurl.com/y22zgf2q>.

1.7 **Collaborative Support**

- a. **On-Location Support or Training.** Purchasing a product subscription provides an option to buy additional on-location support or training. On-location support and/or training may be scheduled in advance for both parties' convenience and will be an included line item within your annual support agreement. Options include annual on-location support for three thousand dollars (\$3000)/annually or every other year on-location support for one thousand five hundred dollars (\$1,500.00)/annually. A minimum of twenty-one (21) business days' notice to us is requested.
- b. **Refresher Training and New Hire Training.** Refresher training of current employees, training of New Hires and training of staff who are hired into or promoted to a position that utilizes Codepal Toolkit will be billed at the then-current pricing for a minimum of a two (2) hour online training session for no more than five (5) people per two (2) hour training session. *The current estimated rate is three hundred dollars (\$300.00) per hour with a (2) hour minimum.*

Refresher Training requirements: Before training is scheduled, it requires a backup of your organization's Codepal Toolkit database. We will review your database and tailor our training based on your organization's use of Codepal Toolkit.

If requested within ten (10) business days of a training session, a fifteen (15) minute Question/Answer session regarding Codepal Toolkit may be held with our staff. This session is FREE of charge.

Note: If it is determined by Codepal staff that on-location training of current, new, and/or promoted staff is necessary to ensure proper training in Codepal Toolkit best practices, they will contact you and arrange an on-location training contract.

- c. **Additional Development.** Also, with your purchase of Codepal Toolkit, we will, *per your request*, provide you with additional Software development services including, but not limited to, customized modules, additional reporting features, and any other software development not included as an existing element of the current version of the product(s). You will be invoiced at the then-current pricing for additional development at a minimum hourly rate. Prior to our staff commencing development services, an Order Form, Schedule or additional documentation outlining the additional development will need to be duly executed by the parties.

1. Notes or Summary on location with and during Codepal Toolkit Meeting with Subscriber.

NA

-- End --