

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

NOTICE OF AWARD OF CONTRACT

TO:	DATE ISSUED:	<u>April 28, 2016</u>
Linko Technology, INC	CURRENT CONTRACT NO:	<u>16-260-SS</u>
4251 Kipling St	CONTRACT TITLE:	<u>DES - Linko Hosted Version &amp; POM Solution</u>
Wheat Ridge, CO 80033	PRIOR CONTRACT NO:	<u></u>

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 April 28, 2016. The contract term covered by this Notice of Award is effective April 28, 2016 and expires on June 30, 2017.

This is the First year award notice of a possible five (5) year contract.

The contract documents consist of the terms and conditions of Agreement No. 16-260-SS, including any exhibits, attached or amendments thereto.

CONTRACT PRICING:

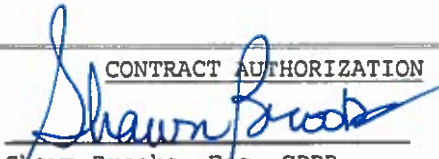
- 1) REFER TO Agreement No. 16-260-SS, Exhibit A (ATTACHED)
- 2) PRICING FIRM FOR CONTRACT TERM

ATTACHMENTS: Agreement No. 16-260-SS

EMPLOYEES NOT TO BENEFIT:

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

VENDOR CONTACT: <u>Mike Connolly</u>	TELEPHONE NO.:	<u>303-275-9969</u>
VENDOR PAYMENT TERMS: NET 30 DAYS	EMAIL ADDRESS:	<u>mconnolly@linkotechnology.com</u>
COUNTY CONTACT: <u>Wilson "Beau" Dodge</u>	TELEPHONE NO.:	<u>703-228-6881</u>
	EMAIL ADDRESS:	<u>wrdodge@arlingtonva.us</u>

CONTRACT AUTHORIZATION  
  
Shawn Brooks, Esq, CPPB  
Procurement Officer

DISTRIBUTION  
VENDOR: 1  
BID FOLDER: 2  
Date 4/28/16

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

**AGREEMENT NO. 16-260-SS**

THIS AGREEMENT is made, on the date of execution by the County, between Linko Technology, Inc, 4251 Kipling Street, Suite 220, Wheat Ridge, CO 80033 ("Contractor") a Washington State Corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. 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 – Linko Technology, LLC Quotation
- Exhibit C – Linko Technology, LLC Customer Service Agreement
- Exhibit D - County Nondisclosure and Data Security Agreement (Contractor)
- Exhibit E - County Nondisclosure and Data Security Agreement (Individual)

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 for the Contractor to provide Arlington County with a Linko Hosted Version & POM Solution. 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. The Work will commence on the date of the execution of the Agreement by the County and must be completed no later than June 30, 2017 ("Initial Contract Term"), subject to any modifications provided in the Contract Documents. Upon satisfactory performance by the Contractor the County may, through issuance of a unilateral Notice of Award, authorize continuation of the Agreement under the same contract prices, subject to County-Approved Contract Price Adjustments (Paragraph 6), for not more than four (4) additional 12-month periods, from July 1, 2017 to June 30, 2021 (each a "Subsequent Contract Term"). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

**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. CONTRACT PRICE ADJUSTMENTS**

The Contract Amount/unit price(s) will remain firm until June 30, 2017 ("Price Adjustment Date"). To request a price adjustment, the Contractor or the County must submit a written request to the other party not less than 60 days before the Price Adjustment Date. Adjustments to the Contract Amount/unit price(s) will not three (3) % for the 12-month period ending in March of each year of the Contract.

Any Contract Amount/unit price(s) that result from this provision will become effective the day after the Price Adjustment Date and will be binding for 12 months. The new Price Adjustment Date will be 12 months after the price adjustment.

If the Contractor and the County have not agreed on a requested adjustment by 30 days before the Price Adjustment Date, the County may terminate the Contract, whether or not the County has previously elected to extend the Contract's term

**7. 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 30 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.

If the County makes a partial payment, it will retain 5% of the estimate upon which the partial payment is based until completion and final acceptance of the Work.

**8. 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.

**9. REIMBURSABLE TRAVEL-RELATED EXPENSES**

No reimbursable travel-related expenses shall be allowed under this Contract.

**10. 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.

**11. 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.

**12. 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.

**13. 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.

**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, national origin, age or 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. 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 30 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. Upon such termination, the Contractor may apply for compensation for Contract services that the County previously accepted ("Termination Costs"), unless payment is otherwise barred by the Contract. 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, as defined above, 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.

#### **19. INDEMNIFICATION**

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. The Contractor's duty to indemnify under this section shall not apply to claims arising solely out of the negligent or willful acts or omissions of the County or its employees.

**20. 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. The Contractor's duty to indemnify under this section shall not apply to claims arising solely out of the negligent or willful acts or omissions of the County or its employees.

**21. 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.



For avoidance of doubt, the parties agree that Contractor retains, and does not convey, any ownership interests in software and intellectual property created and owned by Contractor prior to the execution of this Agreement.

**22. OWNERSHIP AND RETURN OF RECORDS**

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

All drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written, oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of this Contract (collectively "Records") are the exclusive 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 willingly cause or allow such materials to be used for any purpose other than performance of this Contract without the written consent of the County.

The Records are confidential, and the Contractor will neither release the Records nor share their contents. The Contractor will refer all inquiries regarding the status of any Record to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all Records, including hard copies of electronic records, to the Project Officer and will destroy all electronic Records.

The Contractor agrees to 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.

**23. DATA SECURITY AND PROTECTION**

The Contractor will hold County Information, as defined below, in the strictest confidence and will comply with all applicable County security and network resources policies, as well as all local, state and federal laws and regulatory requirements concerning data privacy and security. The Contractor must develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to control access to and to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted information received from or created or maintained on behalf of the County. For purposes of this provision, and as more fully described in this Contract and in the County's Non-Disclosure and Data Security Agreement (NDA), "County Information" includes, but is not limited to, electronic information; documents; data; images; financial records; personally identifiable information; personal health information (PHI); personnel, educational, voting, registration, tax and assessment records; information related to public safety; County networked resources; and County databases, software and security measures that are created, maintained, transmitted or accessed to perform the Work under this Contract.

- (a) County's Non-Disclosure and Data Security Agreement. The Contractor and its Designees (Contractor Designees shall include, but shall not be limited to, all Contractor-controlled agents or subcontractors working on-site at County facilities or otherwise performing any work under this Contract) must sign the NDA (Exhibit D) before performing any work or obtaining or permitting access to County networked resources, application systems or

databases. The Contractor will make copies of the signed NDAs available to the County Project Officer upon request.

- (b) **Use of Data**. The Contractor will ensure against any unauthorized use, distribution or disclosure of or access to County Information and County networked resources by itself or its Designees. Use of County Information other than as specifically outlined in the Contract Documents is strictly prohibited. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access to or disclosure of County Information and for any non-compliance with this provision by itself or by its Designees.
- (c) **Data Protection**. The Contractor will protect the County's Information according to standards established by the National Institute of Standards and Technology, including 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data and proprietary or confidential information. The Contractor must provide to the County a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s). If requested by the County, the Contractor must also provide annually the results of an internal Information Security Risk Assessment provided by an outside firm.
- (d) **Security Requirements**. The Contractor must maintain the most up-to-date anti-virus programs, industry-accepted firewalls and other protections on its systems and networking equipment. The Contractor certifies that all systems and networking equipment that support, interact with or store County Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers or fax machines that store County Data into hard drives must provide data-at-rest encryption. The County's Chief Information Security Officer or designee must approve any deviation from these standards. The downloading of County information onto laptops, other portable storage media or services such as personal e-mail, Dropbox etc. is prohibited without the written authorization of the County's Chief Information Security Officer or designee.
- (e) **Conclusion of Contract**. Within 30 days after the termination, cancellation, expiration or other conclusion of the Contract, the Contractor must, at no cost to the County, return all County Information to the County in a format defined by the County Project Officer. The County may request that the Information be destroyed. The Contractor is responsible for ensuring the return and/or destruction of all Information that is in the possession of its subcontractors or agents. The Contractor must certify completion of this task in writing to the County Project Officer.
- (f) **Notification of Security Incidents**. The Contractor must notify the County Chief Information Officer and County Project Officer within 24 hours of the discovery of any unintended access to or use or disclosure of County Information.
- (g) **Subcontractors**. If subcontractors are permitted under this Contract, the requirements of this entire section must be incorporated into any agreement between the Contractor and the subcontractor. If the subcontractor will have access to County Information, each

subcontractor must provide to the Contractor a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s).

**24. 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.

**25. 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.

**26. 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.

**27. 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.

**28. 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.

**29. 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.

**30. 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, proposals 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)

**31. AUDIT**

The Contractor must retain all books, records and other documents related to this Contract for at least five years 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, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

**32. 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.

**33. AMENDMENTS**

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

**34. 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.

**35. 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.

**36. 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.

**37. ARBITRATION**

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

**38. 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.

**39. 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.

**40. 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.

**41. ATTORNEY'S FEES**

The County is entitled to attorney's fees and costs that it incurs to enforce any provision of this Contract.

**42. SURVIVAL OF TERMS**

**43. 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.

**44. 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.

**45. NOTICES**

Unless otherwise provided in writing, all written 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:**

James Griffiths, Chief Financial Officer  
WaterMarq Technologies, Inc.  
Suite 710- 1050 West Pender St  
Vancouver, B.C. V6E 3S7  
james.griffiths@watertrax.com

**TO THE COUNTY:**

Willson "Beau" Dodge - Project Officer  
Department of Environmental Services  
3402 S. Glebe Road  
Arlington, Virginia 22202-2398  
wrdodge@arlingtonva.us

**AND**

Shawn K. Brooks, CPPB  
Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201

**46. NON-DISCRIMINATION NOTICE**

Arlington County does not discriminate against faith-based organizations.

**47. LIMITED ENGLISH PROFICIENCY**

The Contractor must comply with Executive Order 13166, Title VI of the Civil Rights Act of 1964 and make reasonable efforts to ensure that as part of the services that it provides, adequate communication services, including interpretation and translation, are available to persons who have limited English proficiency. If such services are not included in the Contract's scope of services and pricing, the Contractor will use a County-contracted service provider, and the County will pay the fees.

**48. ACCESSIBILITY OF WEB SITE**

If any work performed under this Contract results in the design, development or maintenance of or responsibility for the content or format of any County web sites or for the County's presence on third-party web sites, the Contractor must perform such work in compliance with ADA.

**49. 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 \$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 per occurrence, with \$2,000,000 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 named 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.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

LINKO TECHNOLOGY, INC

AUTHORIZED  
SIGNATURE: \_\_\_\_\_



NAME: MICHAEL E. BEVIS  
TITLE: PURCHASING AGENT

DATE: \_\_\_\_\_

4/29/16

AUTHORIZED  
SIGNATURE: \_\_\_\_\_



NAME AND  
TITLE: \_\_\_\_\_

MICHAEL L. CONNOLLY, VP

DATE: \_\_\_\_\_

4/24/16



**EXHIBIT D**

**NONDISCLOSURE AND DATA SECURITY AGREEMENT**  
**(CONTRACTOR)**

The undersigned, an authorized agent of the Contractor and on behalf of Linko Technology, Inc. ("Contractor"), hereby agrees that the Contractor will hold County-provided information, documents, data, images, records and the like confidential and secure and protect them 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 the Contractor for testing, support, conversion or other services provided under Arlington County Agreement No. 16-260-SS (the "Project" or "Main Agreement") or that may be accessed through other County-owned or -controlled databases (all of the above collectively referred to as "County Information" or "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 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, any County Information that in any manner describes, locates or indexes anything about an individual, including, but not limited to, his/her ("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 anything that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, or the record of his presence, registration, or membership in an organization or activity, or admission to an institution.

Contractor also agrees that it will not directly or indirectly use or facilitate the use or dissemination of County information (whether intentionally or by inadvertence, negligence or omission and whether verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly associated with its work under the Project. The Contractor acknowledges that any unauthorized use, dissemination or disclosure of County 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.

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. The Contractor shall coordinate closely with the County Project Officer to ensure that its authorization to its employees or approved subcontractors is appropriate and tightly controlled and that such person/s also maintain the security and privacy of County Information and the integrity of County-networked resources.

Contractor agrees to take strict security measures to ensure that County Information is kept secure; is properly stored in accordance with industry best practices, and if stored is encrypted as appropriate; and is otherwise protected from retrieval or access by unauthorized persons or for unauthorized purposes. Any device or media on which County Information is stored, even temporarily, will have strict security and access control. Any County Information that is accessible will not leave Contractor's work

site or the County's physical facility, if the Contractor is working onsite, without written authorization of the County Project Officer. If remote access or other media storage is authorized, the 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. The Contractor will ensure that all passwords used by its employees or subcontractors are robust, protected and not shared. The Contractor will not download any County Information except as agreed to by the parties and then only onto a County-approved device. The Contractor understands that downloading onto a personally owned device or service, such as personal e-mail, Dropbox, etc., is prohibited.

Contractor agrees that it will notify the County Project Officer immediately upon discovery or becoming aware or suspicious of any unauthorized disclosure of County Information, security breach, hacking or other breach of this agreement, the County's or Contractor's security policies, or any other breach of Project protocols concerning data security or County Information. 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 to promptly notify others of a suspected or actual breach if requested.

The 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 the Contractor. The Contractor agrees that it shall take all reasonable measures to ensure that 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 Main 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 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 laws or regulatory requirements. Therefore, to the extent that this *NonDisclosure and Data Security Agreement* conflicts with the Main Agreement or with any applicable local, state, or federal law, regulation or provision, the more stringent requirement, law, regulation or provision controls.

At the conclusion of the Project, the 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 Main Agreement.

Authorized Signature:   
Printed Name and Title: MICHAEL L. CONNOLLY, VICE PRESIDENT  
Date: 4/26/16

**ATTACHMENT E**

**NONDISCLOSURE AND DATA SECURITY AGREEMENT**  
**(INDIVIDUAL)**

I, the undersigned, agree that I will hold County-provided information, documents, data, images, records and the like confidential and secure and protect it against loss, misuse, alteration, destruction or disclosure. This includes, but is not limited to, the information of the County, its employees, contractors, residents, clients, patients, taxpayers, and property as well as information that the County shares with my employer or prime contractor for testing, support, conversion or the provision of other services under Arlington County Agreement No. 16-260-SS (the "Project" or "Main Agreement") or which may be accessed through County-owned or -controlled databases (all of the above collectively referred to as "County Information" or "Information").

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

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

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

I agree that I will take strict security measures to ensure that County Information is kept secure; is properly stored in accordance with industry best practices, and if stored is encrypted as appropriate; and is otherwise protected from retrieval or access by unauthorized persons or for unauthorized purposes. I will also ensure that any device or media on which County Information is stored, even temporarily, will have strict security and access control and that I will not remove, facilitate the removal of or cause any Information to be removed from my employer's worksite or the County's physical facility without written authorization of the County Project Officer. If so authorized, I understand that I am responsible for the security of the electronic equipment or paper files on which the Information is stored and agree to promptly return such Information upon request.


Arlington County Agreement No. 16-260-SS

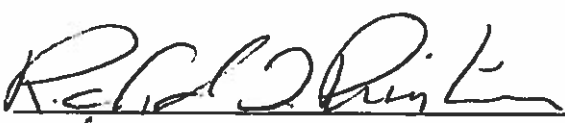
I will not use any devices, laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices ("Device") during my work on the Project without pre-approval. I will ensure that any Device connected to the County network is free of all computer viruses or running the latest version of an industry-standard virus protection program. I will also ensure that my password, if any, is robust, protected and not shared. I will not download any County Information except as authorized by the County Project Officer and then only onto a County-approved Device. I understand that downloading onto a personally-owned Device or service, such as personal e-mail, Dropbox etc., is prohibited.

I agree that I will notify the County Project Officer immediately upon discovery or becoming aware or suspicious of any unauthorized disclosure of County Information, security breach, hacking or other breach of this agreement, the County's or Contractor's security policies, or any other breach of Project protocols concerning data security or County Information. I will fully cooperate with the County to help regain possession of any County Information and to prevent its further disclosure, use or dissemination.

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

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

Signed:   
Printed Name: MICHAEL L. CONNOLLY  
Date: 4/26/16

Witnessed:  
Contractor's Project Manager:   
Printed Name: Richard T. Prinstor  
Date: 4/27/2016

**TO BE COMPLETED PRIOR TO BEGINNING WORK ON THE PROJECT**



**EXHIBIT A**  
**AGREEMENT NUMBER Linko Hosted Version & POM**  
**BETWEEN**  
**ARLINGTON COUNTY, VIRGINIA**  
**AND**  
**Linko Technology, Inc.**

Exhibit A is hereby incorporated into and made an integral part of Agreement Number Linko Hosted Version & POM ("Contract") between Arlington County, VA ("County") and Linko Technology, Inc. ("Contractor").

**SCOPE OF WORK**

This Scope of Work is issued by the Department of Environmental Services on behalf of the Arlington County, hereinafter referred to as "County". The objective of the project described in this Scope of Work is for the Contractor to provide the County with a Linko Hosted Version & POM Solution ("Solution").

**1. Project Scope and Understanding of the Requirements**

a) General description of the Solution: Linko Technology, Inc. will provide the County's existing Linko software into a web-hosted environment, to include the new Pump Out Manifest (POM) module.

b) Project boundaries: One user only. Additional users will require additional cost per user.

c) County-specific requirements:

- (1) Term = 5/1/2016 through 6/30/2021
- (2) Dedicated virtual server with Linko software installed, as well as MS Word and Excel
- (3) Password protected secure and encrypted access to that server using Remote Desktop services
- (4) Individual, personalized desktops for each user of the Linko software
- (5) Access to local drives for transferring files between the Remote and Local machine
- (6) Access to the Linko software from virtually any location with broadband internet
- (7) Access to local printers for printing reports, letters, spreadsheets or other documents
- (8) Automated backups of data and software
- (9) Improved software speed inherent to Linko software hosting infrastructure
- (10) Instant access to new Linko software upgrades and patches, installed by Linko experts
- (11) A fully redundant, enterprise class network, commercial hosting facility
- (12) Responsive customer support
- (13) Subscription to Pump Out Manifest (POM) Portal internet software
- (14) Implementation and training services for the POM Portal module

**2. Contract Products and Services to Support the Requirements**

**a. Solution Components**

Subscription to the web-hosted software – no hardware or software required to be installed on PC. County only required to provide access to internet

**b. Services**

Contractor will establish an account in the Application for the County, and assist the County to upload its data into the Application. The Contractor will host the Application, or arrange for the Application to be hosted, and made available online for the County's use pursuant to the terms of agreement and any applicable end user license agreement.

**c. Training and Knowledge Transfer**

Application training will consist of scheduled, ad hoc training utilizing remote Citrix "GoToMeeting" software. Additionally, subscription includes access to monthly webinars and online training modules located on Linko's homepage.

**d. Support**

Contractor will provide technical support for the Application from 8:00 am to 5:00 pm MST, Monday to Friday, excluding holidays, via telephone. Additionally, the Contractor will provide a non-emergency e-mail address for the County to submit technical reports and questions. The Contractor will perform upgrades and maintenance on the Application as needed. Whenever possible, scheduled maintenance will occur on Fridays between 6:00 pm and 10:00 pm Pacific Time.

**3. Project Events and Tasks**

Contractor will provide a monthly subscription service to a web-hosted Pretreatment, FOG, and POM software Application, to include implementation, training, and support.

**4. Period of Performance**

Implementation of the Solution will occur within two (2) months of execution of the Agreement by the County. This includes delivery and installation all of the products and services necessary to implement the County's Solution, training, and any support, other than on-going maintenance services. The period of performance for maintenance services shall be conducted according to the Contract Term found in Agreement 16-260-SS, pursuant to and unless otherwise specified in the Contract.

**5. Place of Performance**

Tasks associated with this engagement will be performed at the County's location(s) in Arlington, Virginia, at Contractor's location(s) in Wheat Ridge, Colorado, or other locations as required by the effort.

**6. Milestones, Deliverables, Payment Schedule, and Holdbacks**

The following table identifies milestone events and deliverables, the associated schedule, any associated payments, any retainage amounts, and net payments.

Milestone Event	Deliverable	Schedule	Payment	Retainage	Net Payment
Commencement Date	All, except training	Execution + 30 days	\$9,865	\$0---	\$9,865
Training	Ad hoc, online, and webinars	Execution + 14 months	\$0	\$0	\$0

The total Solution price shall not exceed \$US 9,865 annual subject to Contract Pricing Adjustments found in Agreement 16-260-SS.

Contractor's invoices shall show retainage of zero percent (0%). Following completion of Solution implementation, Contractor shall submit a final invoice to the County, for the final milestone payment amount plus the total amount retained by the County annually.

Required Deliverables are as follows:

- o See item #1 above.

In addition, Contractor will provide copies of any briefing materials, presentations, or other information developed to support this engagement.

**7. Acceptance Criteria**

Acceptance Criteria for this Solution will be based on a User Acceptance Test (UAT) designed by Contractor and accepted by the County. The UAT will ensure that all of the functionality required for the Solution has been delivered. Contractor will provide the County with a detailed test plan and acceptance check list based on the mutually agreed upon UAT Plan. This UAT Plan check-list will be incorporated into this Exhibit A.

**8. Assumptions and Project Roles and Responsibilities**

This section contains assumptions specific to this engagement.

No assumptions.

The following roles and responsibilities have been defined for this engagement:

Responsibility Matrix	Contractor	County
Infrastructure – Preparing the system infrastructure that meets the recommended configuration defined in Section 2B herein	✓	
Server Hardware	✓	
Server Operating	✓	
Server Network Connectivity	✓	
Relational Database Management Software (Installation and Implementation)	✓	
Server Modules – Installation and Implementation	✓	
PC Workstations – Hardware, Operating System, Network Connectivity		✓
Wireless Network Access Points		✓
Cabling, Electric and User Network Connectivity from Access Points		✓
Wireless Mobile Computing Products – Scanners, printers		✓
Project Planning and Management	✓	✓
Requirements Analysis	✓	✓
Application Design and Implementation	✓	
Product Installation, Implementation and Testing	✓	
Conversion Support	✓	
Conversion Support -- Subject Matter Expertise		✓
Documentation	✓	
Training	✓	✓
Product Maintenance and Support	✓	
Problem Tracking	✓	✓
Troubleshooting – IT Infrastructure	✓	
Troubleshooting – Solution	✓	

**9. Security Requirements**

Contractor shall adhere to all of Arlington County's standard security requirements and terms and conditions contained in Agreement 16-260-SS.



**10. Risk Management**

No risk factors.

**11. Reporting**

No additional reporting is required.]

**12. Point of Contact**

For the duration of this project, the following Project Officers shall serve as the points of contact for day-to-day communication:

County: Beau Dodge

Contractor: Rich Prinster

By signing below, both parties agree to the terms of this Exhibit A.

County

By: 

(Signature)

Name: MICHAEL E. BEVIS

(Print)

Title: PURCHASING AGENT

Date: 4/29/16

Contractor

By: 

(Signature)

Name: MICHAEL L. CONNOLLY

(Print)

Title: VICE PRESIDENT

Date: 4/26/16



Linko Technology Inc.  
 4251 Kipling Street  
 Suite 220  
 Wheat Ridge, CO 80033

# Quotation

Quote #	Q-26380
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**EXHIBIT B**

Quotation Provided To:
Arlington County Accounts Payable 3402 South Glebe Road Arlington, VA 22202

Ship To:
3401 South Glebe Road Arlington, VA 22202

Quotation Date:	2/11/2016
Valid Thru	4/30/2016

**See Arlington County Agreement 16-260-SS**

Rep
RP

Item	Description	Amount
Hosted Version	<p>Provide client's existing Linko software configuration in a web hosted environment.</p> <p>Price is an annual subscription fee and includes one (1) user login. Additional logins can be added at any time for an additional \$1440 each per year.</p> <p>Term = 5/1/2016 through <del>4/30/2017</del> <b>June 30, 2021</b></p> <p>Software service includes:</p> <ul style="list-style-type: none"> <li>Your own dedicated virtual server with Linko software installed as well as MS Word and Excel</li> <li>Password protected secure and encrypted access to that server using Remote Desktop services</li> <li>Individual, personalized desktops for each user of the Linko software</li> <li>Access to your local drives for transferring files between your Remote and your Local machine</li> <li>Access to your local printers for printing reports, letters, spreadsheets or other documents</li> <li>Access to the Linko software from virtually any location with broadband internet</li> <li>Automated backups of your data and software</li> <li>Improved software speed inherent to our Linko software hosting infrastructure</li> <li>Instant access to new Linko software upgrades and patches, installed by Linko experts</li> <li>A fully redundant, enterprise class network, commercial hosting facility</li> <li>Same great support our customers have come to expect from Linko Data Systems</li> </ul>	5,055.00
Pro-rated Subscription	<p>One time pro-rated subscription fee for two (2) additional months covering May 1, 2017 through June 30, 2017 in order to align renewal date to fiscal year.</p>	1,175.00

**Total US Dollars:**



Linko Technology Inc.  
 4251 Kipling Street  
 Suite 220  
 Wheat Ridge, CO 80033

# Quotation

Quote #	Q-26380
---------	---------

Attachment B- Arlington County Agreement 16-260-SS

Quotation Provided To:
Arlington County Accounts Payable 3402 South Glebe Road Arlington, VA 22202

Ship To:
3401 South Glebe Road Arlington, VA 22202

Quotation Date:	2/11/2016
Valid Thru	4/30/2016

Rep
RP

Item	Description	Amount
POM Portal	Annual subscription to POM Portal internet software. POM Portal allows grease generators or Hauling companies to enter interceptor pump out data online. The pumpout data is then automatically imported directly into the LinkoFOG software.	1,995.00
Implementation & Traini...	<del>Implementation and training services for the POM Portatal module.</del> <b>Implementation and training services</b>	1,640.00

**Total US Dollars: \$9,865.00**

Linko Technology Inc.  
 EIN # 47-2917533  
 FAX 303-275-9949

Arlington County Agreement  
 16-260-SS

All quotations are subject to the ~~Linko Project Terms & Conditions~~



**CUSTOMER SERVICE AGREEMENT**

THIS AGREEMENT made the \_\_\_ day of \_\_\_\_\_, 2016 (the "Effective Date") is

BETWEEN:

Linko Technology Inc. ("Linko") of 4251 Kipling Street, Suite 220, Wheat Ridge, Colorado 80033

AND:

Arlington County (the "Customer") of 3401 South Glebe Road Arlington, VA 22202

**BACKGROUND**

- A. Linko operates the online application described in Schedule A (the "Application").
- B. The Customer wants to use the Application and receive the services described in Schedule B (the "Services") in respect of data the Customer provides to the Application (the "Customer Data").
- C. Linko is willing to provide the Services on the terms and conditions of this Agreement.

**AGREEMENT**

The parties hereby enter into this agreement which is comprised of this Cover Sheet and the following Schedules:

<u>Schedule No.</u>	<u>Description of Schedule</u>
A	Particulars
B	Services and Service Levels
C	Terms and Conditions

The parties executed this agreement as of the Effective Date.

**LINKO TECHNOLOGY INC.**

by: Michael J. Connors  
Signature of Authorized Signatory

its: VICE PRESIDENT  
Title of Authorized Signatory

by: [Signature]  
Signature of Authorized Signatory

its: Purchasing Agent  
Title of Authorized Signatory

**SCHEDULE A**

**PARTICULARS**

<b>Application</b>	
<b>Description</b>	The Application is the Hosted-Linko™ Pretreatment and FOG Software.
<b>Users</b>	Access to the Application is limited to the following number of Users: One (1) Named User login
<b>Term</b>	
<b>Commencement Date</b>	The Commencement Date for the Services is May 1, 2016
<b>Initial Term</b>	The Initial Term of the agreement is <del>fourteen (14) months</del> , starting on the Commencement Date <span style="border: 1px solid red; padding: 2px;">1 year with four (4) one (1) year renewals</span>
<b>Fees</b> <span style="border: 1px solid red; padding: 2px;">see Arlington County Agreement 16-260-SS</span>	
<b>Initial Setup Fee</b>	The Initial Setup Fee is \$1640 plus applicable taxes
<b>Annual Fee</b>	The Annual Fee is \$7,050 plus applicable taxes
<b>Pro-Rated Annual Fee</b>	The one time pro-rated annual fee is \$1175 in order to extend the initial subscription term to June 30, 2017
<b>Hourly Rates</b>	The Hourly Rates are \$195.00 per hour plus applicable taxes
<b>Payment Terms</b>	The Initial Setup Fee, the first year's Annual Fee and the pro-rated annual fee are invoiced at the Commencement Date, with payment due within 30 days. Thereafter, the Annual Fee for each subsequent year will be invoiced by Linko 30 days in advance of the July 1 <sup>st</sup> renewal date. All other fees will be invoiced by Linko after delivery of the services and payment will be due within 30 days.
<b>Contacts</b>	
<b>Primary Contact for the Customer</b>	Wilson "Beau" Dodge- Pretreatment Coordinator 703-228-6881 / wrdodge@arlingtonva.us
<b>Primary Contact for Linko</b>	Rich Prinster- Business Development Manager 720-496-4153 / rprinster@linkotechnology.com

## SCHEDULE B

### SERVICES

#### PART 1– HOSTING SERVICES

- 1.1 **Services.** Linko will do the following, commencing on the Commencement Date:
- (a) establish an account in the Application for the Customer, and assist the Customer to upload its data into the Application (the "Implementation Services");
  - (b) host the Application, or arrange for the Application to be hosted, and made available online for the Customer's use pursuant to the terms of this agreement and any applicable end user licence agreement (the "Hosting Services").

#### PART 2– MAINTENANCE AND SUPPORT SERVICES

- 2.1 **Technical Support.** Linko will:
- (a) provide technical support for the Application from 8:00 AM to 5:00 PM MST, Monday to Friday excluding holidays, via telephone; and
  - (b) provide a non-emergency email address for the Customer to submit technical reports and questions to Linko.
- 2.2 **System Maintenance.** Linko will perform maintenance on the Application as needed. Whenever possible, scheduled maintenance will occur on Fridays between 6:00PM and 10:00PM Pacific Time.

#### PART 3– PRODUCT UPGRADES AND UPDATES

- 3.1 Linko may provide software upgrades and updates to the Application from time to time.

#### PART 4– OTHER SERVICES

4.1 If the Customer requests any changes to the Services or the Application, Linko will estimate the cost of those changes and any timeline adjustments that will be necessary as a result of those changes. If the Customer wishes to proceed with those changes, the Customer will agree in a written, signed, change order to pay for those costs and accept those timeline changes. If such a change order is not delivered to Linko within a reasonable time requested by Linko, then the change request will not be implemented.

4.2 Any other work the Customer requests that is not covered by this agreement will be performed by Linko at the Hourly Rate set out in Schedule A, pursuant to a written Statement of Work signed by both parties.

## PART 5--SERVICE LEVELS

Linko will use commercially reasonable efforts to provide the Application in accordance with the following:

### 5.1 Precautions. Use of the following precautions to enhance uptime:

- (a) Fault-tolerant storage devices;
- (b) Daily full database backups;
- (c) 24/7 monitoring of server availability;
- (d) Maintenance and periodic testing of a disaster recovery plan including hardware spares and data recovery;
- (e) Minimized use of scheduled downtime periods and maintenance windows; and
- (f) Use of a high reliability co-location facility that meets SSAE 16 standards (formerly SAS 70) with a minimum 99.95% uninterrupted transit-to-the-internet guarantee, on-site emergency backup power, multiple Tier One upstream Internet backbone providers; Redundant internal network devices; 24/7 internal network monitoring.

### 5.2 Availability. Available 99.95% of each month, as defined below.

- (a) "Available" means the Linko servers for the Application are accessible from the Internet and the Application is open for use in accordance with this Agreement, except during the Weekly Maintenance Window and any Scheduled Downtime, and excluding any downtime caused by the failure of third party vendors, the Internet in general, the Customer or its equipment, disaster recovery activities, or any emergency or force majeure event.
- (b) "Scheduled Downtime" means scheduled downtime to perform maintenance, backup, and upgrade functions. Scheduled Downtime will not exceed 4 hours per calendar month and will be scheduled on the first Tuesday of every month between 6:00PM and 10:00PM PST.
- (c) "Unavailability" means the number of minutes by which the Application failed to meet the 99.95% availability target. For example, if the Application should have been Available for 6000 minutes in a month but was only available for 5595 minutes, then the Unavailability for that month would be 5 minutes.
- (d) "Weekly Maintenance Window" means the window during which time the Application may be unavailable to allow Linko to perform system maintenance, backup, and upgrade functions for the Service as follows:
  - (i) Fridays: 6:00PM – 10:00PM PST
  - (ii) Weekends: Any time

**5.3 Service Level Credits.** If the Application is not Available in a particular calendar month in accordance with the above availability target, the Customer will be entitled to a service level credit calculated as follows:

$$\text{Credit} = \frac{\text{Unavailability in the month}}{\text{total minutes in the month}} \times \text{Monthly Subscription Fee Equivalent}$$

The "Monthly Subscription Fee Equivalent" is a prorata amount of the Annual Fee that applies to the month in question.

The Customer must request all credits in writing to Linko within 30 days after the month to which the credits apply. Credits will be applied to the next invoice following Customer's request and Linko's confirmation that credits are applicable. Credits will be the Customer's sole and exclusive remedy in the event of any failure to meet the above service levels.



## SCHEDULE C

### TERMS AND CONDITIONS

#### PART 1 - APPLICATION

**1.1 Access.** Subject to the terms and conditions of this agreement, Linko hereby grants to the Customer a non-exclusive, revocable licence to access and use the Application in accordance with the terms and conditions of this agreement, for the Customer's own internal business purposes only. The Customer must comply with this Agreement, any Acceptable Use Policy provided by Linko, and applicable laws when using the Application and Services.

**1.2 Registered Users.** The Customer's license to use the Application entitles Customer to designate a limited number of registered users (each a "User") as listed in Schedule A. The Customer must ensure that each User complies with this Agreement. Each User will be assigned a login identification which will include a username and password (a "Login ID"). The Customer is responsible for all access to the Application and use of the Service by Users, whether or not Customer has knowledge of or authorizes such use.

**1.3 Security.** The Customer must keep all Login IDs confidential, and must ensure that all appropriate user and security settings have been selected in the Application. The Customer must not allow any third party other than the Users to access or use Login IDs. The Customer is solely responsible and liable for all activity conducted through its account in connection with the Application. If the Customer becomes aware of or reasonably suspect any security breach, including any loss, theft or unauthorized disclosure or use of its password or account, the Customer must immediately report the actual or suspected security breach to Linko.

**1.4 Third Party Authorization.** If some or all of the Customer Data will be posted or provided to the Application or Linko by a third party (including a laboratory), then prior to allowing that third party to post or provide the data, the Customer must cause the third party to sign and return to Linko a Third Party Authorization document in a form provided by Linko.

**1.5 Data Formats.** The Customer must ensure that the Customer Data complies with current data format requirements specified by Linko from time to time. Failure to do so may result in the rejection of the data, and may also result in the failure of the Application and Services in respect of that data. Linko does not review Customer Data for accuracy or proper formatting.

**1.6 Restrictions.** The Customer must not:

- (a) reverse engineer, de-compile, hack, disable, disrupt, interfere with, disassemble, copy, rent, lease, loan, sell, distribute, decrypt, reassemble, modify, supplement, translate, adapt or enhance, or create derivative works from any of the Application or the hardware or software used to provide the Application or Services;
- (b) attempt to access any data, information or content of any third party through the Application, except as authorized by Linko;

- (c) upload to or transmit from Application any content or anything else that (if reproduced, published, transmitted or used) may:
  - (i) be defamatory, threatening, abusive, harassing, hateful, obscene, pornographic, harmful or invasive of anyone's privacy, or excessively violent,
  - (ii) violate any law including intellectual property, privacy or other laws; or
  - (iii) give rise to civil or other liability;
- (d) upload to or transmit from the Application any data, file, software or link that contains or redirects to a virus, Trojan horse, worm or other harmful component;
- (e) interfere with the Services or any third party's use of the Application;
- (f) access the Application by any means other than through the interface that is provided by Linko; or
- (g) authorize or encourage any third party to do any of the above.

1.7 **No Other Rights.** All rights not expressly granted in this agreement are reserved by Linko. For clarity, nothing in this agreement will be construed as granting the Customer any ownership, security, right in any intellectual property, or other rights in or relating to any or all of the Application.

## PART 2- SERVICES

2.1 **Services.** Provided that the Customer complies with its obligations under this agreement, Linko will provide the Services to the Customer. Linko may use third party contractors to provide some or all of the Services. The Services may be provided using servers and other equipment located in any country including Canada, the United States and elsewhere.

2.2 **Restriction.** The Customer must not resell, transfer or otherwise provide any of the Services or the Application to any third party.

2.3 **Cooperation.** ~~The Customer will cooperate with Linko in a timely manner as required for Linko to provide the Services, and will give Linko all required information and access to the Customer's premises and equipment as and required by Linko to provide the Services.~~

2.4 **Linko Employees/Contractors.** The Customer will not directly or indirectly at any time during the term of this agreement or for 12 months thereafter:

- (a) induce or encourage any employee or contractor of Linko to leave his or her employment or engagement with Linko; or
- (b) employ, attempt to employ, assist any person to employ, or retain as a consultant or contractor, any employee or contractor or former employee or contractor of Linko;

without Linko's prior written consent.

**PART 3-- FEES**

~~3.1 Fees. The Customer will pay all Fees as and when described in Schedule A. Linko may increase the Fees at any time after the Initial Term upon 30 days' notice to the Customer.~~

~~3.2 Expenses. The Customer will reimburse Linko for all expenses reasonably incurred by Linko in connection with providing any services to the Customer, within 30 days after receiving Linko's invoice for those expenses.~~

~~3.3 Interest. The Customer will pay simple interest on all overdue amounts at a rate of 18% per year or the maximum rate permitted by law, whichever is less, calculated from the date payment was due until the date payment of all overdue amounts is made in full.~~

**PART 4-- CONFIDENTIALITY & PROPRIETARY RIGHTS**

~~4.1 Confidentiality. Each party will (and will cause its employees and agents to) keep the other party's Confidential Information strictly confidential, and will not: (a) use it or take any benefit from it except as required to perform or receive the Services, or (b) disclose it to anyone unless the other party consents or unless the recipient is required by law or court order to do so. In this agreement, "Confidential Information" means all information, data and financial information relating to the business, commercial strategies, pricing, personnel, customers, products or services of a party (the "discloser") but excludes any information that the other party (the "recipient") proves:~~

- ~~(a) was lawfully in the recipient's possession before receiving it from the discloser,~~
- ~~(b) is provided in good faith to the recipient by a third party without breaching any rights of the discloser or any other party, or~~
- ~~(c) is or becomes generally available to, or accessible by, the public through no fault of recipient.~~

~~4.2 Customer Data. As between the parties, the Customer solely owns the Customer Data. Linko may manipulate, format, copy, display, transmit and otherwise use that data as necessary to perform its obligations under this agreement and to provide the Services to the Customer. The Customer represents and warrants to Linko that the Customer has obtained all consents required under privacy laws and other applicable laws for Linko to collect, use and disclose the Customer Data as permitted above. Linko may also provide statistical information to third parties and may include Customer's Data in that information, provided that the information is aggregated and does not include personally identifying information. Linko reserves the right to establish (and notify the Customer of) a maximum amount of memory or other computer storage and a maximum amount of Customer's Data that Customer may post, store, or transmit on or through the Service.~~

~~4.3 Application and Services. As between Linko and Customer, all intellectual property rights (past, present and future) in and to the Application, and all technology, deliverables and other work product created in connection with the Services, are and will remain vested solely in Linko. Linko may, but is not required to, create any new releases, upgrades, enhancements or other modifications of or to the Application at any time.~~

~~Any supplemental software code, documentation, or other material provided to Customer as part of the Services, whether in written or digital format, will be considered part of the Application and subject to the terms and conditions of this agreement. With respect to information Customer provides to Linko as part of the provision of Services by Linko, Customer agrees that Linko may use such information for its business purposes, including for product support and development, on the condition that Linko not utilize such information in a form that personally identifies Customer.~~

#### ~~PART 5 - TERM AND TERMINATION~~

~~5.1 Term. This agreement will commence on the Effective Date and continue for the Initial Term described in Schedule A unless terminated as described below.~~

~~5.2 Renewal. After the Initial Term, this agreement will automatically renew for an unlimited number of one-year renewal terms unless a party gives the other party written notice of non-renewal at least 60 days prior to the end of the then-current term.~~

~~5.3 Termination for Cause. Either party may terminate this agreement for cause if the other party materially breaches the agreement and fails to remedy the breach within 30 days after receiving the other party's written notice of the breach. Neither party may terminate this agreement for convenience.~~

~~5.4 Termination for Insolvency. Either party may terminate this agreement immediately by delivering written notice of termination to the other party if:~~

- ~~(a) the other party becomes insolvent or voluntarily or involuntarily bankrupt;~~
- ~~(b) a petition in bankruptcy against the other party is not dismissed within 90 calendar days of filing;~~
- ~~(c) a receiver, assignee or other liquidating officer is appointed for all or substantially all of the other party's business;~~
- ~~(d) the other party makes an assignment in bankruptcy or an assignment for the benefit of creditors;~~
- ~~(e) the other party ceases to carry on its business in the normal course (or threatens to cease carrying on its business in the normal course); or~~
- ~~(f) if any resolution is passed or order made or other steps taken for the winding up, liquidation or other termination of the existence of the party, or for the amalgamation or merger of the party with another entity.~~

~~5.5 Effect of Termination. Upon termination of this agreement for any reason:~~

- ~~(a) the Customer will immediately cease all use of the Application;~~
- ~~(b) the Customer will have no further access to its account in the Application;~~
- ~~(c) the Customer will pay Linko all unpaid amounts owing to Linko;~~
- ~~(d) at the Customer's request and expense, Linko will return to the Customer all of the Customer Data, provided that Customer requests the return of that data within 30 days after termination; and~~
- ~~(e) Linko may delete all the Customer Data from the Application after the agreement has been terminated for at least 30 days.~~

#### ~~PART 6 REPRESENTATIONS AND WARRANTIES~~

~~6.1 Mutual Representations and Warranties. Each party represents and warrants to the other, in respect of itself, that it has the requisite capacity to enter into and be bound by this agreement and to fulfill its obligations to the other party on the terms and conditions set forth in this agreement.~~

~~6.2 Additional Linko Warranty. Linko warrants that the Service will conform to the descriptions set out in this Agreement and will be performed in a professional manner. The Customer's sole remedy for a breach of this warranty will be for Linko to re-perform the Service in compliance with the above warranty.~~

#### ~~PART 7 INDEMNIFICATION~~

~~7.1 Customer Indemnity. The Customer will indemnify and hold Linko and its employees, directors, officers, agents and affiliates harmless from and against all losses, claims, actions, damages and costs (including legal fees) of any kind or nature which may arise out of:~~

- ~~(a) the breach of any term of this agreement by the Customer or any of its employees, contractors or agents;~~
- ~~(b) any representation or warranty made by the Customer being untrue;~~
- ~~(c) the negligence or misconduct of the Customer or any of its employees, contractors or agents; and~~
- ~~(d) any damage resulting from Customer's use of the Application or the Services, except to the extent caused by Linko.~~

~~7.2 Linko Indemnity. Linko will indemnify and hold the Customer and its employees, directors, officers, agents and affiliates harmless from and against losses, claims, actions, damages and costs (including legal fees) of any kind or nature which may arise out of:~~

- ~~(a) the breach of any term of this agreement by Linko or any of its employees, contractors or agents;~~
- ~~(b) any representation or warranty made by Linko being untrue, and~~
- ~~(c) the negligence or misconduct of Linko or any of its employees, contractors or agents.~~

#### ~~PART 8 - LIMITATION OF LIABILITY~~

~~8.1 Disclaimer. Except for the representations and warranties in Part 6, the Application and the Services are provided "as is" and "as available". Linko disclaims all terms, conditions, guarantees, representations and warranties (express, implied, statutory and otherwise), in respect of the Application and the Services, including those of merchantability, non-infringement, title, quality and fitness for a particular purpose. Without limiting the foregoing, Linko makes no representation or warranty that: (i) the Application and the Services will meet customer's requirements, (ii) the Application and the Services will be uninterrupted, timely, secure or error-free, (iii) the results that may be obtained from the use of the Application and the Services will be accurate or reliable.~~

~~8.2 Limitation of Liability. The Customer uses the Application and the Services at its own risk. Linko will not be liable for any loss in connection to the use of, or inability to use the Application and the Services, including any loss to the Customer's Data. To the maximum extent permitted by applicable law, and without limiting the previous sentence, Linko will not be liable for any indirect, consequential, incidental, special, punitive or exemplary damages whatsoever in connection with the Application or the Services, including damages for loss of revenues, profits, goodwill or data. No claim, regardless of form, may be made or action brought by either party more than one year after the basis for the claim becomes known to the party asserting it.~~

~~8.3 Maximum Liability. If, despite the above limitations, Linko becomes liable to the Customer in respect of the Application and the Services or a combination of the foregoing, that liability will be limited to the fees the Customer paid to Linko for its use of the Application in the 12 months prior to the event giving rise to the liability.~~

#### ~~PART 9 - GENERAL~~

~~9.1 Reference. Linko may refer to the Customer as a customer in Linko's promotional materials, including on Linko's website, and may use the Customer's name and logo for that purpose. Linko may also place a link from its website to the Customer's website.~~

~~9.2 Law and Courts. This agreement and each of the documents contemplated by or delivered under or in connection with this agreement are governed exclusively by, and will be enforced, construed and interpreted exclusively in accordance with, the laws applicable in Colorado. All disputes under this agreement will be resolved by the courts of Colorado in Denver, however, nothing in this section prohibits either party from obtaining an injunction against the other party in any other jurisdiction.~~

~~9.3 Severability. Each provision of this agreement is severable. If any provision of this agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability~~

~~of that provision will not affect the legality, validity or enforceability of the remaining provisions of this agreement, or of that provision in any other jurisdiction.~~

~~9.4 Assignment. The Customer must not assign this agreement or its rights or obligations under this agreement to any third party, except with the prior written consent of Linko~~

~~9.5 Enurement. This agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.~~

~~9.6 Notice. All notices and other communication that the parties give each other in connection with this agreement must be in writing and will be deemed given if delivered by hand, double registered mail, or fax to the recipient at its address set out on the first page of this agreement or at such other address or telecommunication number of which the party gives the other notice. Proof of delivery in that manner will constitute proof of receipt.~~

~~9.7 Waivers. No waiver of any provision of this agreement is binding unless it is in writing and signed by all the parties to this agreement except that any provision which does not give rights or benefits to particular parties may be waived in writing, signed only by those parties who have rights under, or hold the benefit of, the provision being waived if those parties promptly send a copy of the executed waiver to all other parties. No failure to exercise, and no delay in exercising, any right or remedy under this agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.~~

~~9.8 Force Majeure. Neither party will be liable for any delay, interruption or failure in the performance of its obligations if caused by acts of God, war (declared or undeclared), fire, flood, storm, slide, earthquake, power failure, inability to obtain equipment, supplies or other facilities not caused by a failure to pay, labour disputes, or other similar event beyond the control of the party affected which may prevent or delay such performance. If any such act or event occurs or is likely to occur, the party affected shall promptly notify the other, giving particulars of the event. The party so affected shall use reasonable efforts to eliminate or remedy the event.~~

~~9.9 Further Assurances. Before and after the Effective Date, each party will promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions and intent of this agreement and to complete the transactions contemplated by this agreement.~~

~~9.10 Independent Parties. This agreement does not and will not be construed to create any partnership or agency whatsoever as between Linko and the Customer, and neither party will, by reason of any provision herein contained, be deemed to be the partner, agent or legal representative of the other of them nor have the ability, right or authority to assume or create, in writing or otherwise, any obligation of any kind, express or implied, in the name of or on behalf of the other of them.~~

~~9.11 Third Parties. Customer's correspondence or dealings with third parties through the Service are solely between Customer and such third parties. Linko will not responsible or liable for any loss or damage of any sort incurred as the result of any such dealings.~~

~~9.12 Remedies Cumulative. The rights and remedies under this agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.~~

~~9.13 Survival. Section 5.5, and Part 4, Part 7, Part 8 and Part 9 of this Schedule C will survive termination of this agreement.~~

~~9.14 Counterparts. This agreement and all documents contemplated by or delivered under or in connection with this agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.~~

~~9.15 Amendments. No amendment, supplement, restatement or termination of any provision of this agreement is binding unless it is in writing and signed by each party to this agreement at the time of the amendment, supplement, restatement or termination.~~

~~9.16 Entire Agreement. This agreement, the settlement agreement and all documents contemplated by or delivered under or in connection with this agreement or the Settlement agreement, constitute the entire agreement between the parties with respect to the subject matter of this agreement and supersede all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or oral, express or implied, statutory or otherwise.~~



