

**MEMORANDUM OF UNDERSTANDING BETWEEN
LAURA AND JOHN ARNOLD FOUNDATION
AND BERNALILLO COUNTY STAKEHOLDERS**

This Memorandum of Understanding ("*MOU*") documents the understanding between the Second Judicial District Court, the Bernalillo County Metropolitan Court, and Bernalillo County (collectively referred to as the "*Bernalillo County Stakeholders*") and the Laura and John Arnold Foundation (the "*Foundation*"), a tax-exempt private foundation dedicated to producing substantial, widespread, lasting reforms that will transform the criminal justice system. This MOU concerns the collaboration between the parties on a project to implement the Public Safety Assessment™ court-based pretrial risk assessment tool developed by the Foundation (the "*Tool*").

The Foundation and the Bernalillo County Stakeholders share the goals of increasing public safety, reducing crime, and improving the cost-effectiveness and fairness of the criminal justice system. The Bernalillo County Stakeholders and the Foundation intend to collaborate on the implementation of the Tool, as well as the collection and evaluation of related data, in order to enhance the administration of criminal justice in Bernalillo County, New Mexico and nationally. In furtherance of this goal, the Foundation grants to the Bernalillo County Stakeholders a nonexclusive, non-transferable right and license to install, implement, and use the Tool free of charge in Bernalillo County, New Mexico, provided that the Bernalillo County Stakeholders abide by all the terms and conditions of this MOU.

In consideration of the mutual understanding and goals of the parties to this MOU, the parties agree to the following:

I. MUTUAL AGREEMENTS

1. **Term.** This MOU shall commence upon execution by all parties and will remain in effect until terminated by any one party. Any party may terminate this MOU upon providing thirty (30) days written notice to the other parties. Upon termination, all rights and licenses to the Tool granted under this MOU, including the right to use the Tool and/or related materials, shall cease. The non-disclosure obligations in Section II.6, however, shall survive termination of this MOU.
2. **Modifications.** Any and all amendments, changes, and/or modifications to this MOU will be made in writing, signed and dated by all parties before becoming effective.
3. **Assignment of rights.** No party may assign its rights under this MOU without the express written permission of the other parties. Any assignment that does not comply with this provision will be deemed null and void.
4. **Warranty.** The Tool is provided "as is" without warranty.
5. **Implementation Plan.** It is the intent of the parties to administer the Tool to all defendants booked into the Metropolitan Detention Center on open misdemeanor and

felony charges. To that end, the parties agree to mutually develop and adopt an implementation plan that sets forth a timetable for the Tool's rollout throughout Bernalillo County and, at the conclusion of the rollout, the Tool's county-wide administration, as set forth above.

6. **Third Parties.** Nothing in this MOU, express or implied, is intended to confer any rights, remedies, claims or interests upon a person not a party to this MOU.
7. **Independent Contractor; No Monetary Compensation.** The Foundation and the Bernalillo County Stakeholders are independent contractors, and neither party, nor their agents or employees, are employees of the other party. Neither party, nor its agents or employees, shall accrue leave, retirement, insurance, bonding, or any other benefits or privileges afforded to employees of the other party as a result of this MOU. The parties acknowledge that no sums are to be paid to either party by the other party under this MOU.
8. **Notice.** Notice may be provided via electronic mail with confirmation of delivery or via certified mail to each party at the respective addresses:

Bernalillo County Stakeholders:

District Court:

James Noel, Court Executive Officer
Second Judicial District Court
400 Lomas Blvd. NW
Albuquerque, NM 87102
albdjan@nmcourts.gov

Metropolitan Court:

Robert L. Padilla, Court Executive Officer
Bernalillo County Metropolitan Court
P.O. Box 133
Albuquerque, New Mexico 87103
metrrlp@nmcourts.gov

With a copy to:

Bernalillo County Metropolitan Court
Attention: Dana L. Cox, General Counsel
P.O. Box 133
Albuquerque, New Mexico 87103
metrdlc@nmcourts.gov

Bernalillo County:

Julie Morgas Baca
Bernalillo County Manager
One Civic Plaza NW

Albuquerque, NM 87102
jmorgasbaca@bernco.gov

Foundation:

Matthew Alsdorf
Vice President of Criminal Justice
Laura and John Arnold Foundation
3 Columbus Circle, Suite 1601
New York, New York 10019
malsdorf@arnoldfoundation.org

II. THE BERNALILLO COUNTY STAKEHOLDERS

1. **Fidelity to the Tool.** The Bernalillo County Stakeholders agree to use the Tool in a manner consistent with instructions, templates, or other guidance provided by the Foundation regarding: inclusion or exclusion of risk factors; definition of risk factors; weighting of risk factors; scoring or calculation of risk level; categorization of defendants by level of risk for failure to appear, new criminal arrest, and new violent criminal arrest; the prohibition of scoring or categorization overrides by pretrial services entities; visual or other presentation of results generated by the Tool; and other issues related to the use and implementation of the Tool. Pretrial services units within the Bernalillo County Metropolitan Court and the Second Judicial District Court will use the same Decision Making Framework—defined as a guide developed by the Bernalillo County Stakeholders to help decision-makers interpret the PSA risk scores and decide how to manage each level of risk—and PSA results report format for county-wide application.
2. **System improvements.** Subject to the parties' implementation plan, as discussed above in Section I.5, the Bernalillo County Stakeholders agree to administer the Tool to all defendants who are in custody at the earliest possible point following arrest on open misdemeanor and felony charges. The results of the risk assessment will be presented and considered at a defendant's first court appearance (which shall take place no more than 24 hours after arrival in any Bernalillo County jail) and any appearance during which a defendant is in custody and a release/detention determination is made or bail is set or adjusted.
3. **Provision of data and access to staff.** The Foundation is engaged in ongoing research regarding the Tool, including research on the impact of adopting the Tool in jurisdictions and the development of data linkages across systems. The Bernalillo County Stakeholders agree that, upon request from the Foundation, they will promptly provide the Foundation or individuals it designates, including third party researchers or consultants, with data relevant to these research and evaluation efforts, including but not limited to data related to pretrial release and detention, pretrial re-arrest, pretrial failure to appear, and case processing. The Bernalillo County Stakeholders agree that the Foundation may use this data and information for further development and evaluation of the Tool. Access shall be granted to any and all data used to apply the Tool in Bernalillo County, as well as any other demographic and

offense-related variables collected in the normal course of operations. In complying with the terms of this MOU, the parties agree that anonymized data may be required to comply with certain privacy laws or corresponding orders of the court, and nothing in this MOU shall be construed to require the Foundation or the Bernalillo County Stakeholders to disclose information in violation of those laws or orders.

4. **License limitations.** Except for the limited rights and licenses expressly granted in this Agreement, no other license is granted, and no other use is permitted. The Bernalillo County Stakeholders agree not to use the Tool or any information presented by the Tool to create any similar software; or decompile, disassemble or otherwise reverse engineer the Tool. The licenses are solely for academic, non-profit or federal, state or local government use. No commercial use or use by a commercial entity is permitted by this Agreement.
5. **Ownership.** The Foundation and its licensors shall retain all right, title and interest (including patents, copyrights, trade secrets and trademarks) in and to the Tool. Any improvements to the Tool arising out of any feedback or data provided by the Bernalillo County Stakeholders shall be solely owned by the Foundation.
6. **Non-disclosure.** The Bernalillo County Stakeholders agree to refrain from disclosing the formula for calculating the risk scores generated by the Tool to any third parties without prior written approval from the Foundation. This provision shall survive termination of this MOU and remain in effect until withdrawn in writing by the Foundation.

III. THE FOUNDATION

1. **Research, development, and sharing of findings.** The Foundation will engage in ongoing research and development efforts based on data and input from the Bernalillo County Stakeholders as well as other jurisdictions that implement the Tool. The Foundation agrees to share with the Bernalillo County Stakeholders the key findings from this and other research related to the Tool. In addition, the Foundation will provide the Bernalillo County Stakeholders with any modifications made to improve the precision, accuracy, or usability of the Tool.
2. **Privacy and confidentiality.** In obtaining and storing data from the Bernalillo County Stakeholders, the Foundation agrees to comply with all applicable privacy and data protection laws and not to make any disclosures to third parties in violation of these laws. The Foundation will not disseminate or disclose any personally identifiable information to any other organization or individual, other than the Bernalillo County Stakeholders and the Foundation's staff, researchers, contractors, or consultants. Any and all reports or publications produced as a part of this project will present data and findings in aggregated form. This confidentiality provision shall survive the termination of this MOU.

3. **Ownership, publication, and release of research and Tool instructions.** The Foundation shall own all right, title, and interest (including, but not limited to, patent, trademark, and copyrights) in the Tool and any related inventions and works of authorship related to or derived in any way from the research. Accordingly, without further notice to or consent from the Bernalillo County Stakeholders, the Foundation may reproduce, distribute, and/or produce derivative works based on any reports, findings, instruction manual(s) for the Tool, anonymized, aggregated data or other data in accordance with Section III.2 above, and other related documentation.
4. **LIMITATION OF LIABILITY.** THE BERNALILLO COUNTY STAKEHOLDERS AGREE THAT THE FOUNDATION SHALL NOT BE LIABLE IN ANY EVENT FOR ANY CAUSE WHATSOEVER REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) ARISING OUT OF THE BERNALILLO COUNTY STAKEHOLDERS' USAGE OF THE TOOL, INCLUDING WITHOUT LIMITATION FOR (A) ANY INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR (B) ANY OTHER DAMAGES IN THE AGGREGATE IN EXCESS OF \$500.00.
5. **Covenant Not to Sue.** The parties covenant not to sue or otherwise institute or cause to be instituted or in any way participate in legal or administrative proceedings against the other party for any claims, demands, actions, causes of action, suits, rights, debts, damages and other obligations of every kind and nature, known or unknown, in law, equity or otherwise arising out of or in connection with the Bernalillo County Stakeholders' usage of the Tool.
6. **Public Records Act; Disclosures.** The Foundation recognizes and understands that the Bernalillo County Stakeholders are governmental agencies and are subject to certain reporting requirements to other State Agencies (such as the New Mexico State Auditor, the Administrative Office of the Courts, the New Mexico Taxation and Revenue Department, and the New Mexico Department of Finance and Administration) and is further subject to disclosure requirements as set forth in the New Mexico Inspection of Public Records Act ("IPRA"), NMSA § 14-2-1 et seq., and the Sunshine Portal Transparency Act ("*Sunshine Portal*"), NMSA 1978, § 10-16D-1 et seq. Therefore, nothing contained in this Agreement is intended to restrict the Bernalillo County Stakeholders' ability to comply with IPRA and the Sunshine Portal, and other applicable laws and reporting obligations. Notwithstanding the foregoing, if the Bernalillo County Stakeholders are presented with a request for documents or other information by any State Agency, or with an application for a court order compelling production of documents or other information, the Bernalillo County Stakeholders will immediately give notice to the Foundation of the request, pursuant to Section I.8 above, including by email to Matt Alsdorf at masldorf@arnoldfoundation.org, and, to the extent possible, facilitate the Foundation's opportunity to contest such process by any legal means available to it before the information is submitted to a court or other third party. If the Bernalillo County Stakeholders are presented with a court order compelling production of

documents or information that has already been entered without prior notice to the Bernalillo County Stakeholders, the Bernalillo County Stakeholders shall seek to apply to the ordering court to vacate or modify its order prior to turning over the documents or information that the Bernalillo County Stakeholders were ordered to produce. The Bernalillo County Stakeholders, however, are not obligated to withhold the delivery of the requested information beyond the time ordered by a court or State Agency, unless the applicable subpoena or request is quashed or the time to produce is otherwise extended. This provision shall survive termination of this MOU and remain in effect until withdrawn in writing by the Foundation.

[Signature Page Follows.]

THE FOREGOING IS UNDERSTOOD, ACCEPTED, AND AGREED TO BY THE BERNALILLO COUNTY STAKEHOLDERS AND THE FOUNDATION.

THE BERNALILLO COUNTY STAKEHOLDERS

Second Judicial District Court

Name: Honorable Nan Nash

Title: Chief Judge, Second Judicial District Court

Signature: Nan Nash

Date: 11/1/16

Name: James Noel

Title: Court Executive Officer, Second Judicial District Court

Signature: James Noel

Date: 10-31-16

Approval as to Legal Sufficiency:

Signature: Elizabeth Guevara

Date: October 27, 2016

Bernalillo County Metropolitan Court

Name: Honorable Henry A. Alaniz

Title: Chief Judge, Bernalillo County Metropolitan Court

Signature: Henry A. Alaniz

Date: 11-7-2016

Name: Robert L. Padilla

Title: Court Executive Officer, Bernalillo County Metropolitan Court

Signature: Robert L. Padilla

Date: 11-7-2016

2016-0699

Name: Dana L. Cox (certifying legal sufficiency)

Title: General Counsel, Bernalillo County Metropolitan Court

Signature: D. L. Cox

Date: 11/3/16

Bernalillo County

Name: Julie Morgas Baca

Title: Bernalillo County Manager

Signature: Julie Morgas Baca

Date: 10-21-16

Bernalillo County Attorney (Approval as to Legal Sufficiency):

Signature: [Signature]

Date: 10.21.2016

LAURA AND JOHN ARNOLD FOUNDATION

Name: Matt Alsdorf

Title: Vice President of Criminal Justice

Signature: [Signature]

Date: Oct 17, 2016