

## RESEARCH AND CONFIDENTIALITY AGREEMENT

This Research and Confidentiality Agreement ("Agreement") is made by and through the North Dakota Department of Corrections and Rehabilitation ("ND DOCR"), PO Box 1898, Bismarck, ND 58502, and Recidiviz, Inc.)

1. Under N.D.C.C. § 12-47-36(2), the medical, psychological, and treatment records of the ND DOCR or its divisions and departments are confidential. N.D.C.C. § 12-47-36(10) authorizes the ND DOCR to disclose medical, psychological, and treatment records for the purpose of conducting research, provided there is no re-disclosure of medical, psychological, and treatment records. 42 C.F.R. Subchapter A, Part 2, § 2.52 authorizes disclosure of patient identifying drug and alcohol evaluation and treatment information without a signed authorization for disclosure from the patient provided there is strict compliance with the requirements of § 2.52(1)-(3), including non-disclosure of patient identifying information in any report. The ND DOCR Division of Adult Services is not a Covered Entity for purposes of the HIPAA Privacy, Security, and HITECH rules.
2. **(A) Scope of Services.** Recidiviz, Inc. shall analyze ND DOCR Recidivism Data and provide ND DOCR the following output:
  - a. Automation of ND DOCR recidivism data analysis
  - b. Visualizations of ND DOCR recidivism data, trends, timelines, subgroups, sub aggregates
  - c. Reports and data visualizations for four stages of ND DOCR recidivism analysis:
    - a. Data Normalization, including various population breakdowns
    - b. Baseline Metrics, including recidivism rates by various demographics and characteristics
    - c. Alerts and Projections
    - d. Root Cause Analysis
- (B)** Recidiviz, Inc. will accept data from ND DOCR via extract or controlled access point, and evaluate data through business analytics software; Business analytics software shall mean the dashboards and predictive models determined and agreed upon in any forthcoming Statement(s) of work executed by the Parties ("Assessment Models"). Output of the analysis may include, among other outputs, correlation, causation, significance examination of ND DOCR recidivism rates and trends. Data output may also include analysis and reporting of preceding factors, risks, conditions, and events concerning recidivism. Output reporting may include, among other outputs, recommendations on risk scenarios. This scope of services as detailed in Section 2 herein is collectively defined as "Services".

(C) Recidiviz, Inc. hereby grants to ND DOCR a non-transferable license to use the Assessment Models only for the purposes of the subject matter herein. Except as expressly set forth in this Agreement, Recidiviz, Inc. shall, at all times, own all intellectual property rights in the Assessment Models. ND DOCR further acknowledges and agrees that all such intellectual property rights, including but not limited to, service marks, logos, graphics, software, documents and business information and plans that are either owned by Recidiviz, Inc. shall remain the property of Recidiviz, Inc. and shall not be used by ND DOCR for any purposes other than those associated with the subject matter herein.

(D) Notwithstanding anything to the contrary:

- i. Recidiviz, Inc. shall be entitled to rely on the data and materials supplied by ND DOCR on an 'as is' basis without any further verification whatsoever; however, Recidiviz, Inc. shall be responsible solely to the extent of providing the Assessment Models to ND DOCR.
  - ii. ND DOCR shall be solely responsible for the use of the results obtained from the Assessment. Further, ND DOCR shall be solely responsible and liable for any analysis and/or assessments derived from such results or provided in addition to such results.
  - iii. The Services are provided on an 'as is' and 'as available' basis, and Recidiviz, Inc. makes no warranty as to the accuracy or completeness of the same. Except as otherwise stated in this Agreement, Recidiviz, Inc. makes no other warranties, express or implied, including express or implied warranties of merchantability, fitness for a particular purpose, accuracy and non-infringement.
  - iv. The Services shall be used by ND DOCR only as an end-user for its internal purposes. ND DOCR shall not sell, give on hire, rent, lease, license, publish, transmit, distribute or otherwise deal with the Services except as an end-user.
3. **Materials.** At the request of Recidiviz, Inc., ND DOCR shall provide records, data and information (collectively referred to as "Materials") to Recidiviz, Inc. for research, evaluation statistical purposes or for any other purpose(s) in connection with the provision of Services. Subsequent to receipt of Materials from ND DOCR, Recidiviz, Inc. shall submit to ND DOCR research methods and procedures it intends to utilize, identification of study subjects, and the security procedures to protect confidential and exempt information, including physical security and electronic security procedures (collectively referred to as "Methods & Procedures"). The Methods and Procedures shall be deemed to be accepted by ND DOCR if ND DOCR fails to approve or disapprove the Methods and Procedures within the timelines stated herein.
4. **Compensation.** This Agreement is for a pilot research project and Recidiviz, Inc. is offering Services on a trial basis without compensation and without reimbursement for costs, expenses, or any travel expenses for the Initial Term. During the Initial Term, the parties shall be bound by the terms of this Agreement and any applicable law, regulation and generally accepted practices or guidelines in the relevant jurisdictions. Recidiviz, Inc. does not provide any warranty during the Initial Term.

5. **Term of Agreement.** This Agreement is effective when signed by all parties and expires 60 days from the date of receipt by ND DOCR of Services listed in section 2(A) from Recidiviz, Inc. ("Initial Term"). This Agreement may be terminated at any time upon the mutual written consent of the ND DOCR and Recidiviz, Inc., or at any time by either the ND DOCR or Recidiviz, Inc. upon thirty days' written notice to the other party. Further, this Agreement may be renewed upon fresh terms and conditions as mutually agreed between the parties.
- a. Specifically, the Agreement expires 90 days after delivery of viable releases of each listed Service. A release is determined to be viable if it a) is deployed to a production environment, b) access is granted to relevant users within ND DOCR, and c) a feature set agreed upon by both ND DOCR and Recidiviz, Inc. is functional in the service.
  - b. Materials will be regularly transferred from ND DOCR to Recidiviz, Inc. throughout the Term of Agreement. Materials will no longer be provided upon expiration of the Agreement but will be provided again upon the renewal of fresh terms and conditions.
  - c. Any persistent Services, such as visualizations hosted on websites, may continue to be provided upon the expiration of the Agreement and prior to renewal of fresh terms while those terms are being negotiated. However, non-persistent Services, such as regular reports and automated recidivism analysis, will cease until the renewal of terms.
6. **Records Security.** Recidiviz, Inc. shall store all physical records in a secure location and shall securely store all electronic or digital records with commercially reasonable administrative, physical, and technical safeguards to prevent unauthorized access, use, disclosure, or modification of records and shall limit access to ND DOCR records, data and information to those employees and authorized agents of Recidiviz, Inc. who will be conducting the research and evaluation and who are bound by substantially similar obligations of confidentiality with Recidiviz, Inc. as those set forth under this Agreement.
7. **Use of Data and Research.** Recidiviz, Inc. may only use data and information obtained from the ND DOCR for research, evaluative, or statistical purposes under this Agreement. ND DOCR and Recidiviz, Inc. will have the right to publish based on its results in academic journals, unpublished working papers, and reports, materials, and information included in presentations for academic seminars, conferences, and governmental matters. ND DOCR and Recidiviz, Inc. will allow each other a 30-day time period before any publication to assure any confidential information is handled appropriately and in accordance with law.
8. **NOTICE.** All notices or other communications required under this Agreement must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

Dave Krabbenhoft

Mackenzie Jacoby

ND Department of Corrections and Rehabilitation OR

Recidiviz, Inc.

PO Box 1898  
Phone: (701) 328-6135  
Email: dkrabben@nd.gov

1655 Pine Lane, Provo UT 84604  
703-409-7219  
clementine@recidiviz.com

Notice provided under this provision does not meet the notice requirements for monetary claims against DOCR found at N.D.C.C. § 32-12.2-04.

#### **9. NON-DISCRIMINATION AND COMPLIANCE WITH LAWS**

Recidiviz, Inc. agrees to comply with all applicable laws, rules, regulations and policies, including those relating to nondiscrimination, accessibility and civil rights.

#### **10. COMPLIANCE WITH PUBLIC RECORDS LAW**

ND DOCR may be required to disclose to the public upon request any records it receives from Recidiviz, Inc. pursuant to the North Dakota Open Records Law namely N.D.C.C. Section 44-04-18.4. ND DOCR shall not disclose any information it receives from Recidiviz, Inc. that Recidiviz, Inc. has previously identified as confidential and that is protected from mandatory public disclosure under the N.D.C.C. Section 44-04-18.4. Recidiviz, Inc. hereby asserts any and all data information and the like that is privileged or proprietary in nature or that is, or may constitute a trade secret, work product or the like in any form is confidential and protected from public disclosure. Prior to publicly disclosing information received from Recidiviz, Inc., DOCR shall provide Recidiviz, Inc. reasonable opportunity to assert the information received from Recidiviz, Inc. is not subject to public disclosure pursuant to N.D.C.C. Section 44-04-18.4 and to provide the legal basis under N.D.C.C. Section 44-04-18.4 upon which Recidiviz, Inc. relies in support of the aforementioned assertion. The duty of ND DOCR to maintain confidentiality of information under this section continues beyond the term of this Agreement. Recidiviz, Inc. agrees to contact ND DOCR as soon as reasonably practicable and to the extent permissible, upon receiving a request for information under N.D.C.C. Section 44-04-18.4 and to comply with ND DOCR instructions, to the extent permissible, on how to respond to the request unless Recidiviz, Inc. reasonably believes the information is protected from public disclosure by law. If, after ND DOCR considers the aforementioned assertion of Recidiviz, Inc. there is a dispute as to whether information received by ND DOCR from Recidiviz, Inc. is protected from public disclosure, either party may commence a legal proceeding and alternatively, the ND DOCR may request an attorney general's opinion.

#### **11. INDEPENDENT ENTITY**

Recidiviz, Inc. is an independent entity under this Agreement and is not a state employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers' Compensation Act. Recidiviz, Inc. retains sole and absolute discretion in the manner and means of carrying out Recidiviz, Inc.'s activities and responsibilities under this Agreement, except to the extent specified in this Agreement.

#### **12. STATE AUDIT**

All records, regardless of physical form, and the accounting practices and procedures of Recidiviz, Inc. relevant to this Agreement are subject to examination by DOCR, the North Dakota State Auditor, or the Auditor's designee. Recidiviz, Inc. shall maintain all such

records for at least three years following completion of this Agreement.


**13. MERGER AND MODIFICATION**

This Agreement constitutes the entire agreement between the parties and supersedes any other understandings, agreements, or representations, oral or written. This Agreement may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

**14. EFFECTIVENESS OF AGREEMENT**

This Agreement is not effective until fully executed by both parties.

Recidiviz, Inc., LLC

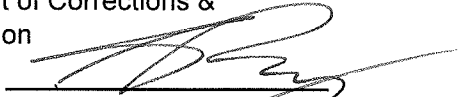
Signature: 

Name (Print): Mackenzie Jacoby

Title: Executive Director

Date: January 18, 2019

STATE OF NORTH DAKOTA – DOCR  
Department of Corrections &  
Rehabilitation

Signature: 

Name: Steven Bourgois

Title: Business Analyst

Date: 1-22-2019

Signature: 

Name: Dave Krabbenhoft

Title: DOCR Director of Administration

Date: 1-22-19



**CONFIDENTIALITY AGREEMENT**  
North Dakota Department of Corrections & Rehabilitation

I acknowledge that I will have access to offender information, including electronically stored information, regarding offenders committed to the custody of, or under the supervision and management of, the North Dakota Department of Corrections and Rehabilitation ("DOCR"), including:

1. Treatment information, including sex offender treatment, and drug and alcohol information;
2. Medical, psychological, and psychiatric information;
3. Pre-sentence investigation reports;
4. Criminal intelligence and investigative reports; and
5. Criminal history record information.

I understand and acknowledge the above information regarding offenders who presently are or who have been under the custody of, or under the supervision and management of, the DOCR is, or may be, confidential. I shall maintain the confidentiality of the above information regarding offenders who presently are or who have been in the custody of, or under the supervision and management of, the DOCR.

I agree that I will not disclose or re-disclose above information regarding offenders who presently are or who have been in the custody of, or under the supervision and management of the DOCR, including disclosure orally, electronically, or in a written format, except when required or authorized by state and federal law.

It is my responsibility to understand and comply with state and federal law and the policies of DOCR relating to the disclosure of the above information.

I may only access relevant information specific to my job duties, and I may not browse DOCR databases for electronically stored information.

**ACKNOWLEDGEMENT**

By signing this confidentiality agreement, I acknowledge that I understand and will comply with this agreement. I understand a violation of this agreement may involve disciplinary proceedings, including immediate termination from my employment and the imposition of civil or criminal penalties under state and federal law.

A handwritten signature in black ink, appearing to read "Mackenzie Jacoby".

\_\_\_\_\_  
Signature

January 18, 2019  
Date

Mackenzie Jacoby  
Name (Print)