

Napa County Agreement No. 230036B A1

Reporting Service Subscription Agreement For Internet Access to SafeMeasures®

This agreement is between Evident Change, a nonprofit corporation organized under the laws of New York, with business offices in Madison, Wisconsin, USA, and Napa County, on behalf of its Health and Human Services Agency, Division of Child Welfare Services (collectively, "Customer" or "County").

BACKGROUND AND PRODUCT DESCRIPTION

- A. Evident Change has developed and owns all rights, title, and interest in a certain child welfare reporting service identified as the Evident Change Internet Reporting Service and referred to as SafeMeasures®. SafeMeasures uses case-level data from a child welfare agency's case management system (CMS) 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, Evident Change will provide Customer with interactive web-based management reports ("Management Reports"), which permit the Customer to categorize agency compliance with various measures and permit the Customer to identify the specific cases within each category. Evident Change will specifically:
 - (a) Provide regular updates of Management Reports, provided that Customer or another agency regularly submits raw CMS data to Evident Change for processing and analysis. Such updates will be provided no more than three business days of receipt of the data by Evident Change.
- 1.2 Access to Customer Data. If requested by Evident Change, Customer will supply a copy of the CMS database(s), or specifically designated data tables therein, that store agency data to be used by Evident Change. If data is supplied by a third

party, Customer will authorize and facilitate release of the data to Evident Change.

- 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 Evident Change owns the copyright in all graphic interfaces, reports, displays, and format ("Original Works"). Evident Change grants Customer a fully paid license to display, reproduce, and distribute the Original Works for its internal purposes with no sub-licensing rights for the Term of the Agreement.
 - 1.7 Training. Evident Change 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 CMS data, shall supply Evident Change with regular extracts one of the following methods to send weekly extracts of agency data to Evident Change for processing and analysis. Data extracts shall occur daily or on a schedule determined jointly by Customer and Evident Change. Customer or supplying party will send data over a secure channel to Evident Change's secure SSH server, or may transfer data via a mutually satisfactory method that meets the frequency and security requirements of both organizations.
 3. Reporting Service Subscription Fee. Customer will pay Evident Change 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, Evident Change 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 Evident Change at Evident Change's published service rates. Evident Change 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 Evident Change or the Customer. Evident Change 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 July 1, 2024, and end on June 30, 2029, unless earlier terminated pursuant to Section 5.3. After expiration of the current Term, Evident Change 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 Evident Change may renew this agreement for an additional period ("Renewal Term"). Prior to the expiration of the current Term, Evident Change 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) Evident Change's issuance of a quotation of the new Reporting Service Subscription Fees, and (b) Evident Change's acceptance of Customer's corresponding purchase order.

In order to ensure continuous access to the SafeMeasures 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 Evident Change within 30 days of contract expiration, Evident Change reserves the right to discontinue access to the SafeMeasures internet reporting service until a renewal agreement is in place.

5.3 Termination. A party may terminate this Agreement, with or without cause, with 30 days' written notice. 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. Evident Change Warranty, Disclaimers, and Remedies.

6.1 Warranty. Evident Change warrants that:

- (a) Provided that Customer or another designated party regularly submits the required raw MIS data to Evident Change, 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. Evident Change 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) Evident Change will utilize all reasonable means and due diligence to protect the confidentiality and security of Customer data.
- (d) Except for the foregoing express warranties, Evident Change neither makes nor grants any other warranties, express or implied. Evident Change 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. Evident Change makes no warranties whatsoever for any Original Works that have been modified by Customer, nor does Evident Change warrant that SafeMeasures will be offered without interruption.

- (e) Customer acknowledges that Evident Change 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 Evident Change with sufficient details available to Customer about the Noncompliance to allow Evident Change to reproduce it. As Customer's exclusive remedy for any Noncompliance, and as Evident Change's entire liability in contract, tort, or otherwise of such Noncompliance, Evident Change will either:

- (a) Correct the Noncompliance; or
- (b) If Evident Change is unable to correct the Noncompliance after a reasonable opportunity to do so, Customer may:
 - (i) Request that Evident Change 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 Evident Change.

7.1 Indemnification. If a third party claims that SafeMeasures infringes any copyright, patent, trade secret, or other rights of any third party, Evident Change will (as long as Customer is not in material breach of this Agreement) defend Customer against such claim at Evident Change's expense, and Evident Change will pay all damages that a court finally awards based solely on such claim, provided that

Customer notifies Evident Change 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 Evident Change sole and exclusive control over the resolution of such claim and that Customer cooperates fully with Evident Change, at Evident Change'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, Evident Change 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 Evident Change 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 Evident Change's Liability, Consequential Damages. The cumulative liability of Evident Change 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 Evident Change by Customer for SafeMeasures during the one-year period prior to the date Evident Change is notified of such claim. This limitation will not apply to third parties indemnification obligations set forth in Section 7. In no event will Evident Change be liable for any special, indirect, incidental, or consequential losses or damages even if Evident Change 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, Evident Change 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 Evident Change's prior written consent and pay the applicable Reporting Service Subscription Fees.
 - 9.2 Customer will provide the requested case-based MIS data to Evident Change 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 Evident Change.

10. General.

- 10.1 Installation. Customer is responsible for providing access to the SafeMeasures website via the Internet to its users. Evident Change 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 Evident Change 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. Evident Change 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 Evident Change 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 Evident Change'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 Privacy. Evident Change undergoes an annual SOC 2 audit to assess its success in ensuring the security, confidentiality, availability, and privacy of the data it processes. The resulting annual report of the audit results may be provided to the Customer upon request. In the event that a data subject contacts Evident Change with a request to exercise his/her rights, Evident Change staff shall document and refer the request to appropriate Customer personnel. Evident Change maintains a data use, destruction, and retention policy that outlines its commitments to secure data processing and personal data breach notification. Upon completion or termination of the contract, Evident Change shall delete/return all personal

data to the Customer according to contractual obligations and/or Evident Charge's data use, destruction, and retention policy.

- 10.8 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.
- 10.9 Governing Law and Severability. The laws of the State of Wisconsin and the United States govern this Agreement. Customer consents to jurisdiction and venue in the courts of Dane County, Wisconsin, or in the Federal District court in the Western District of Wisconsin, 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.
- 10.10 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.
- 10.11 Headings. The headings used herein are for reference and convenience only and will not be used to interpret any provision of this Agreement.
- 10.12 HIPAA Compliance. Evident Change 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, Evident Change 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.
- 10.13 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 Evident Change: Evident Change
Attn: Chris Scharenbroch
426 S. Yellowstone Dr.
Madison, WI 53719
Phone: (800) 306-6223; Fax: (608) 831-6446
Email: cscharenbroch@evidentchange.org

If to Customer:

Napa County HHSA CWS
Attn: Veronica Piper-Jefferson
2751 Napa Valley Corporate Drive, Bldg. B
Napa, CA 94559
Phone: (707) 253-4137
Email: veronica.piper-jefferson@countyofnapa.org

Direct invoices to: Napa County HHSA Fiscal
2751 Napa Valley Corporate Drive, Bldg. B
Napa, CA 94559

Both parties have caused this Agreement to be executed by their respective duly authorized representatives.

County:

Evident Change:

Signature

Joelle Gallagher

Name

Chair, Board of Supervisors

Title

Date

Kathy Park
Kathy Park (Feb 22, 2024 14:39 CST)

Signature

Kathy Park

Name

Chief Executive Officer

Title

02/22/2024

Date

APPROVED AS TO FORM
Office of County Counsel

By: Jo Ann Iwasaki Parker, Deputy
County Counsel by e-signature

Date: February 21, 2024

Exhibit A-1

Reporting Service and Additional Fees

Total cost of this Agreement and annual lump sum payments for reporting system subscription fees include up to two virtual training sessions via the internet to train supervisors, managers, and administrators as requested by the County. Additional training may be available for an added fee, as outlined below.

Reporting Service Fee

\$88,173 for a five-year Agreement. (\$79,435 for SafeMeasures and \$8,738 for Probation)

Payment Schedule

The annual Reporting Service Fee is due on Agreement effective date. Remainder of Reporting Service Fees as listed in the table are due on each annual anniversary date of the Agreement.

Fiscal Year	Safe Measures	Probation	Total
FY 2024–25	\$14,714	\$1,619	\$16,333
FY 2025–26	\$15,596	\$1,716	\$17,312
FY 2026–27	\$16,375	\$1,801	\$18,176
FY 2027–28	\$16,375	\$1,801	\$18,176
FY 2028–29	\$16,375	\$1,801	\$18,176
Contract Maximum	\$79,435	\$8,738	\$88,173

Training (if requested by County)

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 County)

- Time and Materials at \$175 per hour
- All Travel Expenses

County Responsibilities

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

Exhibit B-1

Insurance Provisions

The following insurance provisions are required:

1. INSURANCE

A. Without limiting Contractor's obligation to indemnify County, Contractor must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work under this Contract and the results of that work by Contractor, Contractor's agents, representatives, employees or subcontractors.

B. Minimum Scope of Insurance

Coverage must be at least as broad as:

(1) Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).

(2) Insurance Services Office Form Number CA 00 01 covering Automobile Liability, Code 1 (any auto).

(3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

C. Minimum Limits of Insurance

Contractor must maintain limits no less than:

- | | | |
|--|---|---|
| (1) General Liability: | \$2,000,000 | per occurrence for bodily injury, personal injury and property damage, or the full per occurrence limits of the policy, whichever is greater. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. |
| (Including operations, products and completed operations.) | | |
| (2) Automobile Liability: | \$1,000,000 | per accident for bodily injury and property damage. |
| (3) Workers' Compensation: | As required by the State of California. | |
| (4) Employer's Liability: | \$1,000,000 | per accident for bodily injury or disease. |

D. Additional Insurance Coverage

To the extent coverage is applicable to Contractor's services under this Contract, Contractor must maintain the following insurance coverage:

- | | | |
|-----------------------------|--------------------|--|
| (1) Cyber Liability: | \$1,000,000 | per incident with the aggregate limit twice the required limit to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information property of the County that will be in the care, custody or control of Contractor under this Contract. |
| (2) Professional Liability: | \$2,000,000 | combined single limit per claim and in the aggregate. The policy shall remain in full force and effect for no less than 5 years following the completion of work under this Contract. |

E. If Contractor maintains higher limits than the minimums shown above, County is entitled to coverage for the higher limits maintained by Contractor. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to the County. No representation is made that the minimums shown above are sufficient to cover the indemnity or other obligations of the Contractor under this Contract.

F. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either:

- (1) The insurer will reduce or eliminate such deductibles or self-insured retentions with respect to County, its officers, officials, agents, employees and volunteers; or
- (2) Contractor must provide a financial guarantee satisfactory to County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

G. Other Insurance Provisions

(1) The general liability and automobile liability policies must contain, or be endorsed to contain, the following provisions:

(a) The County of Napa County, its officers, officials, agents, employees, and volunteers must be included as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor; and with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement (CG 20 10 11 85 or both CG 20 10 and CG 20 37 if later ISO revisions are used or the equivalent) to Contractor's insurance policy, or as a separate owner's policy. The insurance afforded to the additional insureds shall be at least as broad as that afforded to the first named insured.

(b) For any claims related to work performed under this Contract, Contractor's insurance coverage must be primary insurance with respect to the County of Napa County, its officers, officials, agents, employees, and volunteers. Any insurance maintained by County, its officers, officials, agents, employees, or volunteers is excess of Contractor's insurance and shall not contribute to it.

(2) If Contractor's services are technologically related, Professional Liability coverage shall include, but not be limited to claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to such obligations. The policy shall also include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the County in the care, custody, or control of the Contractor.

If not covered under the Contractor's Professional Liability policy, such "property" coverage of the County may be endorsed onto the Contractor's Cyber Liability Policy.

(3) Should any of the above described policies be cancelled prior to the policies' expiration date, Contractor agrees that notice of cancellation will be delivered in accordance with the policy provisions.

H. Waiver of Subrogation

(1) Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

(2) The Workers' Compensation policy must be endorsed with a waiver of subrogation in favor of County for all work performed by Contractor, its employees, agents and subcontractors.

I. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII unless otherwise acceptable to County.

J. Verification of Coverage

(1) Contractor must furnish County with original certificates and endorsements effecting coverage required by this Contract.

(2) The endorsements should be on forms provided by County or, if on other than County's forms, must conform to County's requirements and be acceptable to County.

(3) County must receive and approve all certificates and endorsements before work commences.

(4) However, failure to provide the required certificates and endorsements shall not operate as a waiver of these insurance requirements.

(5) County reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage described above at any time.