

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the “Agreement”) is entered into by and between the California State Controller’s Office (the “SCO”) and SAP Public Services, Inc., a corporation qualified to do business in California (“SAP”). The SCO and SAP are referred to herein individually as a “Party” and collectively as the “Parties.” Upon the Effective Date (as defined in Paragraph 1, below) of this Agreement, for good and valuable consideration as stated below, the Parties agree as follows:

RECITALS

- A. California Government Code § 12432 declares “it is essential for the state to replace the current automated human resource/payroll systems operated by the Controller to ensure that state employees continue to be paid accurately and on time and that the state may take advantage of new capabilities and improved business practices.”
- B. The State of California undertook to replace its existing human resource/payroll systems with a new system consistent with Government Code § 12432. This replacement effort is known as the 21st Century Project (the “Project”). Section 12432 authorized the SCO exclusively to procure, modify and implement the Project.
- C. On February 2, 2010, the Parties entered into a fixed price contract in the sum of approximately \$81.3 million (Agreement No. SCO-22191049) for SAP to provide system integration services to complete the Project (the “Implementation Contract”). The new system to be implemented by SAP was called MyCalPAYS (the “MCP System”).
- D. On June 29, 2010, the Parties entered into a Restated Agreement (Agreement No. SCO 22191089) with respect to software for the Project (the “Software Contract”).
- E. On February 8, 2013, the SCO terminated the Implementation Contract in its entirety (except for Attachment F thereto) for SAP’s alleged default.
- F. On November 21, 2013, the SCO filed a Complaint against SAP in Sacramento Superior Court (Case No. 34-2013-00154918) for breach of contract and breach of the covenant of good faith and fair dealing.
- G. On or about April 14, 2014, SAP filed a Cross-Complaint against the SCO for breach of contract, breach of the covenant of good faith and fair dealing, account stated, and declaratory relief. The Complaint and the Cross-Complaint in Case No. 34-2013-00154918 are collectively referred to herein as the “Litigation.”
- H. Trial in the Litigation is scheduled to begin on June 13, 2016.

- I. In recognition of the exchange of good and valuable consideration as stated below, including without limitation, the release by the SCO of its damages and related claims in its Complaint, the release by SAP of its damages and related claims in its Cross-Complaint, and the promises contained herein, the Parties have determined that it is in their respective best interests to compromise and settle all claims and causes of action which they have asserted, or could assert, against each other in the Litigation.

TERMS

NOW, THEREFORE, for and in consideration of the execution of this Agreement and of the respective promises, covenants, releases, and agreements contained herein, and intending to be legally bound, the Parties do hereby agree to settle their claims and disputes against each other relating to and/or arising from the Litigation, and covenant and agree as follows:

1. Effective Date

The effective date of this Agreement (“Effective Date”) shall be the date by which all Parties have executed this Agreement and the SCO has provided wire instructions to SAP on SCO letterhead for wire of the Payment set forth in paragraph 3 of this Agreement.

2. No Admission of Liability

Nothing in this Agreement shall be deemed or construed to be an admission or concession of any liability or fault by either Party with respect to any of the allegations made or which could have been made in the Litigation. The Parties each respectively do not admit any liability whatsoever for any claims among and between them but instead expressly deny the same. This Agreement shall not be offered into evidence as an admission of fault or liability on the part of either of the Parties except to the extent necessary to enforce the terms of this Agreement.

3. Consideration and Dismissal of the Litigation

SAP shall make a cash payment to the SCO in the sum of fifty-nine million dollars (US \$59,000,000.00) (the “Payment”) within ten (10) business days of the Effective Date. On the Effective Date, the Parties will exchange a fully executed Request for Dismissal with prejudice of the Litigation in its entirety in the form attached hereto as Exhibit A. The Parties also shall execute a Joint Notice of Settlement in the form attached hereto as Exhibit B, which will be filed by SAP on the Effective Date of this Agreement. The SCO shall hold the fully executed Exhibit A for filing immediately upon receipt of the Payment and shall promptly provide SAP with a conformed copy of the filed request for dismissal.

SAP shall make the Payment by wire transfer to the SCO, pursuant to instructions that have been provided to SAP by the SCO. SAP shall notify the SCO by electronic mail what day SAP expects the wire to arrive pursuant to Paragraph 10(M), below.

4. Termination For Convenience of the Implementation Contract

Upon the SCO's receipt of the Payment described in Paragraph 3, above:

- A. The SCO's February 8, 2013 letter terminating the Implementation Contract shall be and hereby is rescinded.
- B. Except as explicitly stated in Paragraph 7 of this Agreement, the Implementation Contract and all attachments thereto, with the exception of Attachment F, are terminated for convenience in their entirety effective February 8, 2013. The terms of the termination for convenience are defined in their entirety by the provisions of this Agreement, which supersede Paragraph 22 (Termination for Convenience) of Attachment C to the Implementation Contract, and any other inconsistent meaning by statute or common law. Future rights and obligations with regard to the Implementation Contract are addressed in Paragraph 7, below.
- C. The Software Contract is not terminated and remains in full force and effect, except as provided in Paragraph 7, below.

5. Releases

- A. Except as otherwise provided in this Agreement, upon the SCO's receipt of the Payment described in Paragraph 3, above, the Parties mutually and irrevocably release, acquit, and forever discharge each other and, as applicable, each other's owners, stockholders, partners, attorneys, predecessors, successors, assigns, agents, directors, officers, employees, consultants, contractors, experts, representatives, parent, subsidiary and affiliated companies, and agencies, departments and other offices of the State of California, and each of them, from any and all claims, actions, damages, credits, refunds, offsets, payments, amounts, interest, and demands of every kind and nature, whether arising in law, equity or otherwise, whether presently known or unknown, foreseeable or ascertainable, through and including the Effective Date, concerning any matter prior to the Effective Date arising out of or related to: (1) the Implementation Contract or the Software Contract, including without limitation, any related unpaid invoices, any alleged breach of confidentiality, or any other claims; and (2) matters that were asserted or could have been alleged in the Litigation, including, without limitation, (a) all claims, causes of action, defenses, and cross-claims, (b) amounts that were or could have been sought as damages, and (c) any other remedies or relief.
- B. The Parties each represent and warrant that they fully understand that if the facts and/or circumstances pertaining in any way to the Implementation Contract, the Software Contract, or the Litigation are later found to be different from the facts and/or circumstances now believed to be true by either Party, each of them expressly accepts and assumes the risk of such possible differences in facts and/or circumstances and agrees that this Agreement shall remain effective notwithstanding such differences in facts and/or circumstances.

6. **California Civil Code Section 1542**

With respect to the Releases in the preceding Paragraph, and except for the promises made in this Agreement and the provisions of the Implementation Contract and Software Contract that survive as provided in this Agreement, the Parties each certify that they have read and waive Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

7. **Rights and Obligations Respecting Implementation Contract and Software Contract.**

A. Implementation Contract.

- i. Paragraphs 34 (Confidentiality of Data), 37 (Rights in Work Product), 38 (Protection of Proprietary Software and Other Proprietary Data) and 39 (Patent, Copyright and Trade Secret Indemnity) of Attachment C to the Implementation Contract, General Provisions – Information Technology, shall survive termination. The Parties agree that the Work Product, as defined in Paragraph 37, includes, but is not limited to, all Deliverables and Documentation (as defined in the Implementation Contract), the MCP System itself, and any other software that was customized by SAP in connection with the Project.
- ii. The parties agree that Attachment F to the Implementation Contract (SAP Commercial Software License Special Provisions) shall survive termination, except that the Parties hereby terminate as of the Effective Date the SAP Standard Support service by SAP provided under the SAP Standard Support Schedule (Attachment F, SAP Commercial Software License Special Provisions, Exhibit 2, SAP Standard Support Schedule; Attachment F, SAP Commercial Software License Special Provisions, Exhibit 3, Appendix 1, Section 6; Attachment F, SAP Commercial Software License Special Provisions, Exhibit 4, Appendix 2, Section 5; Attachment F, SAP Commercial Software License Special Provisions, Exhibit 5, Appendix 3, Section 5; Attachment F, SAP Commercial Software License Special Provisions, Exhibit 6, Appendix 4, Section 6; and Attachment F, SAP Commercial Software License Special Provisions, Exhibit 7, Appendix 5, Section 6). SAP agrees that the SCO has fully paid all license fees for the software identified in Attachment F, and that no additional sums are or will be due for license fees, software support or otherwise.

B. Software Contract.

The Software Contract remains in full force and effect except that the Parties hereby terminate as of the Effective Date the SAP Standard Support service by SAP provided under the SAP Standard Support Schedule (Attachment D, Exhibit 2 of the SAP Commercial Software License Special Provisions; Attachment D, Exhibit 3 of the SAP Commercial Software License Special Provisions, Appendix 1, Section 6; Attachment D, Exhibit 4 of the SAP Commercial Software License Special Provisions, Appendix 2, Section 5; and Attachment D, Exhibit 5 of the SAP Commercial Software License Special Provisions, Appendix 3, Section 6). SAP agrees that the SCO has fully paid all license fees for the software identified in the Software Contract, and that no additional sums are or will be due for license fees, software support or otherwise.

8. Compliance with Protective Order

Within sixty (60) days of the Effective Date, each Party shall certify in writing under penalty of perjury that it has complied with Paragraph 28 of the Amended Protective Order dated July 8, 2015 in the Litigation (“Protective Order”), with respect to the destruction or return of Confidential Materials (as defined in the Protective Order) received by the Party during the Litigation. As provided in Paragraph 30 of the Protective Order, all Personal Information (as defined in the Protective Order) constitutes Confidential Material whether or not designated or marked as such.

9. Communication Following Settlement and Notification Regarding Requests.

- A. Subsequent to the execution of this Agreement, SAP and the SCO mutually agree that they may and are free to provide factual information, that is not otherwise prohibited from disclosure by the terms of the Protective Order, regarding the 21st Century Project, the disputes that were the subject matter of the Litigation, and the terms of this settlement. However, the parties agree that for a period of ninety (90) calendar days following the execution of this Agreement, they will not intentionally initiate any public disclosure or publication which may be reasonably perceived as derogatory against each other or any of their directors, officers, affiliates, subsidiaries, employees, agents or representatives.
- B. For the two years specified in the Protective Order following the date of filing of the Request for Dismissal of the Litigation, if either SAP or the SCO receives a subpoena, request pursuant to the Public Records Act, or other process (hereinafter collectively referred to as "Subpoena") from any government or other person or entity demanding production of Confidential Materials (as defined in the Protective Order) produced or provided by the other Party in the Litigation, the recipient of the Subpoena shall promptly give notice of the same by electronic mail transmission to the persons identified in Paragraph 10(M), below, followed by either express mail or overnight delivery. Upon receipt of this notice, the recipient of the notice may, in its sole discretion and at its own cost, move to

quash or limit the Subpoena, otherwise oppose production of the Confidential Materials requested, and/or seek to obtain confidential treatment of such information from the subpoenaing person or entity to the fullest extent available under law. The recipient of a Subpoena subject to this paragraph may not produce any Documents, Testimony or Information (as defined in the Protective Order) pursuant to the Subpoena prior to the date specified for production on the Subpoena and/or required by law. In the event that a party has moved to quash or limit a Subpoena subject to this paragraph, the Party receiving the Subpoena shall not produce any of the Confidential Materials sought by the Subpoena unless and until either (a) the Court denies the party's motion to quash or limit of the Subpoena; or (b) the Party receiving the Subpoena is directed to produce the requested Confidential Materials by a Court having competent jurisdiction over the dispute and the parties thereto.

- C. Nothing in this Paragraph 9 shall prevent either of the Parties to this Agreement from complying with disclosure obligations imposed by law, statute, rule, regulation, court order, reporting requirements, insurance, auditing, oversight or assessment requirements, financial institution or other commercial reporting requirements, or generally accepted accounting principles.

10. General Provisions

- A. **Authority to Enter Into and Perform Agreement.** Each Party represents and warrants that it has full power and authority to enter into and fully perform the provisions of this Agreement, and that the person(s) executing this Agreement on behalf of each of the Parties are doing so in their respective official capacities and they have been properly authorized and empowered to enter into this Agreement and to bind their respective Party to this Agreement.
- B. **Reliance on Own Knowledge.** Each of the Parties to this Agreement warrants that it has, through its representatives (including counsel, whether internal or external), carefully read and understood the terms of this Agreement. Each Party agrees that it is executing this Agreement solely in reliance upon its own knowledge, belief, and judgment, and that it has not relied upon the representations or advice of any other party.
- C. **Mutual Drafting.** This Agreement has been mutually drafted by authorized representatives of the Parties. Accordingly, no provision of this Agreement shall be interpreted for or against a Party because that Party, or its authorized representative, drafted or revised such a provision. The Parties waive the provisions of California Civil Code section 1654.
- D. **Amendment of Agreement.** No modification, waiver, or amendment of this Agreement shall be valid unless the modification, waiver, or amendment is in writing and executed by each of the Parties. No other act, document, usage, or custom shall be deemed to modify, waive, or amend this Agreement.

- E. **Governing Law and Venue.** This Agreement is governed by and shall be construed and enforced in accordance with the laws of the State of California. The Parties agree that any action relating to any dispute, claim or controversy regarding the validity, interpretation, breach or enforcement of this Agreement shall be commenced and maintained in, and the Parties hereby stipulate to the jurisdiction only of, the Superior Court for the County of Sacramento, State of California.
- F. **Further Required Actions.** Each of the Parties represents that it shall do all acts and execute and deliver all documents necessary, convenient, or desirable to effectuate all provisions of this Agreement.
- G. **Entire Agreement.** This Agreement contains the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement, and supersedes all prior or contemporaneous oral and written representations, agreements and understandings between the Parties concerning the subject matter of this Agreement.
- H. **Execution of Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and shall become effective and binding on each of the Parties when all signatories to this Agreement have signed a counterpart of this Agreement. All counterparts so executed shall constitute one agreement binding on each of the Parties. Electronic copies of signatures may be used with the same force and effect as if they were originals.
- I. **Warranties Regarding Releases.** Each Party warrants that it has not sold, assigned, transferred, conveyed, or otherwise disposed of anything released by this Agreement.
- J. **Attorney's Fees and Costs.** Each Party shall be responsible for and bear its own attorney's fees and costs incurred in connection with the Litigation, including the preparation and negotiation of this Agreement.
- K. **Severability of Agreement.** Should any provision of this Agreement be declared or be determined to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions of this Agreement shall not be affected thereby, and shall remain in full force and effect. The illegal, unenforceable, or invalid part, term, or provision shall no longer be deemed to be part of this Agreement. It is the desire and intent of the Parties that the provisions of this Agreement be enforced to the fullest extent permissible under applicable laws.
- L. **Delays and Waivers.** The failure of any Party to immediately or contemporaneously insist in any one or more instances upon the performance, or alleged lack of performance, of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver or relinquishment of the future

performance of any other term, covenant, or condition; but the defaulting Party's obligation with respect to future performance of any other terms shall remain in full force and effect. The failure of any Party to take any action permitted by this Agreement shall not be construed as a waiver or relinquishment of the Party's right thereafter to take such action.

- M. **Notices.** Except as otherwise provided in this Agreement, any notice required or permitted under this Agreement shall be in writing and shall be provided by personal delivery or first class U.S. mail, addressed to the last known address of the Party to whom notice is being given; provided that, in the case of delivery by U.S. mail, a copy of the notice shall also be sent on the date of mailing by facsimile transmission to the facsimile number, if any, designated by the other Party below or otherwise for receipt of such notices. Except as may be specifically provided otherwise, all notices shall be effective in the case of personal delivery, upon receipt; and in case of mailing, upon deposit in the U.S. mail. All notices shall be sent to the following:

For the State Controller's Office:

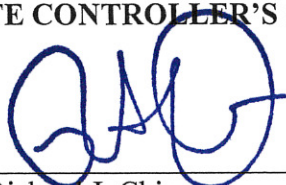
Richard J. Chivaro, Chief Counsel
California State Controller's Office
300 Capitol Mall, Suite 1850
Sacramento, CA 95814
Phone: (916) 445-2636
Fax: (916) 322-4404
Email: rchivaro@sco.ca.gov

For SAP Public Services, Inc.:

Mary Beth Hanss
Senior Vice-President & General Counsel
North America
SAP
3999 West Chester Pike
Newtown Square, PA 19073
Fax: (610) 661-3400
Email: mary.hanss@sap.com

Accepted, Agreed to, and Approved by:

STATE CONTROLLER'S OFFICE



6/6/16

By: Richard J. Chivaro

Title: Chief Counsel

SAP PUBLIC SERVICES, INC.

By: _____

Title:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Phillip R. Kaplan (SBN 76949) Craig S. Bloomgarden (SBN 110241) Manatt, Phelps & Phillips, LLP 695 Town Center Drive, 14th Floor Costa Mesa, CA 92626 TELEPHONE NO.: 714-371-2500 FAX NO. (Optional): 714-371-2550 E-MAIL ADDRESS (Optional): PKaplan@manatt.com ATTORNEY FOR (Name): State Controller's Office	<i>FOR COURT USE ONLY</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS: 720 Ninth Street MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, CA 95814-1398 BRANCH NAME: Main Courthouse	
PLAINTIFF/PETITIONER: STATE CONTROLLER'S OFFICE DEFENDANT/RESPONDENT: SAP PUBLIC SERVICES, INC.	
REQUEST FOR DISMISSAL	
CASE NUMBER: 34-2013-00154918	
A conformed copy will not be returned by the clerk unless a method of return is provided with the document.	
This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)	

1. TO THE CLERK: Please **dismiss** this action as follows:

- a. (1) With prejudice (2) Without prejudice
- b. (1) Complaint (2) Petition
- (3) Cross-complaint filed by (name):
- (4) Cross-complaint filed by (name):
- (5) Entire action of all parties and all causes of action
- (6) Other (specify):*

on (date):
on (date):

2. (Complete in all cases except family law cases.)

The court did did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).

Date:

Phillip R. Kaplan

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

▶

(SIGNATURE)

Attorney or party without attorney for:

- Plaintiff/Petitioner Defendant/Respondent
- Cross-Complainant

TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

Stephen H. Sutro

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

** If a cross-complaint – or Response (Family Law) seeking affirmative relief – is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

▶

(SIGNATURE)

Attorney or party without attorney for:

- Plaintiff/Petitioner Defendant/Respondent
- Cross-Complainant

(To be completed by clerk)

- 4. Dismissal entered as requested on (date):
- 5. Dismissal entered on (date): as to only (name):
- 6. Dismissal **not entered** as requested for the following reasons (specify):
- 7. a. Attorney or party without attorney notified on (date):
- b. Attorney or party without attorney not notified. Filing party failed to provide
 a copy to be conformed means to return conformed copy

Date:

Clerk, by

, Deputy

EXHIBIT B

1 MANATT, PHELPS & PHILLIPS, LLP
Phillip R. Kaplan (Bar No. CA 76949)
2 Craig S. Bloomgarden (Bar No. CA 110241)
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Facsimile: (949) 679-0461
9 E-mail: tumberg@umbergzipser.com

10 *Attorneys for Plaintiff and Cross-Defendant*
STATE CONTROLLER'S OFFICE

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SACRAMENTO

14
15 STATE CONTROLLER'S OFFICE

Case No. 34-2013-00154918

16 Plaintiff,

JOINT NOTICE OF SETTLEMENT

17 vs.

Judge: Hon. Judy Holzer Hersher (Dept. 45)

18 SAP PUBLIC SERVICES, INC.,

Action Filed: November 21, 2013

19 Defendant.

Trial Date: June 13, 2016

1 As the parties previously reported to the Court, the parties reached a settlement in
2 principle that was subject to documentation. Due to the complexity of certain of the issues to be
3 documented, the parties filed a stipulation on May 20, 2016 requesting until June 6, 2016 to
4 complete and execute their settlement documentation and to continue the trial date from May 23,
5 2016 to June 13, 2016.

6 The parties are now pleased to report that they executed their Settlement Agreement
7 earlier today. The Settlement Agreement affords ten business days from today to accommodate
8 payment under the Settlement Agreement, after which a Request for Dismissal with prejudice of
9 the litigation in its entirety will be filed with the Court. The Request for Dismissal thus should be
10 filed on or before June 22, 2016.

11
12 Dated: June 6, 2016

MANATT, PHELPS & PHILLIPS LLP

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By: _____

15

Phillip R. Kaplan
Attorneys for Plaintiff
THE STATE CONTROLLER'S OFFICE

16

17 Dated: June 6, 2016

DUANE MORRIS LLP

18

19

By: _____

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Stephen H. Sutro
Attorneys for Defendant
SAP PUBLIC SERVICES, INC.

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