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Contract Number

23-1382

SAP Number

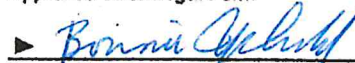
Innovation and Technology Department

Department Contract Representative	Staci McClane
Telephone Number	909-388-0622
Contractor	LinkedIn Corporation
Contractor Representative	
Telephone Number	
Contract Term	Beginning on the date the first order form is executed and continuing until terminated by either party
Original Contract Amount	Non-financial
Amendment Amount	N/A
Total Contract Amount	Non-financial
Cost Center	1200104042

Briefly describe the general nature of the contract: Non-financial Subscription Agreement, including non-standard terms, with LinkedIn Corporation for staff access and use of LinkedIn Learning, beginning on the first order form is executed and continuing until terminated by either party.

FOR COUNTY USE ONLY

Approved as to Legal Form


Bonnie Uphold, Supervising Deputy County Counsel

Date

11-14-2023

Reviewed for Contract Compliance



Date

Reviewed/Approved by Department



Date

LinkedIn Subscription Agreement

August 4, 2023

This LinkedIn Subscription Agreement (“**LSA**”) serves as the framework agreement for LinkedIn's subscription services and governs any previously executed and active Order Forms (defined below) and any future Order Forms executed by the customer identified in the applicable Order Form (“**Customer**”) and the LinkedIn company identified in that Order Form (“**LinkedIn**”). This LSA, the applicable Order Form(s), and any other incorporated terms, comprise the complete understanding between the parties on the subject matter (“**Agreement**”). This LSA supersedes any previously executed LSA or other master agreement(s) entered into by the parties which pertain to the Services (defined below).

This LSA is designed to address the unique concerns of a Public Sector Entity and is not applicable to private entities. “**Public Sector Entity**” means any federal, state, or local government unit, agency, political subdivision or instrumentality. If Customer is not a Public Sector Entity, then LinkedIn's standard terms and conditions located at: <https://www.linkedin.com/legal/l/lsa> will supersede this LSA and govern all ordering documents between the parties.

1. ORDERING

1.1. **Ordering Services.** Subject to credit approval by LinkedIn and Customer's compliance with the Agreement, Customer may access and use the subscription services offered via LinkedIn's websites to the extent and for the term stated in the Order Form (“**Services**”). “**Order Form**” means an ordering document or online order page for the Services. Customer may allow its Affiliate to order Services under the terms of this LSA only if Customer informs LinkedIn in writing of the specific Affiliate authorized to do so. That authorized Affiliate will be (a) deemed a “**Customer**” for that order only; and (b) jointly and severally liable with Customer for its use of the Services and compliance with the Agreement. “**Affiliate**” means an entity that Controls, is Controlled by, or is under common Control with, a party. “**Control**” means direct or indirect ownership of (i) more than 50% of an entity's voting interest; or (ii) the right to receive more than fifty percent (50%) of an entity's profits.

1.2. **Payment and Taxes.** Customer will pay the fees for the Services in accordance with the payment terms stated in the Order Form. Customer's purchases are non-cancelable and payment for Services is non-refundable, except as otherwise stated in this LSA. Customer will pay or reimburse LinkedIn for all federal, state, and local taxes, including sales, use, gross receipts, VAT, levy, GST, or similar transaction taxes imposed on Customer's purchase of Services, unless Customer provides LinkedIn with a valid tax exemption certificate. All taxes payable by Customer will be separately stated and exclusive of the fees. Customer will have no liability for taxes that are statutorily imposed on LinkedIn, including taxes or fees measured by LinkedIn's net or gross income.

1.3. **Withholding Tax.** If taxes are required to be withheld on payments under this Agreement in accordance with the tax laws applicable in the country of residence of Customer, either at the time of signing or during the performance of this Agreement, Customer shall have the right to withhold from any payment due to LinkedIn such amount of money as may be required to be withheld by the appropriate taxing authority. However, Customer shall take all measures in accordance with prevailing legislation in Customer's country of residence and/or applicable international laws or regulations, for the avoidance of double taxation, where applicable, to ensure a reduction of or exemption from withholding taxes which may become payable in connection with this Agreement. If required, to avail of a reduction of withholding tax or an exemption from

withholding tax, Customer shall request any necessary documentation or forms to be completed by LinkedIn as soon as practically possible and providing LinkedIn with a reasonable timeframe in line with contractual payment terms to provide such information. Where tax is withheld from payment due to LinkedIn, Customer shall supply LinkedIn with a valid withholding tax certificate and any other relevant documentation required as soon as this is available. Any balance outstanding will remain collectible until the necessary tax certificate/documentation is provided to LinkedIn.

2. RESPONSIBILITIES

2.1. **Use of Services.** LinkedIn shall provide Customer access to the Services in accordance with the Agreement. Customer will use the Services solely for its intended purpose, and as outlined in LinkedIn's service-specific terms <https://www.linkedin.com/legal/l/service-terms> ("**Service Terms**"). Unless otherwise stated in the Agreement, only Customer-designated employees and contractors are authorized to use the Services ("**Customer User**") and must be a Member when accessing Services through linkedIn.com. A "**Member**" is an individual who signs-up to use LinkedIn's services under LinkedIn's user agreement, currently available at <https://www.linkedin.com/legal/user-agreement>, as amended by LinkedIn from time to time ("**User Agreement**"). The terms of the User Agreement are incorporated into this LSA. Customer will ensure that Customer Users comply with the User Agreement when using the Service within the scope of their employment. Customer may only use the Services for Customer's internal use. Except as otherwise provided in the ordering document, Customer may allow its Affiliates to access and use the Services if Customer is fully liable for its Affiliates' use of the Services and compliance with the Agreement. Notwithstanding the above, Customer may not resell, transfer access to, or otherwise monetize the Services without LinkedIn's written consent. Excluding Customer Affiliates, Customer will not provide access to the Services to any third party. Customer will promptly and without undue delay notify LinkedIn upon learning of any unauthorized use of the Services or any other breach of security related to the Services. Customer will have access to the Customer Users' information that it collects in connection with the Users' access to the LinkedIn Services purchased by Customer. Customer may use such information only as needed for use of the Services and as expressly permitted in this LSA. LinkedIn may communicate to Customer Users about the Services via email, regular mail, and/or postings on the Services, including how to use the Services, customer support, integration, and compliance with the Agreement, provided that such communications comply with the terms of the DPA (defined below).

2.2. **Provision of Services.** Customer is responsible for providing LinkedIn with the information necessary for LinkedIn to provide the Services. Customer is solely responsible for the accuracy, quality and legality of such information. If a Service must integrate with third-party systems or applications used by Customer (e.g., an applicant tracking system ("**ATS**"), a customer relationship management system ("**CRM**"), or a learning management system ("**LMS**")), Customer is solely responsible for the integration and related activities. LinkedIn disclaims any and all liability for the use of third-party systems or applications residing outside LinkedIn's systems.

2.3. **Data Protection.** If LinkedIn processes Personal Data (as defined in Section 1 of the DPA) on behalf of Customer pursuant to this Agreement, then LinkedIn and Customer will comply with the terms of the LinkedIn Data Processing Agreement, currently available at <https://www.linkedin.com/legal/l/dpa> ("**DPA**"), the terms of which are incorporated into this LSA.

2.4. **Compliance with Laws.** With respect to the parties' performance of their obligations under this Agreement, the parties will comply with all applicable Data Protection Requirements (as defined in Section 1 of the DPA) and all international, federal, state, provincial and local laws relating, but not limited to, (a) corruption practice, bribery, and acts contrary to the public administration including the US Foreign Corrupt

Practices Act of 1977, 15 U.S.C. § 78dd-1, et seq.; (b) discrimination against employees or job applicants based on race, color, religion, sex, sexual orientation, gender identity, national origin, veteran status or disability; and (c) the import or export of the Services, including but not limited to trade laws such as the U.S. Export Administration Regulations and International Traffic in Arms Regulations, and sanctions regulations administered by the U.S. Office of Foreign Assets Control (“**Trade Laws**”). LinkedIn is enrolled in the U.S. Department of Homeland Security’s E-Verify program regarding the immigration and employment eligibility of newly hired employees. With respect to LinkedIn’s provision of Services under this Agreement, LinkedIn will comply with the terms of its Code of Business Conduct, the current version of which is available at <https://legal.linkedin.com/documents/LinkedIn-Code-of-Business-Conduct>.

2.5. **Scope of LinkedIn’s Services under the CCPA.** For purposes of the California Consumer Privacy Act, as amended by the California Privacy Rights Act, and other applicable laws, LinkedIn does not sell Personal Data to customers. Customers have access to the same Personal Data that is available to LinkedIn members on the LinkedIn platform, except when LinkedIn members (i) direct LinkedIn to transfer additional information to customers or (ii) use LinkedIn’s Services to directly communicate with LinkedIn’s customers.

3. CONFIDENTIAL INFORMATION

3.1 **Definition.** “**Confidential Information**” means any information disclosed under the Agreement that (a) if tangible, is clearly marked as “Confidential” or with a similar designation; (b) if intangible, is identified as “Confidential” by discloser at the time of disclosure and confirmed in writing to recipient as being Confidential Information; or (c) from the relevant circumstances should reasonably be known by recipient to be confidential (e.g., pricing, non-public Personal Data, etc.). Confidential Information does not include any portion of the information that recipient can prove (a) was rightfully known to recipient before receipt from discloser; (b) was generally known to the public on the Effective Date; (c) becomes generally known to the public after the Effective Date, through no fault of recipient; (d) was received by recipient from a third party without any confidentiality obligation; or (e) was independently developed by recipient without breach of this Section 3. For Customers located in the United States, LinkedIn acknowledges that Customer is subject to certain mandatory disclosure requirements under applicable federal and state freedom of information laws, including the Freedom of Information Act, 5 U.S.C. § 552, et seq., as amended. For all other Customers, LinkedIn acknowledges that Customer is subject to certain mandatory disclosure requirements under applicable freedom of information laws in Customer’s home jurisdiction. Customer acknowledges that certain information provided by LinkedIn during the performance of this Agreement may contain trade secrets and confidential commercial or financial information exempt from the mandatory disclosure requirements under applicable freedom of information laws.

3.2 **Limited Use and Non-Disclosure.** Recipient will (a) use Confidential Information only for the purposes of furthering the business relationship between the parties; (b) protect Confidential Information using the same degree of care it uses to protect its own confidential information of a like nature, but in no event less than a reasonable degree of care; (c) not disclose Confidential Information to any third party except (1) to Affiliates or employees, students, consultants, and agents who (i) have a need to know it in order to carry out their obligations under the Agreement, and (ii) are under written confidentiality and non-use obligations at least as restrictive as those stated in this LSA or (2) as required by law; and (d) not modify, reverse engineer, decompile, create other works from, or disassemble any Confidential Information, to the extent applicable, unless authorized in writing by discloser.

4. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP. No right, title or interest in any intellectual property right transfers to the other party, except for the limited rights stated in the Agreement. As between the parties, Customer retains all ownership rights in and to Customer Personal Data (as defined in Section 1 of the DPA). Customer is not obligated to provide LinkedIn or its Affiliates with any suggestions, enhancement requests, or other feedback about the Services or related technology ("**Feedback**"). However, if Customer does provide Feedback to LinkedIn, LinkedIn may use and modify it without any restriction or payment.

5. TERM AND TERMINATION

5.1. Term. This LSA is effective on the date the first Order Form is executed by Customer and LinkedIn ("**Effective Date**") and remains in effect until terminated.

5.2. Termination and Suspension. Either party may terminate this LSA or an Order Form if the other party materially breaches the Agreement and fails to cure the breach within 30 days after receiving notice of the breach. Either party may terminate this Agreement immediately upon notice if the other party (i) files a voluntary petition for bankruptcy or a petition or answer seeking reorganization; (ii) has filed against it an involuntary petition for bankruptcy that has not been dismissed within sixty (60) days of the date of filing; (iii) makes an assignment for the benefit of creditors; or (iv) applies for or consents to the appointment of a receiver, trustee or liquidator for substantially all of its assets or such a receiver, trustee or liquidator is appointed for the other party. Upon providing advance written notice to Customer, LinkedIn may suspend Customer's access to the Services if Customer is in breach of the Agreement and the suspension will continue for as long as reasonably necessary for Customer to remedy the breach. Any such suspension will not relieve Customer from its obligation to pay LinkedIn in respect of the Services. If all Order Forms under this LSA have expired or been terminated, then either party may terminate this LSA for convenience by providing written notice to the other party.

5.3. Effect of Termination. Termination of this LSA or an Order Form will not relieve Customer from its obligation to pay LinkedIn any fees stated in an Order Form, excluding termination by Customer for LinkedIn's uncured material breach of this LSA. If Customer terminates this LSA or an Order Form because of LinkedIn's uncured material breach, LinkedIn will refund a pro-rata share of any pre-paid fees under the applicable Order Form. Customer will notify Customer Users that their access to the applicable Services has terminated and LinkedIn may remove or discard all content that Customer uploaded or otherwise made available to LinkedIn in accordance with LinkedIn's DPA and policies. Termination of an Order Form does not terminate this LSA; however, termination of this LSA will result in the immediate termination of all Order Forms. The provisions of this LSA that by their nature extend beyond the termination of this LSA will survive termination.

6. LIMITED WARRANTY; DISCLAIMER. LinkedIn warrants that (i) it has the necessary rights to provide the Services to Customer; and (ii) the Services do not and will not infringe the intellectual property rights of a third party. Customer's sole remedy and LinkedIn's sole liability for a breach of the foregoing warranties is LinkedIn's liability under Section 7.1(a). Except for the warranties stated in this Section 6, LinkedIn makes no representation or warranty about the Services, including any representation that the Services will be uninterrupted or error-free. To the fullest extent permitted under applicable law, LinkedIn disclaims any implied or statutory warranty, including any implied warranty of title, merchantability or fitness for a particular purpose.

7. LIABILITY

7.1. **LinkedIn Liability.** LinkedIn will be responsible for any damages resulting from (a) the negligent acts or omissions of LinkedIn, its employees, or agents; and (b) the Services' infringement of a third party's intellectual property right.

7.2. **Customer Liability.** To the extent legally liable and permitted by law, Customer will be responsible for any damages resulting from (a) the negligent acts or omissions of Customer, its Customer Users, or agents; (b) claims made or brought against LinkedIn by a third party alleging that (i) the Customer Personal Data or LinkedIn's transmission or hosting of the Customer Personal Data infringes or violates the rights of the third party; or (ii) Customer's use of the Services in violation of the Agreement infringes or violates the rights of the third party; or (c) Customer's failure to comply with applicable laws, rules or regulations in its performance under the Agreement.

8. LIMITATION OF LIABILITY

8.1 **Damages Waiver.** Subject to Section 8.3, to the fullest extent permitted by law, neither party, including its respective Affiliates, will be liable to the other in connection with the Agreement for lost profits or lost business opportunities, loss of data, or any indirect, incidental, consequential, special or punitive damages. LinkedIn disclaims liability for any Personal Data Breach (as defined in the DPA), provided that LinkedIn will be liable for Personal Data Breaches that result from LinkedIn's negligence, intentional misconduct, or material failure to comply with the terms of the DPA.

8.2 **Liability Cap.** Subject to Section 8.3, neither party, including its respective Affiliates, will be liable to the other in connection with the Agreement for an amount that exceeds the total fees paid or payable to LinkedIn during the term of the applicable Order Form(s).

8.3 **Exclusions.** The limitations of liability stated in sections 8.1 and 8.2 do not apply to: (a) a party's confidentiality obligations; (b) a party's liability for fraud, gross negligence or intentional misconduct; (c) a party's liability for death or personal injury; (d) a party's violation of the other party's intellectual property rights; or (e) any Personal Data Breaches that result from LinkedIn's negligence, intentional misconduct, or material failure to comply with the terms of the DPA.

8.4 **Sovereign Immunity.** The parties recognize that Customer is a Public Sector Entity, and nothing in this LSA is intended to waive or diminish Customer's rights under principles of Sovereign Immunity, as established by law.

9. **INSURANCE COVERAGE.** During the term of this Agreement, LinkedIn will maintain commercially reasonable insurance coverage as required by law in connection with its performance under the Agreement. A copy of LinkedIn's certificate of insurance is currently available at <https://legal.linkedin.com/content/dam/legal/Evidence-of-Insurance---LinkedIn-Corp.pdf>.

10. **DISPUTE RESOLUTION.** The Agreement is governed by the laws of Customer's home jurisdiction. The prevailing party may seek to recover its legal fees and costs. If the Customer is a United Nations program, fund, or specialized agency, then any dispute or claim related to the Agreement, including a claim of breach (unless settled by direct negotiation), will be settled in accordance with the UNCITRAL Arbitration Rules. Any resulting arbitration award will be binding on the parties and final. If during a direct negotiation the parties wish to seek an amicable settlement of the dispute or claim by conciliation, the conciliation will take place in accordance with the UNCITRAL Conciliation Rules. Notwithstanding the foregoing, for Customers who have their registered office within the European Union, LinkedIn may agree to facilitate referral of a dispute to one

of the following [mediation service providers](#) in the first instance where, due to the nature of the dispute, such referral is likely to bring about a prompt and definitive resolution.

11. MISCELLANEOUS

11.1. **Validity.** If a conflict exists between any of the terms in the Agreement, then the Order Form will govern, followed by the DPA, this LSA, the Service Terms, and finally the User Agreement. Neither party relies on any undertaking, promise, assurance, statement, representation, warranty or understanding of any person relating to the subject matter of the Agreement, other than as stated in the Agreement.

11.2. **Notice.** Notices will be provided in writing to the email address and/or physical address of the other party stated on the Order Form, unless otherwise stated in the Agreement. Notices are effective on the date of delivery.

11.3. **No Partnership.** The Agreement does not create a partnership, agency relationship, or joint venture between the parties. Neither party has the power or authority to bind the other or to create any obligation or responsibility on behalf of the other. Under no circumstances will any employee of one party be deemed to be the employee of the other.

11.4. **Assignment.** Except as otherwise provided in the Order Form, either party may assign this Agreement to an Affiliate or a successor-in-interest that is not a competitor of the non-assigning party, made in connection with (i) the sale of all or substantially all of the assigning party's assets; (ii) any change in the ownership of more than 50% of the assigning party's voting capital stock in one or more related transactions; or (iii) the assigning party's merger with or acquisition by such successor-in-interest, provided that the relevant parties enter into a written agreement to do so. Except for the assignments set forth in the foregoing sentence, neither party will assign the Agreement in whole or in part without the other party's prior written consent (which consent will not be unreasonably denied, delayed or conditioned). Any attempted assignment in violation of this restriction is void. The Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.5. **Agencies.** Customer will provide LinkedIn written notification if Customer is purchasing Services through a LinkedIn approved agency. If Customer is an approved agency binding a client under this LSA, Customer (a) represents and warrants that it has the authority to bind the client under this LSA; (b) will notify LinkedIn in writing of the name and address of its client that will access and use the Services; and (c) remains jointly and severally liable for all of Customer's obligations under the Agreement.

11.6. **Languages.** If the Agreement is translated into a language other than English, the translation is for convenience only, and the English language version will govern.

11.7. **Marketing.** Except as necessary to provide the Services to Customer, LinkedIn will not name Customer as a customer of LinkedIn's in its marketing and promotional materials without obtaining Customer's prior consent.

11.8. **Monitoring.** LinkedIn may remotely monitor Customer's use of the Services to ensure compliance with the Agreement, provided that LinkedIn will not access Customer's network, systems or devices in connection with such monitoring.

11.9. **Severability.** If any provision of the Agreement is unenforceable, that provision will be modified to render it enforceable to the extent possible to give effect to the parties' intentions and the remaining provisions will not be affected.

11.10. **Amendment.** The parties may amend the Agreement only in a written amendment signed by both parties, except for (i) the User Agreement and Service Terms, which may be modified in accordance with their terms, and (ii) the DPA, which may be updated from time to time. With respect to the DPA, LinkedIn will provide at least 30 days' prior written notice of a material change, unless such change results from a change in applicable laws or regulations. Upon such notice, which shall be given in accordance with the notice provisions in this Section 11, Customer's continued use of the Services after the date the change becomes effective will constitute Customer's acceptance, and the updated version of the DPA shall supersede and replace all earlier versions.

11.11. **Counterparts.** If this LSA will be executed then it can be executed electronically and in counterparts, each of which is deemed to be an original and together comprise a single document. Each party represents and warrants that the individual binding a party under this LSA is authorized to do so. If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this Agreement on that entity's behalf. LinkedIn reserves the right to treat that entity as the owner of the Services for purposes of this Agreement (this includes treating the entity as the owner of the enterprise data related to the Services).

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