



Dena Murphy
Director

October 26, 2021

Board of Supervisors
Kern County Administrative Center
1115 Truxtun Avenue
Bakersfield, CA 93301

REQUEST FOR APPROVAL OF SAP SOFTWARE LICENSE AND SUPPORT AGREEMENT GENERAL TERMS AND CONDITIONS FOR CRYSTAL REPORTS SOFTWARE CONTAINING NON-STANDARD TERMS AND CONDITIONS (Fiscal Impact: \$964: \$906 Federal/State/Realignment; \$58 County; Budgeted; Discretionary)

The Department of Human Services (DHS) requests your Board's approval to authorize the acceptance of SAP Software License and Support Agreement (SLSA) General Terms and Conditions that contain non-standard terms in an amount not to exceed \$964. Total General Fund for FY 21/22 is \$58.

This agreement enables the purchase of SAP Crystal Reports Software to design and generate reports for data obtained from the California Statewide Automated Welfare System. SAP Crystal Reports allows DHS to access data from platforms such as Oracle or MS SQL Server and to create graphs, charts, and crosstabs that present simplified summaries of the details contained in the reports. These graphs, charts, and crosstabs are an essential tool for the Department of Human Services to help identify and manage their workload in meeting the needs of our internal and external customers.

County Counsel has reviewed the SAP SLSA General Terms and Conditions for Crystal Reports Software and identified non-standard terms and conditions as follows:

- Insurance Provisions
- Governing Law
- Venue
- Attorney's Fee

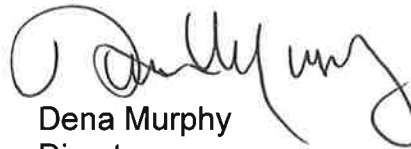
The SAP SLSA General Terms and Conditions does not comply with Administrative Policy and Procedures Manual, Section 530. However, based on representations made by the Department with respect to the need for the SAP Crystal Reports Software, and the low degree of risk, County Counsel has no strong objection and approves the SAP

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SLSA General Terms and Conditions as to form on that basis. The County Administrative office has reviewed and concurs with our recommendations.

Therefore, IT IS RECOMMENDED that your Board approve the proposed Agreement with SAP, accept the Software License and Support General Terms and Conditions for Crystal Reports Software containing non-standard terms and conditions, and proceed with acquisition.

Sincerely,

A handwritten signature in black ink, appearing to read "Dena Murphy". The signature is fluid and cursive, with a large initial "D" and a long, sweeping tail.

Dena Murphy
Director

cc: CAO

SOFTWARE LICENSE AND SUPPORT AGREEMENT
General Terms and Conditions
("GTC")

1. DEFINITIONS.

1.1 "Add-on" means any development that adds new and independent functionality, but does not modify existing SAP functionality, and is developed using SAP application programming interfaces or other SAP code that allows other software products to communicate with or call on SAP Software.

1.2 "Affiliate" means any legal entity in the Territory in which the Licensee, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights. Any such legal entity shall be considered an Affiliate for only such time as such interest is maintained.

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1.6 "Designated Unit" means information technology devices (e.g. hard disks or central processing units) identified by Licensee pursuant to this Agreement that have been officially made known to the public as appropriate for Use or interoperation with the Software.

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12.1 Severability. It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

12.2 No Waiver. If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.

12.3 Counterparts. This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement. Signatures sent by electronic means (facsimile, scanned and sent via e-mail, or signed by electronic signature service where legally permitted) shall be deemed original signatures.

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12.6 Notices. All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the respective executive offices of SAP and Licensee at the addresses first set forth in any Software Order Form. Where in this Section 12.6 or elsewhere in this Agreement a written form is required, except for any notice of termination or notice of a material breach which shall occur by exchange of letter(s), that requirement can be met by facsimile transmission, exchange of letters or other written form, including email.

12.7 Force Majeure. Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

12.8 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Licensee, and all previous representations, discussions, and writings are merged in, and superseded by this Agreement and the parties disclaim any reliance on any such representations, discussions and writings. This Agreement may be modified only by a writing signed by both parties. This Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Licensee to SAP. This Agreement shall prevail over any additional, conflicting or inconsistent terms and conditions which may appear in any clickwrap end user agreement included in the Software. Signatures sent by electronic means (facsimile or scanned and sent via e-mail) shall be deemed original signatures. This Agreement does not create any partnership, joint venture or principal-and-agent relationship.

12.9 Order of Precedence. In the event of a conflict or inconsistency between the provisions of the components of the Agreement, then the following order of precedence shall be used in resolving such conflict or inconsistency: (1) the Software Order Form's terms and conditions shall take precedence over any other component of the Agreement; (2) then the Schedule(s); (3) then the GTC; (4) then, and last, the Use Terms. Notwithstanding the foregoing, if there are any third party pass-through terms and conditions applicable to Third Party Software stated in the Use Terms, those terms and conditions must prevail over any conflicting or inconsistent terms of any component of the Agreement.

Schedule A to the GTC
"SAP CONSULTING SERVICES SUPPLEMENTAL TERMS AND CONDITIONS" ("SUPPLEMENT")

These supplemental terms and conditions (the "**Supplement**") and any modifications to the Agreement made herein apply solely to Consulting Services and not to any other SAP product or service. In case of a conflict between the Supplement and the GTC, the terms of the Supplement shall prevail and govern and in case of a conflict between the GTC and/or Supplement and the Scope Document, the terms of the Scope Document shall prevail and govern.

1. DEFINITIONS

- 1.1 "Consultant"** means any employee or third party contractor which SAP utilizes to provide Consulting Services to Licensee.
- 1.2 "Deliverables"** means those specific work products or tangible results which are explicitly identified as "Deliverable" under the applicable Order Form.
- 1.3 "Scope Document"** means the document that is provided with and becomes part of the applicable Order Form which further defines the scope of Consulting Services to be provided and other engagement specifics.
- 1.4 "Service Description"** means pre-defined descriptions of services found at <http://www.sap.com/corporate-en/about/resources/service-descriptions/index.html> in effect as of the Order Form Effective Date.

2. TERM AND TERMINATION

- 2.1 Term.** Each Consulting Service shall be effective as of the Effective Date set forth in that Order Form, and shall remain in effect until end of term or completion of the Consulting Services or terminated earlier by either party in accordance with the applicable GTC.
- 2.2 Termination for Convenience.** Consulting Services (excluding fixed-price Consulting Services) may be terminated by either party upon thirty (30) days' prior written notice.
- 2.3 Effect of Termination.** Licensee shall be liable for all payments to SAP, including all fees and expenses up to the effective date of termination. All Confidential Information (excluding Consulting Services Deliverables that Licensee has paid for) of the other party shall upon request of the other party be returned to the Disclosing Party or destroyed with certification of such destruction from an authorized individual.

3. CONSULTING SERVICES WARRANTY

- 3.1 General.** SAP warrants that it will perform the Consulting Services in a professional workmanlike manner using resources with the skills reasonably required to perform such services.
- 3.2 Conformance.** SAP warrants that for ninety (90) days following provision of the Consulting Services the Deliverables will materially conform with the specifications for that Deliverable in accordance with the respective Service Description or Scope Document provided that the warranty period for Deliverables (if any) resulting from any subscription based Consulting or Cloud Services will in no event exceed the termination date of the subscription based Consulting or Cloud Services.
- 3.3 Exclusion.** SAP does not warrant error-free or uninterrupted operation of any Consulting Services or Deliverable or that SAP will correct all non-conformities.
- 3.4 Claims.** Licensee shall notify SAP within ninety (90) days of provision of the Consulting Services or Deliverable in writing of the alleged warranty breach and provide SAP with a precise description of the problem and all relevant information reasonably necessary for SAP in order to rectify such warranty breach. Provided Licensee has notified SAP in accordance with this Section of a warranty breach and SAP validates the existence of such warranty breach, SAP will, at its option re-perform the applicable Consulting Services or Deliverable, or refund the fee paid or reallocate quota for the specific non-conforming Consulting Service or Deliverable. This is Licensee's sole and exclusive remedy for a warranty breach.

4. CHANGE REQUEST PROCEDURE

Either party can request changes to the Consulting Services in accordance with the form attached to the Order Form or included in the applicable Service Description ("**Change Request**"). SAP is not required to perform under a Change Request until agreed to and signed by the parties.

5. PROVISION OF SERVICES

- 5.1 Personnel.** The selection, assignment or replacement of Consultants is at SAP's sole discretion and SAP reserves the right to replace any Consultant at any time at its sole discretion with resource Consultant with equivalent skills.
- 5.2 Replacement.** If at any time Licensee or SAP is dissatisfied with the material performance of an assigned Consultant or a Licensee project team member, the dissatisfied party shall promptly report such dissatisfaction to the other party in writing and may request a replacement. The other party shall use its reasonable discretion in accomplishing any such change (which also, in the case of SAP, shall be subject to staffing availability).
- 5.3 Delays.** If any Consulting Service, in whole or in part, cannot be provided by SAP due to a Licensee issue and Licensee fails to provide SAP with reasonable advance notice, the time agreed to be spent by SAP resources on such Consulting Service will be charged to Licensee.
- 5.4 Rights.** Licensee ensures to have all necessary license rights including third party license rights required for the Consulting Services.

6. LIMITATION OF LIABILITY, LIABILITY CAP FOR CONSULTING SERVICES

Consulting Services shall be subject to Section 10 of the GTC, except that the following shall replace and supersede Section 9.2 of the GTC: For any Consulting Services provided under the Agreement, under no circumstances and regardless of the nature

of any claim shall the maximum aggregate liability of either party (or their respective Affiliates or SAP's subcontractors) to the other or any other person or entity under or in connection with the Agreement, exceed the total fees paid for the applicable Consulting Service under the relevant Order Form or, in the case of Consulting Services which are subscription based or billed on a monthly or annual basis, the fees paid in the twelve (12) month period preceding the date of the incident giving rise to the liability.

7. FEEDBACK

Licensee may be invited to participate in certain evaluations, presentations, meetings, surveys or discussions (collectively, "**Discussions**") for the purpose of informing Licensee of SAP's business and technology direction, and to allow Licensee, at its sole discretion, to provide SAP, SAP Affiliates or SAP SE with input, comments or suggestions from Licensee, regarding SAP's business and technology direction and/or the possible creation, modification, correction, improvement or enhancement of the software, products and/or services of SAP, (collectively "**Feedback**"). Licensee grants to SAP SE a non-exclusive, perpetual, irrevocable, worldwide, non-transferable (except to SAP Affiliates), royalty-free license, with the right to sublicense through multiple tiers, under applicable laws to use, publish, modify, and otherwise benefit from Feedback in any manner and via any media. Content of Discussions may include areas outside the scope of Consulting Services and may relate to any SAP software, products, solutions and/or services. Confidential Information disclosed or made available by SAP, or Licensee during Discussions may only be used for the purpose of the Discussions and shall be protected from unauthorized use and disclosure in accordance with the GTC. Licensee acknowledges that the information related to software, products, services, business or technology plans of SAP, disclosed during the Discussions, is only intended as possible strategies, developments, and functionalities and is not intended to bind SAP to any particular course of business, product strategy, and/or development.

8. NON-SOLICITATION

Neither party shall knowingly solicit or hire, the other party's employees involved in the Consulting Services during the performance of the Consulting Services or for a period of six (6) months from the termination of the applicable Order Form, without the express written consent of the other party. This provision shall not restrict the right of either party to solicit or recruit generally in the media.