

## AGREEMENT

### THE GRANTEE AND GRANTOR (AS SET FORTH BELOW) HEREBY AGREE AS FOLLOWS:

DATE: February 24, 2021

GRANT NO.: 20-1907-154111-CJ

GRANTEE: City & County of San Francisco d/b/a San Francisco District Attorney Office  
350 Rhode Island Street  
North Building, Suite 400N  
San Francisco, CA 94103  
("your organization")

GRANTOR: John D. and Catherine T. MacArthur Foundation  
140 South Dearborn Street, Suite 1200  
Chicago, Illinois 60603-5285  
(the "Foundation")

GRANT AMOUNT: U.S. \$2,000,000

PURPOSE OF GRANT: To support San Francisco's participation as an implementation site in the Safety and Justice Challenge, the Foundation's criminal justice reform initiative to reduce over-incarceration by changing the way America thinks about and uses jails (the "Purpose")

FOR USE OVER THE PERIOD: January 1, 2021 - December 31, 2022

EXPECTED PAYMENT SCHEDULE: This grant is expected to be paid in the following installment amounts (the "Payment Schedule"):

Initial Installment:	U.S. \$500,000, paid in a single lump sum subject to the terms set forth in Paragraph 1(B) herein
Installment 2:	U.S. \$250,000, paid in a single lump sum subject to the terms set forth in Paragraph 1(C) herein
Installment 3:	U.S. \$250,000, paid in a single lump sum subject to the terms set forth in Paragraph 1(D) herein
Installment 4:	U.S. \$1,000,000, paid in a single lump sum subject to the terms set forth in Paragraph 1(E) herein

WRITTEN REPORTS DUE, as may be amended from time to time upon written authorization from the Foundation (the "Due Dates"):

June 30, 2021:	Interim Report (DUA), as further described in Paragraph 1(C) herein
July 31, 2021:	Interim Report (Disparity Work), as further described in Paragraph 4(C) herein
February 28, 2022:	Annual Report, covering the period January 1, 2021 through December 31, 2021
February 28, 2023:	Annual Report, covering the period January 1, 2022 through December 31, 2022
February 28, 2023:	Final Report, covering the entire life of the grant

#### OTHER TERMS AND CONDITIONS:

1. PAYMENT TERMS: (A) Payment of the grant funds is expected to be made as indicated in the Payment Schedule above, *provided* your organization is in compliance with all terms and conditions of this agreement at the time of each scheduled payment.

(B) The initial installment of the grant funds will be made within thirty (30) days after receipt by the Foundation of a fully-executed copy of this agreement and all necessary tax documents if all conditions are satisfied. The scheduled dates of estimated payment for any subsequent installments, which dates may be amended by the Foundation from time to time, are available in the Foundation's online Grants Management System ("GMS").

(C) Payment of the second installment and all subsequent installments of the grant funds are contingent upon the Foundation's receipt and approval, in its sole discretion, of the Interim Report (DUA), as described herein. Your organization's Interim Report (DUA) should include a copy of a fully executed Data Use Agreement ("**DUA**") and any additional information reasonably requested by the Foundation. If your organization has not entered into the DUA by the date the Interim Report is due, your organization shall include, in such Interim Report, a narrative describing your organization's good faith efforts toward finalizing the DUA, including when the DUA is expected to be fully-signed. The DUA is a comprehensive agreement between your organization and the City University of New York's Institute for State and Local Governance regarding the disclosure, maintenance, and use of the criminal justice-related information that your organization will provide, as part of the Safety and Justice Challenge. A draft of the DUA, in a form substantially similar to what your organization will be asked to sign, is attached hereto and incorporated herein as Exhibit 1.

(D) If the fully-executed DUA was not included in the Interim Report described above, payment of the third installment of the grant funds shall be contingent on the Foundation's receipt of a fully executed DUA, which DUA should be uploaded by your organization in GMS.

(E) Payment of any remaining installment of the grant funds is contingent upon the Foundation's receipt and approval, in its sole discretion, of (i) the annual report specified in the Due Dates above and described in Paragraphs 4(A) and 4(B) below, and (ii) compliance with paragraphs 1(C) and 1(D) above.

2. **BANK ACCOUNTS:** Grant funds shall be deposited in an interest-bearing account whenever feasible. Any grant funds, and income earned thereon, not expended or committed for the purposes of the grant, will be returned to the Foundation.
3. **USE OF FUNDS:** (A) **EXEMPT PURPOSES:** Under United States law, Foundation grant funds, and income earned thereon, may be expended only for charitable, religious, scientific, literary or educational purposes. This grant is made only for the Purpose stated above. It is understood that these grant funds will be used only for such Purpose, substantially in accordance with the document uploaded into GMS by the Foundation on February 4, 2021 and entitled "Final Proposal 154111", and the budget uploaded into GMS on September 24, 2020, relating thereto (the "**Approved Budget**"), subject to the terms of this agreement. Your organization agrees to obtain the Foundation's prior approval in writing should there be any material changes or variances to the Approved Budget, including the timing of expenditures, at any point during the course of this grant.

(B) **CONTROL OF PROJECT:** Your organization confirms that this project is under its complete control. Your organization further confirms that it has and will exercise control over the process of selecting any secondary grantee or consultant, that the decision made or that will be made on any such selection is completely independent of the Foundation and, further, that there does not exist an agreement, written or oral, under which the Foundation has caused or may cause the selection of a secondary grantee or consultant.

(C) **RESTRICTIONS ON USE OF FUNDS:** (1) In connection with the activities to be funded under this grant, your organization acknowledges that it is responsible for complying with all relevant laws and regulations of the countries in which such activities are conducted.

(2) Your organization agrees that no Foundation grant funds will be used for any of the following purposes:

- (a) To carry on propaganda, or otherwise to attempt to influence any legislation (within the meaning of Section 4945(d)(1) of the United States Internal Revenue Code ("**Tax Code**"));
- (b) To influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive (within the meaning of Section 4945(d)(2) of the Tax Code);
- (c) To undertake any activity for any purpose other than one specified in Section 170(c)(2)(B) of the Tax Code;
- (d) To offer or provide money, gifts, or any other things of value, directly or indirectly, to anyone in order to improperly influence any act or decision relating to the Foundation or the project, including by assisting any party to secure an improper advantage in

violation of the Foreign Corrupt Practices Act or similar laws of the countries in which the grantee operates;

- (e) To use directly or indirectly to assist in, sponsor, or provide support for acts of terrorism or to support organizations or persons listed as terrorists on lists maintained by the United States government, the United Nations, the European Union, and other entities (each, a “**Prohibited Party**”); or
- (f) To use in or with respect to countries or individuals under sanctions by the U.S. government, including prohibited travel to and from those countries, or for the unauthorized provision of funds or services to any person, entity, or organization from those countries.

Attachment A and Attachment B are summaries of the types of activities prohibited under Section 4945 of the United States Internal Revenue Code.

(3) Further, your organization agrees to provide the Foundation such information as the Foundation may reasonably request, including (a) information about persons or organizations that will or have received funds in connection with this grant and (b) information regarding the steps and procedures that your organization uses to ensure that grant funds are not used to pay a Prohibited Party either through regranteeing or by contract.

4. WRITTEN REPORTS: (A) Written reports are to be furnished to the Foundation covering each year, or partial year in the instance of the Interim Reports, in which your organization receives or expends any portion of the grant funds until the Foundation's grant funds, and any income earned thereon are expended in full or the grant is otherwise terminated. The written reports for this grant are due no later than the Due Dates specified on Page 1 of this agreement. The written reports should be submitted electronically through GMS.

(B) The annual and final written reports should contain a narrative and financial account of what was accomplished by the expenditure of the grant funds during the period covered by the report. The narrative account should contain a detailed description of what was accomplished by the grant, including a description of the progress made toward achieving the goals of the grant and an assurance that the activities under the grant have been conducted in conformity with the terms of the grant. The financial account should contain a financial statement reporting, in U.S. dollars, all expenditures of the grant funds and any income earned thereon during the period covered by the report.

(C) INTERIM REPORT (DISPARITY WORK): Your organization's Interim Report (Disparity Work) shall contain a narrative detailing progress on efforts to meet your organization's jail population target, address and reduce racial disparities, improve community engagement, and enhance stakeholder involvement.

5. INTELLECTUAL PROPERTY: (A) In countersigning this agreement, your organization acknowledges that it has read the Foundation's Policy Regarding Intellectual Property Arising Out of Foundation Grants (the “**Policy**”; Attachment C hereto). Except as may otherwise be provided herein, all copyright interest in materials produced as a result of this grant (the “**Grant Work Product**”) shall be owned by your organization and made available consistent with the terms of the Policy. To effect the widest possible distribution of the Grant Work Product and to ensure that it furthers charitable purposes and benefits the public, your organization hereby grants to the Foundation a non-exclusive, transferable, perpetual, irrevocable, royalty-free, paid-up, worldwide license to use, display, perform, reproduce, publish, copy, and distribute, for non-commercial purposes, the Grant Work Product and any other work product arising out of or resulting from your organization's use (including digital, electronic or other media) of these funds, including all intellectual property rights appurtenant thereto, and to sublicense to third parties the rights described herein. Without limiting the foregoing, such license includes the right of the Foundation to publish the Grant Work Product on the Foundation's website in connection with the Foundation's work with and support of your organization, and for use in periodic public reports, press releases, and fact sheets about the Foundation's grantmaking. Your organization further acknowledges and agrees, at the Foundation's request, to execute any additional documents necessary to effect such license.

(B) To the extent that, as part of any arrangement with any subcontractor, subgrantee, or other party working on matters related to this grant and receiving the benefit of the grant funds (a “**Third Party**”), the intellectual property rights in the Grant Work Product is to be owned by such Third

Party, your organization agrees to require that the Foundation be granted a license in such Grant Work Product in a form reasonably acceptable to the Foundation.

(C) Except as stated in Paragraph 5(A) herein, and as you may be otherwise notified by the Foundation, it is the Foundation's policy not to ordinarily use the license granted herein if the Grant Work Product is otherwise made widely available through a means and on terms (including any cost to the public and timeliness of publication) satisfactory to the Foundation. Under the Foundation's Policy, the Foundation will consider also releasing such license at the request of your organization if it is demonstrated to the Foundation's satisfaction that such release is necessary in connection with a publication or distribution plan that will make the Grant Work Product widely available at a reasonable or little cost, such as through scholarly publication, open access journals, or use of a suitable Creative Commons license.

(D) In connection with the narrative reports required to be submitted in the GMS under this agreement, your organization will be required to address a series of questions related to intellectual property that are available on the narrative report form in the GMS.

6. **USE OF NAME:** Your organization acknowledges that the name and mark "John D. and Catherine T. MacArthur Foundation" and all variations thereof and any other names and marks comprising the name or mark "MacArthur" (the "**MacArthur Name**"), are the sole and exclusive property of the Foundation, that any and all uses of the MacArthur Name by your organization shall inure solely to the benefit of the Foundation, and that your organization shall not acquire any right, title or interest in any MacArthur Name. All uses of any MacArthur Name by your organization in any manner shall be subject to inspection by and approval of the Foundation, which approval may be granted or withheld in the sole and absolute discretion of the Foundation. Upon termination of this agreement, or at the request of the Foundation at any time, your organization shall immediately discontinue and forever thereafter desist from any and all use of any MacArthur Name and shall either destroy or deliver to the Foundation, at no charge to the Foundation, stationery, brochures, proposed paid media and other similar materials bearing any MacArthur Name that then are in the possession or control of your organization.
7. **PUBLICATIONS:** Two copies of any publications produced or disseminated wholly or in part with these grant funds will be furnished to the Foundation. Unless otherwise notified by the Foundation, such publications should include a simple acknowledgment of the grant support from the Foundation.
8. **NOTIFICATION:** Your organization will promptly notify the Foundation upon the occurrence of any of the following: (i) A change in the executive director, chief executive officer, president, or comparable senior level executive of any agency that is engaged materially in the activities funded by the Foundation ("**Agency**"); (ii) receipt by the Agency of notification by another significant funder, if any, that the funder is ceasing further funding; or (iii) unless prohibited by court or agency order, the filing of a claim in any court or federal, state, or local agency alleging (a) sexual or other harassment, discrimination, a hostile work environment, or similar claims regarding the activities of the Agency; (b) financial impropriety by the Agency; or (c) breach of fiduciary obligations by senior leadership or the board of the Agency. Written notification will be given to the signatory of this agreement at the e-mail address under the signature line below.
9. **WORKPLACE CONDUCT STANDARDS:** (A) Your organization represents that it aspires to a tolerant and civil workplace, one that is free of discrimination, harassment, and misconduct of any kind. Your organization further represents that it has in place or is committed to putting in place policies, procedures, or practices that will help ensure a tolerant and civil workplace, including the following: Staff training regarding workplace misconduct; mechanisms for complaints to be made to an impartial person; fair processes for investigation and adjudication; and prohibitions against retaliation against persons making good faith complaints.

(B) In the event the Foundation learns of allegations of workplace misconduct as a result of notification by your organization or by third parties, your organization agrees to cooperate with reasonable requests of the Foundation to understand the policies, procedures, and practices in place and what steps were taken in response to the allegations. In making such requests, the Foundation is not seeking to determine the truth or falsity of the underlying allegations and is not accepting any such allegations as true. If the Foundation concludes that your organization lacks the necessary workplace protections or has failed to adhere to appropriate practices in its investigation, the Foundation may take such action as is appropriate under the circumstances, including suspending future grant payments until your organization has implemented additional steps to addressing the

situation or, in extreme cases, terminating the grant. Prior to taking any action, the Foundation will discuss with you the proposed course of action and provide your organization an opportunity to respond and suggest corrective action.

10. **EVALUATING OPERATIONS:** The Foundation may monitor and conduct an evaluation of operations under this grant, which may include a visit from Foundation personnel to observe your organization's program, discuss the program with your organization's personnel, and review financial and other records and materials connected with the activities financed by this grant.
11. **FOUNDATION GRANT REPORTS:** The Foundation may include basic information about this grant through a variety of public channels, including press releases, publications, videos, social media, and the Foundation's website. If there are special considerations concerning the public announcement of this grant at your organization, if you plan to issue a public announcement of the grant, or if you would like to coordinate a public announcement of the grant with the Foundation's announcement, please reach out to Communications at the Foundation.
12. **RIGHT TO DISCONTINUE FUNDING, RESCIND PAYMENTS, AND REQUIRE RETURN OF UNSPENT FUNDS:** The Foundation may, in its sole discretion, discontinue or suspend funding, rescind payments made or demand return of any unspent funds based on any of the following: (a) the written reports required herein are not submitted to the Foundation on a timely basis, (b) the reports do not comply with the terms of this agreement or fail to contain adequate information to allow the Foundation to determine the funds have been used for their intended charitable purposes, (c) grant funds have not been used for their intended charitable purposes or have been used inconsistent with the terms of this agreement, (d) the Foundation is not satisfied with the progress of the activities funded by the grant, (e) the purposes for which the grant was made cannot be accomplished, (f) making any payment might, in the judgment of the Foundation, expose the Foundation to liability, adverse tax consequences, or constitute a taxable expenditure, or (g) failure to timely execute the DUA. The Foundation will provide notice of any determinations made under this paragraph. In the event the Foundation takes action permitted by this paragraph solely based on (d) and (e), and your organization provides documentation that it has incurred obligations consistent with the terms of the grant in good faith reliance on the grant agreement and the Approved Budget, the Foundation will consider in good faith permitting grant funds to be used to pay such obligations.
13. **RIGHT TO RECOVER SPENT FUNDS:** Your organization will repay the Foundation, upon demand, the amount of any funds spent for purposes inconsistent with or contrary to the grant agreement or the Approved Budget.
14. **U.S. TAX STATUS:** By countersigning this agreement, your organization confirms that it is a governmental entity. If such status changes during the course of this grant, your organization hereby agrees to notify the Foundation and, upon request, promptly return any unspent grant funds to the Foundation as of the date of such change.
15. **MODIFICATION OF TERMS:** The terms of this agreement may be modified only by an agreement signed by an officer of your organization and a corporate officer of the Foundation. Any modifications made by your organization to this printed agreement (whether handwritten or otherwise) will not be considered binding on the Foundation until written confirmation of such modification is obtained from the Foundation.
16. **HEADINGS:** The section headings in this agreement are for convenience only and are not intended, and shall not be construed, to alter, limit or enlarge in any way the scope or meaning of the language contained in this agreement.
17. **ENTIRE AGREEMENT:** This agreement represents the entire agreement between your organization and the Foundation with respect to the subject matter herein and supersedes any and all prior agreements, understandings, negotiations, representations and discussions with respect thereto. This agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.
18. **DUE AUTHORITY: The person(s) signing this agreement on behalf of your organization represents and warrants to the Foundation that s/he is an officer of your organization and**

**has requisite legal power and authority to execute this agreement on behalf of your organization and bind your organization to the obligations herein.**

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the day and date first written above.

**JOHN D. AND CATHERINE T.  
MacARTHUR FOUNDATION**

DocuSigned by:  
*Joshua Mintz*  
By: \_\_\_\_\_  
CSD13B7643314D2...  
Joshua J. Mintz  
Its: Vice President, General Counsel, and Secretary  
E-Mail: [jmintz@macfound.org](mailto:jmintz@macfound.org)

**CITY & COUNTY OF SAN FRANCISCO D/B/A  
SAN FRANCISCO DISTRICT ATTORNEY OFFICE**

DocuSigned by:  
*Chesa Bowdin*  
By: \_\_\_\_\_  
D17B6AACAAE1421...  
*Signature*  
Its: District Attorney  
*Title*  
Acceptance Date: March 3, 2021

**Payment should be made payable to CITY & COUNTY OF SAN FRANCISCO D/B/A SAN FRANCISCO DISTRICT ATTORNEY OFFICE**

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*To facilitate receipt of the grant funds:*

- (1) Please upload the fully-signed agreement (and attachments) to the Foundation's Grants Management System.
  - (2) Please complete, sign, and return the MacArthur Electronic Payment Authorization Form by e-mail to [MacFinanceGrantees@macfound.org](mailto:MacFinanceGrantees@macfound.org). The MacArthur Electronic Payment Authorization Form can be downloaded from the Document Library of the Foundation's Grants Management System.
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## **EXHIBIT 1**

### **Overview of Data Use Agreement (DUA) Revisions**

As has been communicated by the Foundation in recent months, the Safety and Justice Challenge (SJC) is becoming increasingly focused on knowledge development and producing research that informs the field about effective strategies for reducing jail incarceration and racial and ethnic disparities. The Foundation's intention has always been to use data collected from SJC sites by ISLG to support this research, and the DUAs that were executed with implementation sites at the start of implementation work (going back to 2016) include language to reflect that. At the time that these DUAs were executed, however, the initiative had not yet established specific mechanisms for advancing this research. Since that time, those mechanisms—namely, the SJC Research Consortium and direct project funding by the Foundation—have been developed, and it is important that DUAs are updated to reflect the current structure that is in place. The DUA template that follows includes amended language that ISLG plans to incorporate toward that end. This updated template streamlines and aligns data sharing with the SJC initiative's updated framework.

Amendments to the DUA template are highlighted in track changes for ease of viewing. Broadly, they do the following:

- Provide more explicit language specifying that Consortium and other researchers funded by the Foundation to do SJC-related research may use the data submitted by sites to support their research
- Clarify the differences between research entities and other SJC technical assistance partners

In addition to changes related to SJC-related research, ISLG is using this amendment as an opportunity to revise a few other provisions in an attempt to streamline processes that are already happening with sites, and specifically to:

- Simplify and make more flexible the data transfer process and schedule between sites and ISLG
- Allow for the possibility of sharing cleaned, merged data files created by ISLG back to site agencies

In the coming weeks, ISLG will send each site an individualized version of this amended DUA template that incorporates the changes into their specific DUA with ISLG.

**DATA USE AGREEMENT**

**BETWEEN**

\_\_\_\_\_  
[FILL IN NAME OF SITE]

**AND**

**RESEARCH FOUNDATION OF THE CITY UNIVERSITY OF NEW YORK ON BEHALF OF  
THE CITY UNIVERSITY OF NEW YORK INSTITUTE FOR STATE AND LOCAL GOVERNANCE**

**REGARDING DATA USE AND CONFIDENTIALITY**

**FOR**

The John D. and Catherine T. MacArthur Foundation  
Safety and Justice Challenge

This Data Use Agreement (“Agreement” or “DUA”) is made and entered into by and between the “Site”, which includes \_\_\_\_\_ (“Lead Agency”) and all of the agencies, organizations and entities listed in [Schedule 1 \(“Other Agencies”\)](#), and Research Foundation of The City University of New York on behalf of The City University Of New York Institute for State and Local Governance (“ISLG”).

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WHEREAS the John D. and Catherine T. MacArthur Foundation (“Foundation”) has initiated and is providing funding for the “Safety and Justice Challenge” (the “SJC”), the goal of which is to safely reduce the use of local incarceration by reducing the flow of individuals into jail, shortening lengths of stay in jail, and diminishing racial and ethnic disparities in jail populations without compromising public safety; and

WHEREAS the Lead Agency received funding to participate in the SJC, and the Site developed a plan to further the goals of the initiative in its jurisdiction; and

WHEREAS, upon the Lead Agency’s application, the Foundation has decided to fund the Site (through the Lead Agency) to implement the plan it developed; and

WHEREAS data collection and analysis will inform decision-making during this initiative and will enable the Foundation to evaluate and understand the success of the SJC and, pursuant to an agreement between the Lead Agency and the Foundation [and pursuant to this Agreement](#), the Lead Agency will provide data to ISLG for such analysis; and

WHEREAS ISLG will collect, consolidate, and analyze data from the Site for the purpose of establishing performance measures, [monitoring those measures, and conducting other analysis](#), and will, where appropriate, transfer such data to other entities working on the SJC for the purposes of evaluation, jail population projections, data-driven technical assistance, and other research to further understand the outcomes of the SJC;

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NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, the parties agree as follows:

I. Term of Agreement

This Agreement shall be effective upon execution by all parties, and will continue until **insert date five years from Grant initiation date: \_\_ / \_\_ / 2022**] (“Scheduled Termination Date”), unless it is:

- A. extended, as provided pursuant to Section IX herein, or
- B. terminated earlier than the Scheduled Termination Date, pursuant to Section X herein.

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II. Definitions

- A. “Agreement” means this Data Use Agreement (“DUA”), including all documents attached or incorporated by reference.
- B. “Lead Agency” is an entity in the Site that was awarded funding for the implementation of the Site’s plan and has been given the specific operational responsibilities indicated in this Agreement. The Lead Agency for this Agreement is \_\_\_\_\_ (Name).
- C. “Site” means the Lead Agency and all of the agencies, organizations and entities that are expected to provide or aid in the provision of Data pursuant to this Agreement and whose names appear in Schedule 1.
- D. “Personally Identifiable Information (PII)” is information that directly identifies or uniquely describes a particular individual, criminal justice case, or event (e.g., individual arrest number, docket number, criminal justice individual identifier) or that might be used, either directly or in combination with other information, to ascertain the identity of a particular individual (such as place and date of birth).
- E. “Data” is the case-level information that is directly transferred from the Site to ISLG in response to ISLG’s requests for Data. The Data will contain PII.
- F. “Data Work Product” is files, information, or analysis that is derived from Data. An example of a Data Work Product is a file in which the Data is aggregated, matched or compared to other information gained during the SJC. Unless stated otherwise, Data Work Product may contain PII.
- G. “Research Products” are any written publications or reports, or any presentations and the materials that accompany them, that are generally accessible to the public, and which present the results of systematic inquiry or analysis of the SJC-generated information. Examples of Research Products that may be produced concerning the SJC are an evaluation, jail population projections and conclusions drawn from performance measurement. Research Products do not contain PII.

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H. "Communication Materials" are materials in written or oral form, produced for the public, that convey general news and information about the SJC, but which are not the product of systematic investigation. Communication Materials do not contain PII.

I. "SJC-related Research" is research or analysis that will help document and further understand the outcomes of the SJC in relation to jail and prison population trends, including changes in racial and ethnic disparities, public safety, criminal justice system costs, the use of innovative and promising criminal justice practices, and behavioral health and other health trends. SJC-related Research is based solely on the de-identified aggregate or case-level data generated from the SJC.

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J. "Site Coordinators" are organizations assigned to Sites to provide technical assistance to and conduct analyses as needed to inform the technical assistance, and include the Vera Institute of Justice, the Center for Court Innovation, Justice System Partners, and the Justice Management Institute.

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K. "SJC Partners" are organizations that have been approved and funded by the Foundation to provide technical assistance, analytic support, consultation, or other services or expertise to SJC sites as part of the SJC initiative. SJC Partners include Existing SJC Partners and New SJC Partners.

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L. "Existing SJC Partners" are SJC Partners already providing technical assistance, analytic support, consultation or other services or expertise to SJC sites, and include The JFA Institute ("JFA"), the Site Coordinators, the W. Haywood Burns Institute ("Burns Institute"), the Urban Institute ("Urban") and Policy Research Associates ("PRA").

M. "New SJC Partners" are new organizations that will be approved and funded by the Foundation to provide technical assistance, analytic support, consultation, or other services or expertise to SJC sites as part of the SJC initiative.

N. "SJC Research Entities" are organizations that are being funded by the Foundation or a partner funder approved by the Foundation to carry out SJC-related Research. These entities include, but are not limited to, members of the SJC Research Consortium.

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### III. Data Transfer

A. The Site will provide to ISLG case-level Data related to key SJC decision points, as delineated in the Data Elements List that is attached hereto as Exhibit A, to the extent such Data are contained within the records maintained by the Site. The List may be amended from time to time by the mutual written consent of the Lead Agency and ISLG. For this purpose, the requirement of writing may be satisfied through email correspondence between the Data Liaisons, as hereinafter defined, for the Site and ISLG, who are identified in Section XII, which clearly confirms that both parties agree to the amendment.

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B. The Site will provide Data to ISLG, upon ISLG's request, at least three times during the term of this Agreement, beginning in the fall/winter of 2017, the spring of 2018, and at approximate one-year intervals thereafter for the duration of the Site's participation in

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the initiative. As specified in Exhibit A, the first Data pull will include cases and events from the previous forty eight (48) months leading up to implementation; each subsequent Data pull will include cases and events from the previous twelve (12) months. The timeframe and/or timing of the Data pulls may be amended from time to time using the same amendment process described in Section III (A), above.

**Deleted:** The Data transfers will correspond to four points of performance measurement: baseline (on or about April of 2016), Year One (on or about April of 2017), Year Two (on or about April of 2018), and at the end of the SJC initiative (approximately April of 2019).

C. The Lead Agency, through the Site's Data Liaison identified in this Agreement, is responsible for coordinating the provision of Data to ISLG. The Site's Data Liaison will be available as needed to answer ISLG's questions regarding the Data provided.

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D. The Site will provide the Data to ISLG within thirty (30) business days of each request for Data. However, if the Site has questions about the request, is unable to provide specific data elements or to provide them in the form requested, the Site's Data Liaison will inform the ISLG Data Liaison as soon as possible, and the liaisons will work together to develop a solution.

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E. The Foundation reserves the right to terminate its grant agreement with the Site if data is not able to be appropriately collected and shared.

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F. All Data will be transferred from the Site using ISLG's secure file transfer protocol or another secure file transfer protocol agreed upon by the Data Liaisons for the Site and ISLG.

#### IV. Data Storage

A. All Data provided by the Site to ISLG and all Data Work Product is confidential. ISLG will hold all Data and Data Work Product in a secure manner and will protect it from disclosure, except as specifically provided in this Agreement.

B. Data and Data Work Product in electronic form shall be stored on secure computer drives that require credentialed log-in for individual access. All access to such Data and Data Work Product shall be restricted to authorized users who have been authenticated through secure password and log-in.

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C. ISLG will limit the use of portable electronic devices that contain Data or Data Work Product to the minimum amount necessary. To the extent that any portable electronic devices contain Data and Data Work Product, they will be stored securely in locked drawers and cabinets, access to which will be limited to trained, authorized personnel who have a need to access such Data or Data Work Product for purposes of the SJC initiative. When transported, such portable devices will remain under the physical control of authorized staff.

D. ISLG will limit the use of paper and other hard copy files or documents that contain Data or Data Work Product to the minimum amount necessary. Such hard copy materials will be stored in locked drawers and cabinets, with access limited to authorized personnel.

E. The stored Data and Data Work Product will be subjected to the technical safeguards for the protection of PII that are generally accepted as best practices in the industry.

V. ISLG's Use of Data and Data Work Product

- A. ISLG, including its employees, agents and subcontractors, will not use the Data or Data Work Product for any purpose other than that of carrying out its work in the SJC. Accordingly, ISLG will not match or link any of the Data provided or any of the Data Work Product produced under the terms of this Agreement with any datasets that are unrelated to the SJC.
- B. ISLG will not re-disclose the Data and Data Work Product for any purposes other than those specifically stated in this Agreement, except as required by law.
- C. ISLG will limit access to the Data and Data Work Product to those authorized employees, agents and subcontractors who require it in the official performance of their job duties. ISLG certifies that its employees, agents, and subcontractors with access to the Data and Data Work Product have received training on data security and the protocols that are necessary to secure confidential materials, the importance of confidentiality, and the requirements of this Agreement.
- D. ISLG will not contact any individual whose records are contained in the Data.

VI. ISLG's Disclosure of Data and Data Work Product

- A. ISLG will disclose aggregate data to RTI International ("RTI"), for the sole purpose of allowing RTI to conduct a comprehensive evaluation of the effectiveness and the impact of the SJC on behalf of the Foundation. ISLG will not disclose any case-level Data to RTI.
- B. ISLG will disclose Data Work Product that does not contain PII to SJC Research Entities for the purpose of carrying out SJC-related Research. All SJC Research Entities that conduct research will enter into a separate DUA with ISLG and shall be subject to the same confidentiality provisions as those contained therein, and their research must be submitted to an Institutional Review Board in accordance with their organization's procedures or guidelines.
- C. ISLG will disclose Data Work Product that does not contain PII to the Existing SJC Partners and solely for the following purposes: JFA, which will conduct jail population projections and other analysis, the Site Coordinators, which will conduct analysis as needed to inform technical assistance provided to the Site, the Burns Institute, Urban and PRA, which will also conduct analysis as needed to inform technical assistance provided to the Site.
- D. ISLG may also disclose Data Work Product that does not contain PII to New SJC Partners. Use of data by New SJC Partners must be approved by the Lead Agency before any data is shared. ISLG shall promptly notify the Lead Agency of the approval of a New SJC Partner by the Foundation. No de-identified aggregate or case-level data provided

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If and when additional organizations are approved by the Foundation to become SJC Partners and to use data for the purposes described in Section VI(CB), supra,  
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by the Site shall be disclosed by ISLG to a New SJC Partner unless and until the Lead Agency gives its express prior written consent and approval.

E. ISLG may disclose the aggregate data provided by the Site to date to (a) the Foundation and the Vera Institute of Justice, for the purpose of using such information in their Communication Materials regarding the SJC, such as Site profiles for the SJC website, press releases, and talking points; (b) SJC Partners; and (c) SJC Research Entities,

F. Upon request, ISLG may provide analytic files or other Data Work Product back to the Site agencies from which the Data for those files or Data Work Product originated. ISLG may also merge Data or Data Work Product from Other Agencies that own the Data and, at the request and approval of those Other Agencies that own the Data, disclose the merged data file or files to them or to Other Agencies. For both these types of requests, mutual written consent of the agency or agencies with ownership of the Data and/or Data Work Product and ISLG is required, with notice to the Lead Agency. For this purpose, the requirement of written consent and notice may be satisfied through email correspondence between ISLG's Data Liaison, the Lead Agency, and the agency or agencies that own the Data and/or Data Work Product. All requests for analytic files, Data or Data Work Product must be made prior to the Scheduled Termination Date.

G. De-identified data and Data Work Product that contain any case-level information that is transferred from ISLG to any of the parties referred to in (B), (C), (D), (E) or (F) above shall be encrypted in transit, using secure, authenticated, and industry-accepted encryption mechanisms. All electronic data transmission will be conducted using a Secure Socket Layer (SSL) certified, password-protected file sharing system that is used for secure data exchange.

H. All recipients of data and Data Work Product pursuant to this Section VI must execute a binding, written agreement with ISLG in which the recipient commits to the same provisions regarding the security, confidentiality, disclosure, and destruction of data and Data Work Product that are binding upon ISLG pursuant to this Agreement.

I. ISLG will not disclose any aggregate data, data, or Data Work Product to any of the parties referred to in (A), (B), (C) or (D) until they have submitted their work to an Institutional Review Board and received either approval, exemption from review, or a determination that the work is not human subjects research.

### VII. Request for Data by Third Parties

In the event that ISLG receives a request from a third party for the disclosure of PII contained in the Data or Data Work Product, for example, a subpoena or freedom of information request, ISLG will promptly notify the Lead Agency, unless it is prohibited from doing so by state or federal law, and will discuss with the Lead Agency an appropriate response to the request. In responding to such a request, ISLG will abide by all Federal, state and local statutes regarding the confidentiality of the information requested.

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ISLG will provide final analytic Data files back to the Site's respective agencies at their request, using the same file transfer protocol described in Section III(E). This request can be made through the mutual written consent of the agency with ownership of the Data and ISLG. For this purpose only, the requirement of writing may be satisfied through email correspondence between ISLG's Data Liaison and the agency requesting the final analytic Data files, which clearly confirms that both parties agree to the transfer of Data.¶

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VII. SJC-Related Research¶

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The Foundation may approve and fund "SJC-related Research," which is additional research or analysis that is based solely on the de-identified aggregate or case-level data generated from the SJC. The Foundation may approve such research if the Foundation determines that it will help document and further understand the outcomes of the SJC in relation to jail and prison population trends, including changes in racial and ethnic disparities, public safety, criminal justice system costs, the use of innovative and promising criminal justice practices, and behavioral health and other health trends. The entities that r...

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In the event that ISLG receives a request from a third party for the disclosure of data or Data Work Product that does not contain PII, ISLG will promptly notify the Lead Agency and the Foundation of the request and ISLG's response. Where appropriate, ISLG will discuss such requests with Lead Agency and Foundation before responding.

VIII. Research Products and Communication Materials

- A. It is anticipated that the following entities will create Research Products for the SJC: ISLG (performance measurement), RTI (overall evaluation), JFA (jail population projections), and the Burns Institute (technical assistance). In addition, these entities and SJC Research Entities and SJC Partners may produce Research Products in connection with the technical assistance provided to Sites or SJC-related Research, as applicable. The Foundation and the organizations referred to in this Section VIII(A), may also produce Communication Materials.
- B. No PII will be reported in any Research Product or Communication Materials. Sites may be identified by name and discussed in Research Products and Communication Materials.
- C. The Lead Agency will have an opportunity, within a reasonable time period specified by the creator of each written Research Product, to review the Research Product before publication, for the purpose of (a) identifying factual errors or inaccuracies and providing information or corrections regarding it and (b) suggesting additional contextual information that might aid in the interpretation of findings. At its discretion, the entity that created the Research Product may amend the Research Product based on the Lead Agency's comments if that entity deems the comments to be relevant and appropriate. Should the entity that created the Research Product decide not to amend, or if the Site determines that the entity's amendment is insufficient, the procedure outlined in Section VIII(D), below, shall apply.
- D. In the event that the Lead Agency identifies research or analysis findings that it believes to be inaccurate, and the entity that created the Research Product decides not to amend it, upon request of the Lead Agency, ISLG will work with the entity creating the Research Product and the Lead Agency to explore how the findings were developed, and to correct the findings, as needed, before publication. In the event that the entity creating the Research Product chooses not to make an amendment based on the Lead Agency's comments, the Lead Agency shall be permitted to draft an addendum that must be included in the Research Product, except in the case of the SJC evaluation report completed by RTI.

IX. Extension of Agreement

The Site understands that the Foundation may decide to extend the term of the grant and the corresponding collection and analysis of Data such that the Agreement's Scheduled Termination Date would no longer be practicable. Accordingly, if ISLG wishes to extend the Agreement it will notify the Lead Agency no less than 60 days before the Scheduled Termination Date. In that case, this Agreement will be modified through the following process: ISLG will propose a brief letter Agreement, to be executed by all the entities that signed this Agreement, or by all of the entities that will provide additional Data during the extended term, as applicable, that may extend the term to

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allow for additional Data pulls, and which protects the security of the Data as it is protected in this Agreement. All signatories to this Agreement agree that they will respond promptly to such a request for extension, and will not unreasonably withhold their consent.

X. Early Termination of Agreement

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If, for any reason, the Foundation discontinues the SJC, or if the Foundation or Lead Agency terminates Lead Agency's participation in the SJC, this Agreement would automatically terminate at the same time that the SJC is terminated or the Lead Agency's participation in the SJC ends.

The Lead Agency may seek to terminate the Agreement before the Scheduled Termination Date if there is an uncorrected breach of a material term of the Agreement. In such a case, the Lead Agency would send written notification to ISLG and the Foundation stating that it believes there has been a material breach of this Agreement, specifying its reasons for such belief. The Lead Agency would meet with ISLG and the Foundation within ten (10) business days of ISLG's receipt of the notification to discuss the alleged breach and attempt to cure or resolve it. If the issue is resolved, ISLG and the Lead Agency will confirm the resolution within five (5) business days by executing a written memorandum so stating. If the issue is not resolved, ISLG and the Lead Agency will continue to discuss the issue and seek in good faith to resolve it, for an additional forty-five (45)-day period. Thereafter, upon ten (10) business days' notice, the Lead Agency may terminate the Agreement by providing written notification of termination.

XI. Data Destruction

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Upon Termination of the Agreement, including Early Termination pursuant to Section X, ISLG will destroy the Data and all Data Work Product containing PII two years after the Scheduled Termination Date stated in Section I.

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Acceptable destruction methods for various types of media include:

1) For paper documents containing confidential or sensitive information, a contract with a recycling firm to recycle confidential documents is acceptable, provided the contract ensures that the confidentiality of the data will be protected. Such documents may also be destroyed by on-site shredding, pulping, or incineration.

2) If confidential or sensitive information has been contained on optical discs (e.g. CDs, DVDs, Blu-ray), the data recipient shall either destroy by incineration the disc(s), shredding the discs, or completely defacing the readable surface with a coarse abrasive.

3) If data has been stored on server or workstation data hard drives or similar media, the data recipient shall destroy the data by using a "wipe" utility which will overwrite the data at least three (3) times using either random or single character data, degaussing sufficiently to ensure that the data cannot be reconstructed, or physically destroying disk(s).

4) If data has been stored on removable media (e.g. USB flash drives, portable hard disks, or similar disks), the data recipient shall destroy the data by using a "wipe" utility which will overwrite the data at least three (3) times using either random or single character data, degaussing sufficiently to ensure that the data cannot be reconstructed, or physically destroying disk(s).

XII. Data Liaisons

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A. Site Data Liaison

The Lead Agency designates the following individual to be the data liaison for the Site ("Data Liaison"):

Name: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

B. ISLG designates the following individual to be the Data Liaison:

Name: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

In the event that Lead Agency or ISLG designates another individual to serve as Data Liaison during the course of this Agreement, the Lead Agency or ISLG, as the case may be, will provide notice of the change to the other party, with a letter signed by the original Data Liaison along with the new Data Liaison's contact information. Such notice may be sent through email, with an appended, signed and scanned letter.

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XIII. Indemnification

A. ISLG agrees to indemnify and defend the Lead Agency against all claims, demands, lawsuits, fines, penalties, damages, and losses and costs (including court costs, investigative expenses, and attorneys' fees), arising out of or caused by ISLG's negligent or willful failure to abide by the provisions of this Agreement.

B. The Lead Agency agrees to indemnify and defend ISLG against all claims, demands, lawsuits, fines, penalties, damages, and losses and costs (including court costs, investigative expenses, and attorneys' fees), arising out of or caused by the Lead Agency's negligent or willful failure to abide by the provisions of this Agreement.

XIV. Survival of Provisions

All provisions of this Agreement regarding the confidentiality and security of the Data and Data Work Product shall survive the termination of this Agreement, including any extended term of this Agreement.

XV. General Provisions

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A. This Agreement shall be governed by and construed under the laws of New York State.



- B. Any waiver by any party of the violation of any provision of this Agreement shall not bar any action for subsequent violations of the Agreement.
- C. If any provision of this Agreement becomes or is declared illegal, invalid or unenforceable, such provision will be severed from this Agreement and will be deemed deleted. The other terms and conditions thereof shall not be affected thereby, and shall remain in full force and effect.
- D. This Agreement may be amended by the mutual consent of the parties in writing.
- E. This Agreement is complete and contains the entire understanding of the parties relating to the subject matter contained here. This Agreement supersedes any and all prior understandings, representations, negotiations, discussions, and agreements between the parties relating hereto, whether written or oral.

**XVI. Third Party Beneficiary**

The Foundation shall be a third party beneficiary of this Agreement. ISLG may not assign its responsibilities hereunder without the express written consent of the Foundation. If, due to unforeseen circumstances, the Foundation designates a replacement organization (with similar expertise of ISLG) to assume the obligations and duties of ISLG as provided in this Agreement, the Foundation will provide written notice to the Site and request the Site's approval to assign ISLG's obligations and duties to the replacement organization. In that case, the Site may terminate this Agreement if it is unwilling to provide Data to the replacement organization or to work with it in the same manner that it agreed to work with ISLG, provided that the Site will not unreasonably withhold its approval of the assignment by the Foundation to the replacement organization.

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Moved up [1]: The Foundation reserves the right to terminate its grant agreement with the Site if data is not able to be appropriately collected and shared.

**XVII. Counterparts**

This Agreement may be executed in counterparts and will be considered as one executed Agreement and facsimile or electronic signatures (in pdf format) received by the appropriate party will be treated as originals.

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**XVIII. Signatories**

Each of the individuals signing this Agreement on behalf of the named agency or entity below certifies that he or she has authority to execute this Agreement on behalf of the named agency or entity.

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**A. For the Site:**

Name of Lead Agency: \_\_\_\_\_  
 Address: \_\_\_\_\_

By: \_\_\_\_\_  
 Print Name and Title: \_\_\_\_\_ Date \_\_\_\_\_

Other Agencies:

Name of Agency: \_\_\_\_\_  
Address: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name and Title: \_\_\_\_\_ Date \_\_\_\_\_

- B. Research Foundation of The City University of New York  
on behalf of The City University of New York  
Institute for State and Local Governance  
230 West 41st Street, 7th FL  
New York, NY 10036

By: \_\_\_\_\_  
Jeffrey I. Slonim Date \_\_\_\_\_  
Chief Counsel and Secretary of the Board

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Schedule 1:  
Other Agencies

[To be added]

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**Exhibit A:  
Data Elements List**

The list below contains data elements that **may be** requested from Safety and Justice Challenge (SJC) core sites for the purposes outlined in the data use agreement (DUA). The list is organized by system point and is a **general template** that covers the broad range of reforms being pursued across all SJC sites and system points. While information highlighted in yellow will be requested from all sites, the remainder of the list will be **tailored to site-specific data needs** before the DUA is executed. ISLG will work with each site to refine the list based on the scope of its implementation plan, further define and tailor data elements to the local operational context; and identify time frames, samples, formatting and other parameters for requested data.

**BACKGROUND INFORMATION:**

**For cases/people at each of the system points below (as applicable):**

- Unique Person ID
- Unique Case ID (e.g. arrest ID, summons ID docket number, probation case number, etc.)
- Date of birth
- Gender
- Race
- Ethnicity
- Zip code (of home residence)
- Any other information necessary to identify eligible/target populations for selected strategies

**LAW ENFORCEMENT**

**For each arrest (custodial and non-custodial):**

- Date of arrest
- Zip code of arrest location
- Type of arrest—custodial or non-custodial (i.e. arrested and released with a citation)
- All charges associated with the arrest—including charge code and level (felony, misdemeanor, etc.), flag for top charge
- Offense type (for each charge) (e.g., person, property, drug, public order, sex, violation of probation/parole, other, etc.)

**For each summons:**

- Date of summons
- Zip code where summons was issued
- Type of summons (e.g. civil, criminal)
- All charges associated with the summons—including charge code and level (misdemeanor, violation, etc.)

**For each police diversion:**

- Date of diversion
- All charges associated with the diversion
- Name and type of diversion program/service (if applicable)
- Date diversion terminated (if applicable)
- Type of termination (successful/unsuccessful) (if applicable)
- Dates and charges of any subsequent arrests that occur during diversion programming (if applicable)

**For each call for service:**

- Date of call
- Type/nature of incident (including information about offense, as relevant)
- Flag for incidents involving behavioral health crisis/disturbance
- Responding unit
- Outcome (e.g. arrest, transport to emergency room, referral to service)
- If referral to service, name/type of program/service

**PROSECUTOR (OR OTHER CHARGING ENTITY):**

**For each case received by the prosecutor (or other charging entity):**

- Date of review and/or receipt of arrest charges
- Information on any risk assessment completed by the prosecutor
- Charging outcome (e.g., case accepted, declined, deferred/diversion pre-filing, referred back to law enforcement, grand jury outcome, etc.)
- Date of charging outcome
- If not declined:
  - All charges associated with the case—including charge code and level (felony, misdemeanor, etc.)
  - Offense type (for each charge) (e.g., person, property, drug, public order, sex, violation of probation/parole, other), etc.

**For each prosecutorial diversion:**

- Conditions of diversion/deferral (e.g. restitution payments)
- Date diversion terminated (if applicable)
- Type of termination (successful/unsuccessful)
- Any relevant additional detail on conditions met
- Dates and charges of any subsequent arrests that occur during diversion/deferral period (charge codes and levels)

**PUBLIC DEFENDER:**

**For each case screened for assigned counsel:**

- Date of arrest
- Date of filing (by prosecutor or other charging entity)
- Date of eligibility screening (for public defender/assigned counsel)
- Outcome of eligibility screening
- If assigned counsel, type assigned (e.g., public defender, assigned counsel, private attorney)—in cases where there is a change in counsel, include all assignments
- If assigned counsel, all assignment dates

**PRETRIAL SERVICES:**

**For each case screened/assessed:**

- All charges associated with the case (charge code and level—using charges at the point of assessment)
- Date of risk assessment/screening
- Outcome/recommendation of risk assessment/screening (risk level and score)

- Pretrial release recommendation (release, release to supervision, etc.)
- Date of pretrial release recommendation
- Pretrial release decision (by the court)
- Date of pretrial release decision

**For each case released to pretrial supervision:**

- Enrollment and Termination dates
- Any conditions applied
- Termination type (successful/unsuccessful) and specific conditions met (e.g. restitution paid) as applicable
- Date and charges of any subsequent arrests that occur during supervision (charge codes and levels)
- Dates of any failures to appear that occur during supervision (and associated bench warrants)

**COURT:**

**For each court case:**

- Date of filing (by prosecutor or other charging entity)
- All filing charges (charge codes and levels)
- If bail/bond set:
  - Type (secure, unsecured, full cash, etc.)
  - Amount
  - Date set
  - If paid/posted: date, amount, and type paid/posted; date of release from custody
  - If bail/bond review: date, outcome (bail/bond lowered, eliminated, etc.), and release status following review
- Release decision at bail/bond hearing/first appearance (e.g., remand, held on money bail, released on money bail, released on bond, RoR, supervised release, ATI, etc.)
- Any further release decisions made
- All arraignment charges (if different from filing)
- Arraignment plea
- Arraignment outcome (e.g. continued, disposed, dismissed)
- Dates of all failures to appear and bench warrants issued
- Dates, types, and outcomes of selected court appearances (including bail/bond hearing/initial appearance, arraignment, disposition, sentencing)
- Dates of all adjournments/continuances
- Custody status at selected court appearances (in custody, out of custody)
- Type of counsel present at selected court appearances (e.g. public defender, court-appointed counsel, private attorney)
- If screened for diversion/deferral at any point during court processing: screening date/outcome
- If diverted/deferred at any point during court processing (including problem-solving court):
  - Referral date
  - Name and type of diversion/deferral program
  - Any conditions applied
  - Termination date and type (successful/unsuccessful) and specific conditions met (e.g. restitution paid) as applicable
  - Date and charges of any subsequent arrests that occur during diversion/deferral (charge codes and levels)

- Disposition (e.g. dismissal, guilty plea, conviction)
- Disposition charges (if different from filing or arraignment)
- If sentenced, sentence type and length

#### **PROBATION AND/OR PAROLE:**

##### **For population snapshot:**

- Original charges (code, level, flag for top charge)/sentence (date, type, length)
- Intake date
- Supervision level (if applicable)
- Risk level
- Information on any special supervision conditions (restitution, sex offender registration, etc.)
- Anticipated discharge date

##### **For each violation issued:**

- Original charges/sentence (date and type)
- Information on any special supervision conditions (restitution, sex offender registration, etc.)
- Date violation filed
- Type of violation (technical, new arrest, etc.)
- Information on conditions violated
- If booked into jail custody: date of booking and release
- If diverted to program/service: date of diversion, name and type of program, termination type (successful/unsuccessful); dates and charges of any subsequent arrests that occurred during programming (charge codes and levels)
- Date of final violation disposition
- Final disposition (revoked, restored, etc.)

#### **JAIL:**

##### **For jail population snapshot:**

- Law enforcement agency admitting person
- Legal status (“current” status—at time of snapshot)
- If held on money bail/bond, amount
- Date/time of admission
- Date/time of booking (if different from admission)
- Risk assessment/classification/custody level (current status)
- Housing unit and cell location (including facility of confinement) (current status)
- Flag for mental health
- Information on any program participation within jail (name/type of program, date of enrollment, date of termination, type of termination (successful/unsuccessful))
- All charges associated with jail admission (charge codes, levels, flag for top charge)
- Top/Most Serious Booking/Admission Charge Type (e.g., person, property, drug, public order, sex, violation of probation/parole, other, etc.)
- If sentenced, date, length, type (time served, jail, split) of sentence; sentencing court/jurisdiction
- If probation/parole violator, type of violation (probation/parole; technical/new arrest)

- Flag for individuals who are under the jail's jurisdiction but not confined (some elements in this list will not apply to them)

**For jail admissions:**

- Law enforcement agency admitting person
- Legal status at admission
- If held on money bail/bond, amount
- Date/time of admission
- Date/time of booking (if different from admission)
- Risk assessment/classification status/custody level at admission
- Assigned housing unit and cell location at admission (including facility of confinement)
- All charges associated with jail admission (charge codes, offense levels, flag for top charge)
- Offense Type for each charge associated with booking/admission (e.g., person, property, drug, public order, sex, violation of probation/parole, other, etc.)
- Flag for mental health
- If released:
  - Date/time of release
  - Type of release (e.g., RoR, release on money bail, release to pretrial supervision, ATI, sentence served, transferred, etc.)
  - If sentenced: date, length, type (time served, jail, split) of sentence; and sentencing court/jurisdiction
  - Risk assessment/classification status/custody level at release
  - All charges associated with release (charge codes, levels, flag for top charge)
  - Referrals/connections to services/programming upon release (name/type of service/program, date of referral)



**ATTEMPTS TO INFLUENCE LEGISLATION  
BY MacARTHUR FOUNDATION GRANTEES**

Under United States law, MacArthur Foundation grant monies may not be used to pay for attempts to influence legislation, unless they qualify under certain specific exceptions. (These laws do not affect how grantees may spend money received from other sources.) This paper will generally describe what activities are regarded as attempts to influence legislation and some of the exceptions available. Also, attached is a chart describing some permissible and prohibited public policy activities.

**Lobbying**

Attempts to influence legislation, commonly known as lobbying, may be of two types, direct or indirect:

*Direct Lobbying*

Direct lobbying refers to certain communications directly with government personnel who are involved in the legislative process. They may be legislators or employees of legislative bodies, or other government personnel who participate in the formulation of the legislation concerned.

A communication with these government personnel will be lobbying only if it both refers to specific legislation and indicates a view on that legislation.

*Indirect Lobbying*

Indirect (or "grass roots") lobbying refers to communications with members of the general public. Certain "public relations" or educational activities may constitute indirect lobbying, and others will not.

Indirect lobbying communications include only communications that (1) refer to specific legislation, (2) indicate a view on the legislation, and (3) encourage the recipient of the communication to take action with respect to the legislation.

*Specific Legislation*

"Specific legislation" includes both legislation that has already been introduced in a legislative body and a specific legislative proposal.

*Legislation*

Legislation refers only to action by a legislative body -- such as a congress, senate, chamber of deputies, house of representatives, state legislature, local council or municipal chamber of representatives -- or by the public in a referendum or similar procedure. Legislation of

the United States or any other country or of any local government is included.

Legislation also includes proposed treaties required to be submitted by the President of the United States to the Senate for its advice and consent from the time the President's representative begins to negotiate its position with the prospective parties to the proposed treaties.

Action by an executive or by a judicial or administrative body does not constitute legislation, so attempts to influence such action do not constitute lobbying.

*Encouraging Recipient to Take Action*

A communication may encourage the recipient to take action with respect to legislation, and therefore meet the third test for indirect lobbying, in any one of the following four ways:

1. It may state that the recipient should contact a legislator (or other government official or employee who may be involved in the legislation).
2. It may state the address, telephone number, or similar information of a legislator or an employee of a legislative body.
3. It may provide a petition, tear-off postcard, or similar materials for the recipient to send to a legislator or other government official or employee.
4. It may specifically identify one or more legislators who will vote as:
  - a. opposing the communication's view with respect to the legislation,
  - b. undecided about the legislation,
  - c. the recipient's legislative representative, or
  - d. a member of the legislative committee that will consider the legislation.

**Exceptions**

There are a few specific exceptions from prohibited lobbying. The most important of these for MacArthur Foundation grantees are the exception for examinations and discussions of broad social, economic, and similar problems and the exception for nonpartisan analysis, study, or research.

A communication regarding broad social, economic, and similar problems will not constitute lobbying, even if the problems discussed are of a type with which government would be expected to deal eventually. Accordingly, it is permissible to speak to

legislators or the general public about problems that the legislature should address. These communications may not, however, discuss the merits of a specific legislative proposal or directly encourage recipients to take action with respect to the legislation.

Nonpartisan analysis, study, or research means an independent or objective exposition of a particular subject matter. It may advocate a particular position or viewpoint, so long as there is a full and fair discussion of the pertinent facts, which is sufficient to enable an individual to form an independent opinion or conclusion.

The results of nonpartisan analysis, study, or research may indicate a view on specific legislation, and they may be communicated to a legislator or government official or employee involved in the legislative process. They may not, however, be communicated to members of the general public with a direct encouragement to the recipient to take action with respect to the legislation.

A grantee may not use the nonpartisan analysis, study, or research exception, such as by omitting the direct encouragement to take action, and then later use the communication for lobbying purposes. If it does, and if the

grantee's primary purpose in preparing the original communication was for use in lobbying, the amounts spent to prepare the original communication will be treated as funds used for lobbying.

#### **Related Issues**

The use of any MacArthur Foundation grant monies to participate in any political campaign on behalf of or in opposition to any candidate for public office is also prohibited by United States law. This applies to elections both inside and outside the United States.

Also, no MacArthur Foundation grant monies may be used to make any payments that would be illegal under local law, such as to offer money to a public official to perform an official action or to omit or to delay an official action.

#### **Questions**

If you have any questions regarding the rules discussed in this memorandum, or if you would like further information please contact the Office of the General Counsel, at the John D. and Catherine T. MacArthur Foundation, 140 South Dearborn Street, Chicago, Illinois 60603-5285, U.S.A.; telephone (312) 726-8000.

## **PERMISSIBLE AND PROHIBITED ACTIVITIES**

### ***Some Permissible Public Policy Activities***

1. Meetings with or letters to government officials, including legislators, about a problem needing a legislative solution, so long as there is either no reference to specific legislation or no view expressed on specific legislation.
2. Communications with members of the general public about a social problem, so long as there is either no reference to specific legislation, no position taken on the legislation or no encouragement of the public to contact legislators or other government personnel concerning the legislation.
3. Meetings with or letters to government personnel other than legislators or their staff (such as mayors, governors or their staff) about specific legislation if the personnel contacted are not participating in formulating the legislation.
4. Efforts to influence regulations or other actions of an executive, judicial or administrative body.
5. Public interest lawsuits.
6. Communications directly to legislators or their staff regarding legislation that might affect the communicating organization's existence, powers and duties, or its exemption from taxes.
7. Responding to written requests from a legislative body or committee (but not one legislator) for technical advice or assistance on particular legislation.
8. Communicating the results of nonpartisan analysis, study or research on a legislative issue, so long as there is no direct encouragement of members of the general public to contact legislators or other government personnel concerning the legislation.

### ***Some Prohibited Public Policy Activities***

1. A letter to or meeting with a legislator encouraging the legislator to vote either for or against specific legislation or to submit a specific legislative proposal to the legislature.
2. An advertisement or pamphlet encouraging people to contact their legislators and to urge them to vote for or against specific legislation.
3. A public meeting where individuals are asked to sign a petition urging legislators to vote for or against specific legislation.
4. Publishing articles and producing radio and television broadcasts urging recipients to become involved in a political campaign on behalf of or in opposition to a candidate.
5. Preparing a fact sheet for a legislative committee describing one view of proposed legislation important to an organization's objectives, when such fact sheet has not been requested in writing by the committee.

## ELECTIONEERING ACTIVITIES

This document provides guidance regarding the rules prohibiting participation in political campaigns. This overview is simplified for educational purposes. It is not legal advice and should not be relied on as such. Your organization should consult qualified legal counsel with questions.

The general rules are clear and easy to state: **Organizations described in section 501(c)(3) of the Internal Revenue Code -- or their equivalent as determined in accordance with applicable law -- may not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.** For ease of reference, this general prohibition will be referred to as “electioneering activities”. The MacArthur Foundation is a section 501(c)(3) private foundation and it is subject to the prohibition on the use of its funds for electioneering activities (and lobbying).

There are no bright line rules defining electioneering activities, although they generally arise when there is (1) a candidate,<sup>1</sup> (2) that candidate is seeking public office, and (3) the activities involve participation or intervention in the candidate’s political campaign. The IRS applies a “facts and circumstances” test to determine whether an activity constitutes campaign intervention. **Nonpartisan voter education is not treated as campaign intervention.** Educational activities include “the instruction or training of the individual for the purpose of improving or developing his capabilities.” Educational activities also must present “a sufficiently full and fair exposition of the pertinent facts.”

To help evaluate whether a particular activity involves prohibited political campaign intervention, the following chart compares examples of situations in which the IRS has ruled that an activity constitutes prohibited campaign intervention with examples involving nonpartisan voter education:

Political Campaign Intervention	Nonpartisan Voter Education
<b>Basic Advocacy</b>	
Expressly advocating for the election or defeat of an identified candidate or party, including through the use of code words or issues that are clearly associated with one candidate or party.	Providing neutral information about candidates, such as posting links to each candidate’s official campaign websites if the links are presented on a consistent neutral basis for each candidate with text saying, “For more information on Candidate X, you may consult ____.”

<sup>1</sup> A candidate is defined under Section 1.501(c)(3)-1(c)(3)(iii) of the Treasury Regulations as “an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local.”

Electioneering Activities

Political Campaign Intervention	Nonpartisan Voter Education
<b>Guides on Voter Issues and Voting Records</b>	
<p>Publishing a single-issue voter guide reflecting candidates' positions on an area of interest to the organization. [<b>Consequently, a voter guide that reflected a candidate's position on only a single issue related to corruption would be problematic.</b>]</p> <p>Preparing voter guides that convey a bias regarding candidates' positions on certain issues and distributing the guides to particular congressional districts close to the date of the election.</p>	<p>Publishing and making widely available the results of a questionnaire identifying the candidates' positions on a broad range of issues selected by the organization solely on the basis of their importance and interest to the electorate as a whole.</p> <p>Publishing and making widely available a compilation of voting records of Congressional members on a broad range of subjects when there is <b>no editorial opinion</b> and the content and structure of the publication do not imply approval or disapproval of any Congressional members or their voting records.</p> <p>Publishing a summary of the voting records of all incumbent members of Congress on selected legislative issues that are important to the organization, along with the organization's position on those issues, when there is limited distribution, no attempt to target distribution to areas where there are elections, and the timing coincides with the end of congressional sessions (the guide also included a caveat about judging the qualifications of an incumbent based on a few selected votes).</p>
<b>Get Out the Vote Efforts</b>	
<p>Calling registered voters before an election, emphasizing the importance of particular issues, asking about the voters' views on those issues, and only engaging voters whose views are favorable to the organization's positions.</p>	<p>Conducting or funding "get out the vote" drives that treat all voters equally, regardless of party affiliation or candidate preference (if known).</p> <p>The IRS has also ruled that an organization can focus voter education and outreach efforts on women voters, particularly in minority communities, through a variety of public events and locations if the organization provides assistance to anyone who requests it, regardless of party affiliation, and the organization does not comment on any candidate's qualifications and does not rate any candidates.</p>
<b>Candidate Forums and Debates</b>	
<p>Holding a candidate forum that involves biased questioning procedures.</p>	<p>Sponsoring candidate debates or forums that include all qualified candidates if the moderator's questions cover a range of issues and do not reflect a bias for or against a candidate.</p>

## Electioneering Activities

Political Campaign Intervention	Nonpartisan Voter Education
<b>Use of Resources and Facilities</b>	
<p>Permitting directors, officers, and employees to use the organization’s resources (e.g., email or mailing list) to engage in campaign activities, even if these directors, officers, and employees are only supporting the campaign in their personal capacities.</p> <p>Offering special support, services, or resources (e.g., reviewing issue papers) to one campaign, without making such support or services available on an even-handed basis to all candidates and failing to charge fair market value for such support or services.</p>	<p>Permitting directors, officers, and employees to engage in political campaign activities on a <b>personal basis</b> so long as they do not use the organization’s resources (e.g., email or mailing list) to engage in campaign activities.</p> <p>Making the organization’s facilities and other resources available to individuals or groups for political campaign purposes, provided they are made available on the same basis as to non-political groups or individuals, the organization doesn’t promote or endorse the event, and ensures the facilities are equally available to all candidates and political parties.</p>
<b>Rating Candidates</b>	
<p>Rating candidates for elective public office, even if there is no mention of the candidates’ party affiliation and the ratings are based on a standard of professional competence (e.g., approved as highly qualified, approved, or not approved) as opposed to a comparison of candidates.</p> <p>This can include hosting a platform for members of the public to learn more about candidate positions and express their preferences for candidates and publishing the ratings.</p>	<p>Hosting a platform for members of the public to listen to candidate positions and express their preferences for candidates without publishing or otherwise making available the ratings.</p>
<b>Appearances at Public Meetings and Events</b>	
<p>Acknowledging the presence of an elected official who is also a candidate at a public event and highlighting the importance of his or her re-election in order to advance an issue.</p>	<p>Referencing the presence of an elected official who is a candidate attending a meeting or event without referencing that person’s candidacy or the election.</p>

The following are additional activities that are **impermissible** under the rules:

- Candidate pledges, such as asking candidates to sign pledges (or covenants) to support your issue.
- Making financial contributions to candidates.
- Expressly advocating a vote for or against a candidate.
- Increasing the amount or volume of criticism of sitting officials who are also candidates in close proximity to an election.
- Endorsing a candidate.
- Making campaign contributions or expenditures on behalf of candidates.
- Restricting rental of mailing lists or facilities to only certain candidates or engaging in such business transaction for the first time with candidates.
- Publishing or communicating anything that explicitly or implicitly favors or opposes a candidate.

## Electioneering Activities

- Criticizing sitting legislators or other elected officials by attacking their personal characteristics or attacking them in their status as a candidate.

### Acting in a Personal Capacity

While 501(c)3 organizations cannot intervene in political campaigns, individuals that may be associated with the organization can in their personal capacity intervene in campaigns. It becomes very important, however, for the individual to be clear that he or she is acting as an individual and not on behalf of the organization. Written or spoken disclaimers indicating that the actions or words are in a personal capacity are critical to making the distinction especially if the individual occupies a high-profile place in the organization. In addition, the resources of the organization should not be used to advance the individual's political activity. This means the following types of resources or equipment belonging to the organization should not be used by the individual to further his/her own political activity: machines, phones, computers, mailing lists, email, office space, newsletters, internal communications or stationary among other items.

### Conclusion

This overview provides some examples of how the IRS has distinguished between political campaign intervention and nonpartisan voter education to help grantees comply with the Foundation's prohibition on the use of grant funds for political campaign activities. It is important to note that some of these activities may also intersect with the Foundation's prohibition on the use of funds for lobbying activities. In these cases, the grantee should ensure that the activities qualify under a relevant exception to the lobbying rules, such as the exceptions for nonpartisan analysis and research or the examination and discussion of broad social, economic, or other issues.

# Policy Regarding Intellectual Property Arising Out of Foundation Grants

## Introduction

Foundation grants often result in tangible products, such as reports, papers, research, software, data sets, curriculum, books, film or television documentaries, or radio programs (“Grant Work Product”). This Policy articulates the principles guiding the Foundation’s approach to the ownership and use of Grant Work Product. It addresses specifically the ownership, use, copyright to, distribution and licensing of the Grant Work Product arising from project grants by balancing the interests of the Foundation with the interests of the grantee and other interested parties.

Recipients of general operating support grants are expected to have policies in place reasonably consistent with the underlying philosophy and principles reflected in this Policy.

The Foundation is cognizant that fast-evolving technological advances are impacting the manner and method by which knowledge in whatever form can be protected and distributed and the Foundation will evaluate this policy in light of this understanding. The attached glossary defines certain underscored terms used in this Policy.

## Policy

The Foundation's policy is to ensure that use of the Grant Work Product furthers charitable purposes and benefits the public. To that end, the Foundation seeks prompt and broad dissemination or availability of the Grant Work Product at minimal cost to the public or, when justified, at a reasonable price. Distribution at a reasonable price may be justified when integral to the business plan and sustainability of a charitable organization or when the Foundation is satisfied that net revenues derived from the distribution will be used for charitable purposes.

- Grant Work Product should, whenever feasible, be licensed under a Creative Commons license appropriate for the circumstances or other similar scheme that provides for wide distribution or access to the public.
- Software created with grant funds should be ordinarily licensed under an open source license.
- The Foundation also expects openness in research and freedom of access to research results and, when feasible, to the underlying data by persons with a serious interest in the research. This means that grant-funded impact studies should generally be registered in a field-appropriate registry, preferably before data are collected or at least before statistical analyses are performed.

The Foundation recognizes there may be circumstances where limited or delayed dissemination of Grant Work Product, delayed or non-registration of impact studies, or limited or delayed access to data may be appropriate to protect legitimate interests of the grantee, other funders, principal investigators or participants in research studies. Such circumstances will be evaluated on a case-by-case basis.

We will apply these same general principles to our contract-funded evaluation work and make the relevant information available under our Policy on Information Sharing.

Ownership of intellectual property rights (including copyright and patent rights) should not be used to limit or deny access to the Grant Work Product, to result in exclusive use of such Grant Work Product, or to create revenue that is not used substantially for charitable purposes. Copyright to or patent rights in the Grant Work Product will ordinarily remain with the grantee, but the Foundation will be granted a no-cost assignable license to use or publish the Grant Work Product consistent with this Policy. The Foundation may forego or limit the requirement of a license if the Foundation is reasonably satisfied that other appropriate arrangements will be implemented that will assure the goals of this Policy.

In all instances, the Foundation will agree to suitable terms at the time a grant is made based on the facts to ensure the objectives of the Policy are met while respecting appropriate interests of others.

This Policy was initially adopted by the Foundation on September 18, 2008. It was last revised on September 10, 2015 and applies to grants awarded after that date.



## **Glossary**

**Creative Commons License:** A license that allows creators of intellectual property to retain copyright while allowing others to copy, distribute, and make some uses of their work — at least non-commercially. <http://creativecommons.org/licenses/>

**Data:** All materials created during the research process including raw data and metadata required to replicate and assess the trustworthiness of reported findings in their entirety.

**Impact Study:** A study that investigates how an intervention affects outcomes based on a model of cause and effect. It requires a credible counterfactual (typically, a control group or a comparison group) of what those outcomes would have been in the absence of the intervention. An impact study must control for factors other than the intervention that might account for the observed change.

**Open Source License:** A license that allows software or other products to be used, modified, and shared under defined terms and conditions.

**Registry:** An access point for collaborators, other scholars, students, and the interested public that provides links to data sets, survey instruments, impact studies, and experimental protocols. The purpose is to enhance the transparency and quality of research/evaluations studies funded by foundations.

**Research:** The general field of disciplined investigation, covering the humanities, the sciences, jurisprudence, evaluation and so on.

Source: Evaluation Thesaurus. Michael Scriven.