

Reporting Service Subscription Agreement For Internet Access to SafeMeasures®

This agreement is between the National Council on Crime and Delinquency ("NCCD"), a nonprofit corporation organized under the laws of New York, with business offices in Madison, Wisconsin, USA and San Benito County Health & Human Services Agency (collectively, "Customer").

BACKGROUND AND PRODUCT DESCRIPTION

- A. NCCD has developed and owns all rights, title, and interest in a certain child welfare reporting service identified as the NCCD Internet Reporting Service, and referred to as SafeMeasures®. SafeMeasures uses case-level data from a child welfare agency's management information system (MIS) and publishes it via a conventional web browser in a series of concise, interactive management reports.
- B. SafeMeasures is a subscription reporting service that permits customers to monitor service delivery activity by navigating an extensive set of reports presented in graph and chart format. These reports permit them to estimate current workload demand, plan more effective service interventions, and monitor certain performance indicators established by state or federal regulatory requirements. SafeMeasures includes case-level quality control displays that agencies may employ to improve compliance with state or federal performance audits.

Acknowledging the sufficiency of the consideration exchanged, the parties agree as follows:

1. Provision of Service.

- 1.1 **Web-Based Reports.** During the Term of this Agreement, NCCD will provide Customer with interactive web-based management reports ("Management Reports"), which permit the Customer to categorize agency compliance with various measures, and permit Customer to identify the specific cases within each category. NCCD will specifically:
 - (a) Provide Management Reports within 45 business days after first receiving raw MIS data from the Customer; and
 - (b) Provide regular updates of Management Reports, provided that Customer or another agency regularly submits raw MIS data to NCCD for processing and analysis. Such updates will be provided within three business days of receipt of the MIS data by NCCD.
- 1.2 **Access to Customer Data.** If requested by NCCD, Customer will supply a copy of the CWS/CMS databases, or specifically designated data tables therein, that store agency data to be used by NCCD. If data is supplied by a third party, Customer will authorize and facilitate release of the data to NCCD.
- 1.3 **Access to Website Restricted.** The right to access the SafeMeasures website is jurisdiction- and agency-specific. Only Customer and its employees or agents may access or use the SafeMeasures website for the Customer's monitoring and reporting

needs. Specifically, and without limitation, Customer may not act as a relay or intermediary allowing access to the SafeMeasures website to any third party jurisdiction, agency, individual, or business for any purpose.

- 1.4 Internal Business. Customer may only use SafeMeasures for its own internal purposes. Customer's internal purposes do not include extending this service to third parties, except that data may be provided to state and governmental authorities if required by law.
- 1.5 Competing Services or Products. Customer shall not use all or any part of SafeMeasures or its documentation to create a service or product that competes with, or is used in a product that competes with, all or any part of SafeMeasures, regardless of whether such service or product is distributed with or without consideration.
- 1.6 Copyright Ownership and License. Customer acknowledges that NCCD owns the copyright in all graphic interfaces, reports, displays, and formats ("Original Works"). NCCD grants Customer a fully paid license to display, reproduce, and distribute the Original Works for its internal purposes for the Term of the Agreement.
- 1.7 Training. NCCD will provide training as specified in Exhibit A. Customer will provide training facility, equipment, and access to the SafeMeasures training website.
2. Data Transmission. Customer, or other party supplying MIS data, shall use one of the following methods to send weekly extracts of agency MIS data to NCCD for processing and analysis:
 - 2.1 Compact Disk. Customer or supplying party will copy data onto one or more compact disks and mail to NCCD via overnight delivery service; or
 - 2.2 Secured File Transfer Protocol (SFTP) over Secure Shell (SSH). Customer or supplying party will send data over a secure channel to NCCD's secure SSH server. This transfer may be made using a dedicated SSH file transfer client.
3. Reporting Service Subscription Fee. Customer will pay NCCD the fees ("Reporting Service Subscription Fees") according to the payment schedule specified in attached Exhibit A and all applicable taxes related thereto unless Customer provides evidence that Customer is exempt from such taxes.
4. Updates. During the Term of this Agreement, NCCD will provide to Customer updates, error corrections, and modifications to SafeMeasures displays ("Updates") as such Updates become available. Updates do not include modifications to displays specifically requested by Customer. Any Customer requested modifications must be made by NCCD at NCCD's published service rates. NCCD reserves the right to use the displays created for Customer, and analyses to produce such displays for other parties whether such displays were suggested by NCCD or the Customer. NCCD shall not use any Customer data in its publishing for other parties without Customer's permission.
5. Term and Termination.

- 5.1 Term. The Term of this Agreement shall commence on January 1, 2017, and end on December 31, 2018, unless earlier terminated pursuant to Section 5.3. After expiration of the current Term, NCCD will not provide any Updates to Customer, and Customer must cease all use of SafeMeasures.
- 5.2 Renewal. If Customer is not in default of this agreement, Customer and NCCD may renew this agreement for an additional period ("Renewal Term"). Prior to the expiration of the current Term, NCCD may, in its discretion, issue a quotation of the Reporting Service Subscription Fees for the Renewal Term. Renewal of this Agreement will be effective upon (a) NCCD's issuance of a quotation of the new Reporting Service Subscription Fees, and (b) NCCD's acceptance of Customer's corresponding purchase order.

In order to ensure continuous access to the SafeMeasures internet reporting service, the effective date of any renewal agreement will begin one day after the previous agreement expires. If a renewal agreement is not fully executed and received by NCCD within 30 days of contract expiration, NCCD reserves the right to discontinue access to the SafeMeasures internet reporting service until a renewal agreement is in place.

- 5.3 Termination for Cause. A party may terminate this Agreement if the other party commits a material breach that is not cured within 30 days of a written notice of such material breach. This Agreement may be terminated immediately for a breach of Customer's obligation to pay fees under this Agreement or a breach of Sections 1.3, 1.4, or 1.5 of this Agreement.

6. NCCD Warranty, Disclaimers, and Remedies.

6.1 Warranty. NCCD warrants that:

- (a) Provided that Customer or another designated party regularly submits the required raw MIS data to NCCD, SafeMeasures will perform substantially as described in this Agreement and SafeMeasures promotional material.
- (b) It is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. NCCD also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs issued by the General Services Administration.
- (c) NCCD will utilize all reasonable means and due diligence to protect the confidentiality and security of Customer data.
- (d) Except for the foregoing express warranties, NCCD neither makes nor grants any other warranties, express or implied. NCCD excludes all implied warranties including specifically any implied warranty arising by statute or otherwise in or from a course of dealing or usage of trade including any and all implied warranties of merchantability, merchantable quality, or fitness for any purpose, particular, specific or otherwise. The foregoing express warranty is the only

warranty of any kind for SafeMeasures. NCCD makes no warranties whatsoever for any Original Works that have been modified by Customer nor does NCCD warrant that SafeMeasures will be offered without interruption.

- (e) Customer acknowledges that NCCD provides no monitoring, analysis, or review of the accuracy or quality of the Customer's data accessed through SafeMeasures.

6.2 Remedies. If SafeMeasures does not operate substantially as warranted (hereinafter described as "Noncompliance"), Customer will provide NCCD with sufficient details available to Customer about the Noncompliance to allow NCCD to reproduce it. As Customer's exclusive remedy for any Noncompliance, and as NCCD's entire liability in contract, tort, or otherwise of such Noncompliance, NCCD will either:

- (a) Correct the Noncompliance; or
- (b) If NCCD is unable to correct the Noncompliance after a reasonable opportunity to do so, Customer may:
 - (i) Request that NCCD cease publication of any demonstrably incorrect information and request a pro-rata reduction in the Reporting Service Subscription Fee; or
 - (ii) Terminate the Reporting Service Subscription and receive a pro-rated refund of the Reporting Service Subscription Fee.

7. Intellectual Property Indemnification by NCCD.

7.1 Indemnification. If a third party claims that SafeMeasures infringes any copyright, patent, trade secret, or other rights of any third party, NCCD will (as long as Customer is not in material breach of this Agreement) defend Customer against such claim at NCCD's expense, and NCCD will pay all damages that a court finally awards based solely on such claim, provided that Customer notifies NCCD in writing of such claim within 21 days of Customer's receipt of notice of the existence or possible existence of such claim, and further provided that Customer allows NCCD sole and exclusive control over the resolution of such claim and that Customer cooperates fully with NCCD, at NCCD's cost, in the defense of such claim and in any related settlement negotiations.

7.2 Replacement, Refund. If such a claim is made or appears possible, NCCD may, using reasonable business judgment, either secure Customer's right to continue to use SafeMeasures by modifying or replacing the portion of SafeMeasures that is the basis for the claim so that such portion of SafeMeasures is no longer infringing, or NCCD may provide Customer with a credit equal to the portion of previously paid Reporting Service Subscription Fee prorated to the remainder of the Term or Renewal Term of the Agreement.

8. Limitation of NCCD's Liability, Consequential Damages. The cumulative liability of NCCD to Customer for all claims relating to SafeMeasures, and any services rendered under this Agreement, will not exceed the total amount of all Reporting Service Subscription Fees paid to

NCCD by Customer for SafeMeasures during the one-year period prior to the date NCCD is notified of such claim. This limitation will not apply to third parties indemnification obligations set forth in Section 7. In no event will NCCD be liable for any special, indirect, incidental, or consequential losses or damages, even if NCCD has been advised of the possibility of such potential loss or damage. Except as set forth in Section 7, and solely to the extent provided therein, NCCD will not indemnify Customer in any way against any claim.

9. Customer Warranties. Customer warrants that:

9.1 Customer will only allow access to SafeMeasures as permitted under this Agreement. If Customer wishes to extend its use of SafeMeasures beyond this Agreement, Customer will obtain NCCD's prior written consent and pay the applicable Reporting Service Subscription Fees.

9.2 Customer will provide the requested case-based MIS data to NCCD using one of the methods described in Section 2, or, if data is supplied by another party, execute all necessary agreements and permissions to release this data to NCCD.

10. General.

10.1 Installation. Customer is responsible for providing access to the SafeMeasures website via the Internet to its users. NCCD will, as requested, provide reasonable assistance (up to three hours) with set-up of user workstations and use of SafeMeasures via telephone, fax, or email at no additional charge to the fees as outlined in Exhibit A. Customer may hire NCCD to provide additional training or assistance at the prevailing published rates plus travel expenses.

10.2 Notification of Rights. In copying SafeMeasures web reports as authorized under the terms of this Agreement, Customer will not remove, suppress, or modify any notice of copyright, trademark, or other proprietary rights that appear in SafeMeasures. Customer will use reasonable efforts to keep persons with access to SafeMeasures from modifying or suppressing any of the copyright notices that appear on SafeMeasures media, documentation, files, and banners.

10.3 Service Fees. NCCD reserves the right to charge additional service fees if Customer seeks assistance for any other matters not explicitly covered by this Agreement.

10.4 Complete Agreement, Modification of This Agreement. This Agreement contains the complete and final agreement of the parties and supersedes previous understandings related to the subject matter hereof whether oral or written. This Agreement may only be modified by an amendment signed by authorized representatives of NCCD and Customer. Any term in Customer's purchase order that is in addition to or different from terms of this Agreement other than acceptance of the Reporting Service Subscription Fees for the Renewal Term, are not part of this Agreement.

10.5 Non-Assignment. Neither this Agreement nor the rights of Customer under this Agreement may be transferred, leased, assigned, or shared without NCCD's prior written consent.

- 10.6 Confidentiality. Customer will not disclose SafeMeasures Original Works to anyone other than its employees, consultants (who are bound by a written confidentiality agreement), volunteers, and interns, except for information that is or later enters the public domain through no fault of Customer.
- 10.7 Waiver. The waiver by either party of any default or breach of this Agreement does not constitute a waiver of any other default or breach of this Agreement or a subsequent waiver of that same default or breach.
- 10.8 Governing Law and Severability. The laws of the State of California and the United States govern this Agreement. Customer consents to jurisdiction and venue in the courts of San Benito County, California or in the Federal District court in California, for any claims arising out of this Agreement. If any part of this Agreement is held to be invalid, that part will be omitted, but the balance of the Agreement will remain in full force and effect.
- 10.9 Survival. All provisions of this Agreement relating to warranties, confidentiality, non-disclosure, proprietary rights, limitation of liability, indemnification obligations, and payment obligation survive the termination or expiration of this Agreement.
- 10.10 Headings. The headings used herein are for reference and convenience only and will not be used to interpret any provision of this Agreement.
- 10.11 HIPAA Compliance. NCCD will utilize all reasonable means and due diligence to protect the confidentiality and security of Customer data. Customer acknowledges that the privacy and security regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (the "HIPAA Privacy and Security Rules") do not apply to the Customer data which is the subject of this Agreement, because the data is not subject to requirements of HIPAA. However, NCCD acknowledges that the Customer data may include health information and other information of a personal and sensitive nature, and will adopt and keep current confidentiality and security procedures that are reasonably consistent with the current professional standards recommended by the HIPAA Privacy and Security Rules.

- 10.12 Notices. All notices or other communications required or permitted under this Agreement will be in writing and will be delivered by personal delivery, email (with delivery receipt), registered mail return receipt requested, a "Next Day Air" delivery service, or by facsimile transmission, addressed to the parties indicated below:

If to NCCD:	NCCD Attn: Tim Connell 426 South Yellowstone Drive, Suite 250 Madison, WI 53719 Phone: (800) 306-6223; Fax: (608) 831-6446 Email: tconnell@nccdglobal.org
If to Customer:	San Benito County Health & Human Services Agency Attn: Maria C. Corona, Deputy Director 1111 San Felipe Road, Suite 206 Hollister, CA 95023 Phone: (831) 636-4180; Fax: (831) 637-9754 Email: MCorona@cosb.us
Direct invoices to:	Cindy Larca, Deputy Director 1111 San Felipe Road, Suite. 206 Hollister, CA 95023 Phone: (831) 636-4180; Fax: (831) 637-9754 Email: ndaroza@cosb.us

IN WITNESS WHEREOF, both parties have caused this Agreement to be executed by their respective duly authorized representatives.

Customer:

Signature

Name

Board of Supervisors- Chair
Title

Date


NCCD:

Signature

Katherine Park
Name

Chief Executive Officer
Title

Date

APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL
 12-9-16

DEPUTY COUNTY COUNSEL DATE

Exhibit A

Reporting Service and Additional Fees

Reporting Service

\$12,000

Payment Schedule

50% of Reporting Service Fee (\$6,000) on Agreement effective date. Remainder of Reporting Service Fee (\$6,000) on anniversary date of Agreement.

Training (if requested by Customer)

Up to two remote training sessions via the internet to train supervisors, managers, and administrators as requested by the County.

Additional/Onsite Support/Training (if requested by Customer)

Time and Materials at \$150 per hour

All Travel Expenses

County Responsibilities

- Designate at least one local SafeMeasures administrator to maintain user IDs and to coordinate the handling of questions or problems regarding SafeMeasures with NCCD.
- Provide access to the SafeMeasures website: <https://app.safemeasures.org/ca/>