



**SAN BERNARDINO COUNTY
POLICY MANUAL**

No. 11-05

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EFFECTIVE January 14, 2025

POLICY: NON-STANDARD CONTRACT LANGUAGE

APPROVED

Chair, Board of Supervisors

POLICY STATEMENT AND PURPOSE

The purpose of this policy is to address the authority for modification of certain standard contract terms.

DEPARTMENTS AFFECTED

All County Agencies, Departments and Board-Governed Special Districts.

POLICY AMPLIFICATION

For purposes of consistency and protection of the County, contracts for services and goods shall contain standard contract language that has been developed by the Purchasing Department (Purchasing) in consultation with County Counsel and the Risk Management Department (Risk Management). Information Technology software licenses and cloud service subscriptions, and other contracts with deviations from the County standard contract language may be accepted only in accordance with the provisions below.

A. Contracts within the Purchasing Agent’s Approval Authority

Information Technology software licenses and cloud service subscriptions with non-standard County contract terms, except those with governing law or venue outside of the United States, may be approved by the Purchasing Agent upon consultation with County Counsel, Risk Management, and the Innovation and Technology Department, if the contract amounts meet one of the following criteria:

- i. No cost.
- ii. Software licenses under \$5,000 per purchase order and a total annual cost not to exceed \$30,000.
- iii. Maintenance and support of software for a total annual cost not to exceed \$30,000.
- iv. Software as a Service (SaaS or cloud service) subscriptions with a total annual cost not to exceed \$30,000.
- v. Total annual aggregate cost of i-iv per the above not to exceed \$30,000.

These amounts are aggregate, not separate. For example, an order for \$20,000 in licensing cost and \$20,000 for maintenance and support, totaling \$40,000 in a single order, are not within the Purchasing Agent’s authority under this policy. Upon approval of a purchase order meeting the criteria of i-iv above, the Purchasing Agent may delegate electronic acceptance of non-financial contract terms, in writing, to an appropriate department management-level employee.

With department approval, and in consultation with County Counsel and Risk Management, the Purchasing Agent is authorized to approve contracts for all other services or goods under \$30,000 per scope of services, per fiscal year, per vendor, per department and the contracts are excluded from this Policy 11-05 and County Policy 11-07, except contracts with governing law or venue outside of the United States, or the purchase of Unbudgeted Fixed Assets, subject to County Policy 11-04 SP2.

For contracts that do not meet the criteria above, the following is a list of certain standard County contract terms and acceptable revisions that may be approved by the Purchasing Agent upon consultation with County Counsel and Risk Management. The Purchasing Agent is not required to agree to revisions and may determine that the department should seek Board of Supervisors (Board) approval for contracts containing these or other non-standard County contract terms. Any contract that further alters the acceptable deviations listed below must be approved by the Board.

1. Assignment:

- i. Standard Term: The County must approve any assignment of the contract.
- ii. Acceptable Revision: Assignment may be made without prior County approval due to

operation of law, corporate reorganization, consolidation, merger, or sale of all of its assets, provided that advance notice is given to the County.

2. Attorney's Fees and Costs:

- i. Standard Term: Neither party is responsible to pay for the other party's attorney's fees and costs, except for indemnity obligations.
- ii. Acceptable Revision: The contract is governed by California law and silent on the payment of attorney's fees and costs.

3. Contract Term:

- i. Standard Term: The standard County contract term is five years. Indefinite contract terms are not permitted.
- ii. Acceptable Revision: Contract terms less than five years are permissible, with or without options that extend the contract to a maximum of five years.
- iii. Acceptable Information Technology Contract Revision: Terms that exceed five years or automatically renew are acceptable for software end user license agreements, cloud service subscriptions, and master or support service agreements. Perpetual software end user licenses for on-premises software or software required for use with installed equipment.

4. Dispute Resolution:

- i. Standard Term: In the event of a dispute, the parties shall use their best efforts to settle the dispute through negotiation with each other in good faith.
- ii. Acceptable Revision: A non-binding form of dispute resolution may be agreed to, such as non-binding arbitration or mediation. In this case, each party would bear their own costs or the supplier will pay the costs of the non-binding dispute resolution.

5. Governing Law/Venue:

- i. Standard Term: Governing law is the State of California, and venue is San Bernardino County.
- ii. Acceptable Revision: May approve governing law in any United States state, commonwealth, or territory, and venue in any United States jurisdiction, except for public works contracts and contracts that require the payment of prevailing wages.

6. Indemnification:

- i. Standard Term: The contractor agrees to indemnify the County in accordance with County Policy 11-07.
- ii. Acceptable Revision: Modifications to the indemnity provisions may be made in accordance with County Policy 11-07 Standard Practice (SP). Mutual comparative fault indemnification of other government entities.

7. Insurance:

- i. Standard Term: Insurance terms must mirror the insurance provisions in County Policy 11-07 SP.
- ii. Acceptable Revision: Risk Management may approve revisions to the standard County insurance requirements.

8. Limitations of Liability:

- i. Standard Term: The contractor may not limit its liability in performance of the contract.
- ii. Acceptable Revision: Liability limitation excludes indemnification obligations, gross negligence, willful misconduct, and violations of the law by the contractor and is limited to as low as two million dollars or the limits of insurance, whichever is greater. Upon consultation, Risk Management, County Counsel and Purchasing, may agree to a lower limitation of liability that is appropriate for the type of purchase.

9. Payment Terms:

- i. Standard Term: Payment will be Net 60 days with no interest or late payment penalties.
 - ii. Acceptable Revision: May approve Net 45 days or Net 30 days if the contractor will not accept 60 days, and no interest or late payment penalties apply.
10. Termination:
- i. Standard Term: The County reserves the right to terminate the contract for convenience with 30 days' notice.
 - ii. Acceptable Revision: May approve a modified termination for convenience clause that requires extended notice, or termination for convenience may be eliminated if other termination provisions apply that allow the County to terminate the contract, such as for cause or loss of funding.
 - iii. Acceptable Information Technology Contract Revision: Termination for convenience for purchases of software licenses or subscriptions is not necessary provided that discontinuing use of software at any time automatically terminates the contract.
11. Warranty:
- i. Standard Term: The contractor fully warrants its services and product.
 - ii. Acceptable Revision: Upon approval by County Counsel, may approve a limited warranty that is industry standard and acceptable for the type of product/service being offered.
 - iii. Acceptable Information Technology Contract Revision: Disclaimer of a warranty for non-infringement is acceptable provided there is indemnity for infringement.

B. Contracts that Require Board Approval

Contracts containing non-standard contract language, other than those acceptable deviations listed above, require Board approval. In consultation with County Counsel, Risk Management, and Purchasing, the Board agenda item must reference the non-standard provisions, the potential impact of the non-standard provisions, and provide an explanation on why the department wants to enter a contract with these non-standard provisions.

If the Purchasing Agent directs a department to seek Board approval for other non-standard contract terms, the same requirement applies.

C. Exclusions

1. Specialized outside counsel contracts for a particular matter not-to-exceed \$200,000 per fiscal year that are approved by the County Counsel.
2. Upon written approval of the Chief Executive Officer, the Purchasing Agent may execute contracts with non-standard terms for services or goods between \$30,000 and \$200,000 per scope of services, per fiscal year, per vendor, per department, upon consultation with County Counsel, Risk Management and Purchasing, per the process indicated in Policy 11-05 SP1, Non-Standard Item Approvals.
3. The above exclusions do not apply to contracts with governing law or venue outside of the United States, or the purchase of Unbudgeted Fixed Assets, subject to County Policy 11-04 SP2.

LEAD DEPARTMENT

Purchasing Department

APPROVAL HISTORY

Adopted March 10, 2020 (Item No. 71)

Amended January 14, 2025 (Item No. XX)

REVIEW DATES

January 2030