

Noble Software Group, LLC

Noble Assessment Platform

AGREEMENT FOR SERVICES #6151

THIS AGREEMENT, made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Noble Software Group, LLC, a Washington Limited Liability Company, duly qualified to conduct business in the State of California, whose principal place of business is 1320 Yuba Street, Suite 208, Redding, CA 96001 (hereinafter referred to as "Consultant");

R E C I T A L S

WHEREAS, County has determined that it is necessary to obtain a consultant to provide training, access, and use license of Noble Assessment Platform, a cloud-based service hosted by Noble Software Group, LLC;

WHEREAS, Consultant has represented to County that it is specially trained, experienced, expert, and competent to perform the special services described in ARTICLE II, Scope of Work; that it is an independent and bona fide business operation, advertises and holds itself as such, is in possession of a valid business license, and is customarily engaged in an independently established business that provides similar services to others; and County relies upon those representations;

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable state and local laws;

WHEREAS, County has determined that the provision of such services provided by Consultant are in the public's best interest and that there are specialty skills, qualifications, and equipment not expressly identified in County classifications involved in the performance of the work in accordance with El Dorado County Ordinance Code, Chapter 3.13.030(b), El Dorado County Charter, Section 210(b)(6), and/or Government Code Section 31000;

NOW, THEREFORE, County and Consultant mutually agree as follows:

ARTICLE I

Definitions:

- 1.1 "Agreement:" This Agreement #6151.
- 1.2 "Documentation:" Text materials which describe the design, function, operation, and use of the Licensed Software and which are customarily delivered by Consultant to licensees thereof.
- 1.3 "Licensed Software:" The source and object code software identified in ARTICLE II, Scope of Work, I Noble Assessment Platform, delivered solely by the Hosting Site.

- 1.4 "Third Party Materials:" Products which will be procured by Consultant from a third party for delivery to County. Unless identified in Agreement or upon notice and written approval of County, Consultant will not deliver any Third Party Materials.
- 1.5 "User Position:" Workstations, personal or desktop computers, terminals or other items installed to support and be dedicated to, at any one time, a single individual as part of the Licensed Software.
- 1.6 "Work Order:" A written document, signed by both parties, specifying the mutually-agreed upon terms for the performance of additional tasks by Consultant and which, upon performance, shall be included in and governed by all other terms and conditions of this Agreement. If the Work Order calls for the development of software, the Work Order shall also specify ownership of any intellectual property created thereby in a manner consistent with the title provisions of this Agreement set forth in ARTICLE VI, Title, and the acceptance criteria for such software.
- 1.7 "Hosting Site:" An internet-based website maintained by Consultant for the purposes of delivering the Licensed Software to County.

ARTICLE II

Scope of Work: Consultant is engaged in the business of doing the services and tasks required under this Agreement and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Consultant agrees to furnish, at Consultant's own cost and expense, all personnel, equipment, tools, materials, and services necessary to perform the services and tasks required under this Agreement and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Consultant shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. Consultant is responsible for ensuring that its employees, as well as any subcontractor, if applicable, perform the services and tasks required under this Agreement accordingly.

Consultant agrees to grant such license to County as a hosted service under the terms and conditions of this Agreement and to perform additional services, including but not limited to installation, integration, testing, and training of the Noble software under the terms and conditions of subsequent Work Orders (defined below) issued under this Agreement. Consultant agrees to furnish the personnel, training, and provide cloud access to authorized users for the County as follows:

I. Noble Assessment Platform

Consultant will provision licenses for the Noble Assessment Platform for users within the El Dorado County Probation Department (Probation), as described in table under ARTICLE V, Compensation for Services. The Platform will include access to all assessments in the Noble catalog with the proper permissions/licensing by the author.

The Assessment Platform allows for an unlimited number of subjects and assessments to be completed by users. Additionally, case planning functionality is included in the platform and allows for unlimited case plans to be completed. Two case plans based on the Positive Achievement Change Tool (PACT) and customized to County's unique needs are included with the product at no extra charge.

Every installation of Noble's Assessment Platform comes standard with forms designer, the same tool Consultant Engineers use to build Noble's assessments, and it is available at no charge to users within the County. This powerful tool allows the creation of custom forms and assessments by County staff that is instantly made available to users. This allows for custom data capture without expensive vendor calls for customization services.

The Assessment Platform comes with documentation and licenses to allow for optional integration with the system-of-record in El Dorado County. This integration is designed to save time and avoid data entry errors by allowing for single-sign on into the platform, automatic transfer of subject demographic information, and automatic entry of criminal history information. Use of this integration service is completely optional, however, and there is no separate cost associated with activating integration services. The system-of-record (SOR) can be changed at any time, and Consultant does not charge for integration changes when the SOR changes.

Requirements

County computers need to be running Internet Explorer 10 or later to access and utilize the assessment platform and have Adobe Reader installed for the viewing of reports within the system.

II. Training

Consultant will send a professional trainer onsite for training. Training is priced per day of instructor training, and all travel expenses are included in the daily rate for the training. A breakdown of suggested training and a proposed schedule for each of the user counts follows.

- Assessment and Case Plan Training (Youth) – This two-day session is designed for line staff and supervisors to learn the assessment tools and the eight guiding principles of effective interventions. Case Plan training includes modules on effective interviewing and the creation of case plans that are actionable, effective, and meaningful in the lives of offenders and their families. This class has a maximum size of 30 participants. The contract administrator or designee will schedule this course as needed basis at mutual agreement with the contractor.
- Assessment and Case Plan Refresher Training (Youth) – This course will be scheduled as needed with a limit of 30 participants at mutual agreement of the contractor and County contract administrator or designee.
- Assessment and Case Plan Training (Adult) – This two-day session is designed for line staff and supervisors to learn the assessment tools and the eight guiding principles of effective interventions. Case Plan training includes modules on effective interviewing and the creation of case plans that are actionable, effective, and meaningful in the lives of offenders and their families. This class has a maximum size of 30 participants. The contract administrator or designee will

- schedule this course as needed basis at mutual agreement with the contractor.
- Assessment and Case Plan Refresher Training (Adult) – This one-day session is scheduled to fall approximately three months after the go-live date of the application. The curriculum is designed to help maintain fidelity to the assessment model and refresh attendees on core principles after critical experience has been gained. Like the initial assessment training, this class has a 30 student limit. The contract administrator or designee will schedule this course as needed basis at mutual agreement with the contractor.

Requirements

County will need to provide a suitable training facility for the number of staff trained. All participants will need access to a computer with an internet connection, compatible web browser (i.e. MS-Edge or Google Chrome), and Adobe Reader.

County may request the performance of additional tasks. If Consultant agrees, each such task will be documented in a Work Order which will specify the tasks to be performed, the deliverables, the time table for performance and the basis for payment whether on a fixed-price (Fixed Price) or time-services-materials-and-expenses (T&M) basis. Unless specified otherwise in the Work Order, the terms and conditions of this Agreement shall apply to performance of the Work Order. The pricing for T&M work shall be at Consultant customary pricing schedules unless a specific price is set forth in the Work Order.

ARTICLE III

Acceptance:

- 3.1 Unless the parties agree otherwise herein or in a Work Order, the Licensed Software will be considered accepted upon delivery. In the event that there are multiple sites, acceptance of the Licensed Software, or any part thereof, at the first such delivery shall constitute acceptance at all subsequent sites.
- 3.2 If a Work Order calls for installation and acceptance testing, the parties agree to the following procedure:
 - a. Following proper installation of the Licensed Software by Consultant pursuant to the Work Order, unless specified in the Work Order, the parties will perform the acceptance tests provided by Consultant for the purpose of determining that the Licensed Software performs substantially in accordance with its Documentation or, in the case of new software development, substantially in accordance with County's functional requirements for such software. If the Licensed Software (including newly developed software) substantially performs the acceptance tests, the County shall notify Consultant within five (5) days, and the date of notification shall be the acceptance date. Failure to do so will constitute acceptance. Testing will be scheduled in accordance with the implementation plan set forth in the Work Order.
 - b. If County fails to notify Consultant of any material defect within thirty (30) days of installation of the Licensed Software, the Licensed Software shall be deemed accepted by County.
 - c. If County notifies Consultant in writing and demonstrates to Consultant that the Licensed Software has not substantially met the acceptance tests, Consultant shall

make corrections and modifications to the Licensed Software so as to meet such criteria. The charges for corrections and modifications to Fixed Price components are included in the Fixed Price established therefor. The charges for corrections and modifications to T&M components will be charged on a T&M basis.

- d. Corrections and modifications will be accomplished on a timely basis to make the Licensed Software ready for retesting by the County. The parties shall repeat the acceptance tests as soon as reasonably requested by Consultant and County shall notify Consultant within five (5) days after such tests have been conducted if and when the Licensed Software is accepted. In the event that the Licensed Software (or parts thereof) does not pass the applicable acceptance test(s), County may issue a conditional acceptance, upon terms acceptable to both parties, which will permit utilization in production and continued correction by Consultant of any defects. If County declines to grant conditional acceptance, then County may terminate this Agreement in accordance with ARTICLE XVI, Default, Termination, and Cancellation. Otherwise, the date of the last such test shall be the acceptance date.
- e. In the event the Licensed Software (or parts thereof) does not pass the applicable acceptance test(s), but is utilized by County in a production environment for a period of thirty (30) consecutive business days, it shall be deemed accepted for all purposes as if it had successfully passed such acceptance test(s).

ARTICLE IV

Term: This Agreement shall become effective upon final execution by both parties hereto and shall cover the period of November 1, 2021, through October 31, 2024.

ARTICLE V

Compensation for Services: For services provided herein, including any deliverables that may be identified herein, County agrees to pay Consultant upon the satisfactory completion and County’s acceptance of work, in arrears. Payment shall be made within forty-five (45) days following County’s receipt and approval of itemized invoices identifying the services rendered.

For the purposes of this Agreement, the billing rate shall be in accordance with the table below:

Services	Summary	Price
Training	Per Day	\$2,200
Annual License Hosting Fee	Noble Assessment Program for Juvenile and Adult-per user	\$481.00
Annual License Hosting Fee	Hosting for View-per user	\$54.55
System Maintenance	Per Hour	\$150.00 per hour or per Work Order as specified in Article II

Additional costs on a per-user basis shall be prorated if users are added mid-year.

The total amount of this Agreement shall not exceed \$250,000, inclusive of all costs, taxes, and expenses.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices. Invoices shall be mailed to County at the following address:

County of El Dorado
Probation Department - Fiscal
3974 Durock Rd, Ste. 205
Shingle Springs CA 95682

or to such other location as County directs.

In the event that Consultant fails to deliver, in the format specified, the deliverables required by this Agreement, County at its sole option may delay the payment for the period of time of the delay, cease all payments until such time as the required deliverables are received, or proceed as set forth below in ARTICLE XVI, Default, Termination, and Cancellation, herein.

In consideration of Consultant's performance, County agrees to pay Consultant in accordance with the following provisions:

- a. Work Orders are payable as follows: one-third due upon execution the applicable Work Order, one-third upon delivery, and the balance payable upon acceptance.
- b. T&M Fees. The charges for performance of any T&M tasks due to Work Orders will be billed monthly for charges incurred in the previous monthly period and are due and payable within thirty (30) days of the date of the invoice. Expenses may include, but are not limited to, reasonable charges for materials, office and travel expenses, graphics, documentation, research materials, computer laboratory and data processing, and out-of-pocket expenses reasonably required for performance. Expenses for travel and travel-related expenses and individual expenses require the prior approval of County.

ARTICLE VI

Title:

- 6.1 Consultant shall retain title to all intellectual property rights embodied in the Licensed Software, Documentation, and any modification or enhancement of the Licensed Software or Documentation made under this Agreement or any Work Order ("Consultant Property").
- 6.2 County shall retain title to all intellectual property rights embodied in software, and any modification or enhancement thereof, that is provided or developed solely by County without any violation of the terms of this Agreement and which is not Consultant Property ("County Property").
- 6.3 The parties agree that performance hereunder may result in the development of new concepts, software, methods, techniques, processes, adaptations and ideas, in addition to the Consultant Property and/or County Property, which may be delivered by Consultant or embedded in Consultant's deliverables ("New Property"). The parties agree that

ownership of New Property shall be determined on a case by case basis prior to the execution of a Work Order requiring the delivery of any New Property and such ownership shall be clearly detailed in such Work Order. The parties intend for the designation of ownership in the Work Order to be consistent with (but not necessarily bound by) the following guidelines:

- a. New Property which contains County's proprietary or confidential information shall belong to County to the extent it contains such information; and
- b. New Property which contains Consultant's proprietary or confidential information shall belong to Consultant to the extent it contains such information; and
- c. Any other New Property for which ownership is not allocated by Work Order or by the above default rules shall belong to Consultant.

6.4 Each party will assign and shall cause its respective employees, agents, and contractors to assign, without further consideration, the ownership of software and/or documentation, including all associated intellectual property rights therein, as necessary to give effect to the ownership terms specified in this Agreement. Each party agrees to perform, at the reasonable request of the owner of such software and/or documentation, such further acts as may be necessary or desirable to transfer ownership of, and to perfect and defend such software and/or documentation or other deliverable or work product in order to give effect to these ownership terms.

6.5 In as far as data entered into the system by County, such data shall be deemed to be owned by County. Consultant shall have right to use, at its sole discretion, such data in an anonymous fashion, for the purposes of research, validation, and other commercial use. Anonymous data is defined, for the purposes of this section, to refer to data that have had all personally identifying characteristics removed, destroyed, obfuscated, or otherwise rendered de-identifying of the person to whom they relate.

ARTICLE VII

Licensed Software:

7.1 In accordance with the terms herein, Consultant grants to County, and County accepts from Consultant, a personal, non-exclusive and non-transferable (except as otherwise specifically provided by this Agreement) hosting service license to use the current version of Licensed Software (or any other version provided to County by Consultant) on Consultant's hosting servers for the term of this agreement.

7.2 Software shall be able to be used at any of County's business premises without the prior approval of Consultant. The Licensed Software may not be used at other locations unless Consultant is notified and approves otherwise, such approval not to be unreasonably withheld. Use of the Licensed Software may be subsequently transferred to other locations maintained by County, provided County furnishes Consultant with written notice within thirty (30) days after such transfer.

7.3 The Licensed Software shall be used only for the processing of County's own business, which may include servicing and maintaining records on behalf of its customers and County's. County shall not permit any third party to use the Licensed Software.

Authorized agents or contractors of County acting for County shall not be considered "third parties" for purposes of such limitation provided, however that disclosure of Consultant Confidential Information to such agents or contractors will be subject to the provisions of ARTICLE XXIII, Confidentiality.

- 7.4 County shall not use or allow the use of the Licensed Software (a) for rental or in the operation of a service bureau; (b) through terminals located outside County's business premises by persons not employed by or under contract with County; or (c) as on-line control equipment in the operation of a nuclear facility, aircraft navigation or aircraft communication systems, or air traffic control machines.
- 7.5 County shall have the right to reproduce one (1) copy of the Licensed Software and Documentation for archival purposes.
- 7.6 County shall not, either directly, or through a third party, reverse engineer, disassemble or decompile any software provided by Consultant, or make any attempt in any fashion except as specifically provided in this Agreement to obtain the source code to the Licensed Software, nor shall County reproduce or distribute, the Licensed Software or Hosted Site, or any part thereof, as part of any other software program. Further, County may not create any software program which makes direct function calls to any libraries which are Third Party Materials.
- 7.7 County is strictly prohibited from installing any third party software on Consultant's servers without the express written authorization of Consultant.
- a. In the event that the authorized third party software disrupts Consultant's server, Consultant shall have the right to temporarily disable the software until the problem can be resolved.
 - b. In the event that the County installs third party software on Consultant's servers without the express written authorization of Consultant, Consultant shall have the right to terminate the Services without notice pursuant to ARTICLE XVI Default, Termination, and Cancellation, herein.

ARTICLE VIII

Taxes: Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County. Consultant agrees that it shall not default on any obligations to County during the term of this Agreement.

ARTICLE IX

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE X

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Consultant, and

Consultant may perform similar work or services for others. However, Consultant shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Consultant's responsibilities or hinder Consultant's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

ARTICLE XI

Confidentiality: Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Probation Department for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

ARTICLE XII

Assignment and Delegation: Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE XIII

Independent Contractor: The parties intend that an independent contractor relationship will be created by this contract. Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Consultant. Those persons will be entirely and exclusively under the direction, supervision, and control of Consultant.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Consultant performs the work or services for accomplishing the results. Consultant understands and agrees that Consultant lacks the authority to bind County or incur any obligations on behalf of County.

Consultant, including any subcontractor or employees of Consultant, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Consultant shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments

which it owes Consultant. Consultant shall not be subject to the work schedules or vacation periods that apply to County employees.

Consultant shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Consultant provides for its employees.

Consultant acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

ARTICLE XIV

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XV

Audit by California State Auditor: Consultant acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, Consultant shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.

ARTICLE XVI

Default, Termination, and Cancellation:

A. Termination by Default: If either party becomes aware of an event of default, that party

shall give written notice of said default to the party in default that shall state the following:

1. The alleged default and the applicable Agreement provision.
2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

If County terminates this Agreement, in whole or in part, for default:

1. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Consultant shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Consultant, the excess costs to procure from an alternate source.
2. County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.
3. County may require Consultant to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
 2. A representation or warranty made by Consultant in this Agreement proves to have been false or misleading in any respect.
 3. Consultant fails to observe and perform any covenant, condition, or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
 4. A violation of ARTICLE XXVI, Conflict of Interest.
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event Consultant ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of

Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Consultant, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

- E. In the event of termination by reason of County's failure to substantially comply with any material part of this Agreement, or upon any act which shall give rise to Consultant's right to terminate, Consultant shall have the right, at any time, to terminate the license(s), deactivate the Hosted Site, and take immediate possession of the Licensed Software and documentation and all copies wherever located, without additional demand or notice. Within five (5) days after termination of the license(s) as provided above, County will return to Consultant any Licensed Software in the form provided by Consultant or as modified by County at County's cost, or upon request by Consultant destroy the Licensed Software and all copies, and certify in writing that they have been destroyed. Termination under this Article shall not relieve County or Consultant of obligations regarding confidentiality of the Licensed Software.
- F. Without limiting any of the above provisions, in the event of termination as a result of County's failure to substantially comply with any of its material obligations under this Agreement, County shall continue to be obligated for any payments due. Termination of the license(s) shall be in addition to and not in lieu of any equitable or other remedies available to Consultant.
- G. Notwithstanding anything contained in this Article to the contrary, once County has made full payment of the license fee for any particular term of hosting the Licensed Software, Consultant cannot terminate the license granted hereunder with respect to such program, except for an uncured breach by County of the terms of ARTICLE VII, Licensed Software, or ARTICLE XXIII, Confidentiality.
- H. Notwithstanding anything herein to the contrary, in the event of termination of this Agreement by County for cause prior to acceptance of the Licensed Software, the software licenses granted hereunder shall be canceled and County shall discontinue use of the Licensed Software and Hosting Site and return all copies thereof to Consultant and Consultant shall refund any license fees paid. Upon such termination and return of the Licensed Software and repayment, the parties hereto shall be discharged of all further liabilities under this Agreement except for such liabilities arising out of the continuing obligations of confidentiality and non-solicitation of employees.
- I. Notwithstanding anything herein, pursuant to ARTICLE VII, Licensed Software 7.7, Consultant may immediately terminate this agreement and withdraw the hosting services in the event that in the sole discretion of Consultant, it determines that:
 - 1. County is using or allowing, authorizing, or assisting the Hosted Site to be used for illegal purposes; or

2. County downloads or installs third party software to its Hosting Site without the express written authorization of Consultant.

ARTICLE XVII

Warranties

- 17.1 Consultant warrants that, for thirty (30) days following County acceptance of the Licensed Software furnished under this Agreement or the deliverables provided pursuant to a Work Order hereunder (the "Warranty Period"), the Licensed Software, exclusive of Third Party Materials, will substantially conform to the accepted level of performance as set forth in ARTICLE III, Acceptance, 3.2 (a). To the extent that County notifies Consultant in writing during the applicable Warranty Period of any material non-conformity of the Licensed Software or deliverables with such acceptance level, and provides Consultant with (a) County's estimation of the severity of such non-conformity and (b) such printouts, typescripts, documentation, and other details of such non-conformity as Consultant shall request, Consultant's sole obligations to use reasonable commercial measures to remedy or provide a work-around for such defect. In determining the timing of its response, Consultant shall be entitled to take into account the severity of the defect. In the event that Consultant determines that the Licensed Software is not defective in such respect, County shall reimburse Consultant for its services at Consultant's then current consulting rate for such services.
- 17.2 To the extent its agreement with a supplier of Third Party Materials permits, Consultant shall pass through to County any performance warranty relative to such Third Party Materials; provided, however, that Consultant makes no additional or supplemental warranty with respect thereto
- 17.3 Consultant warrants that it has, and on the date of acceptance of the Licensed Software will have, the full right and authority to grant this license and that neither this license nor performance under this Agreement does or shall conflict with any other agreement or obligation to which Consultant is a party or by which it is bound.
- 17.4 Consultant warrants that its technical and consulting services will be of a professional quality conforming to generally accepted industry standards and practices. During the thirty (30) day period following completion of any such services, Consultant shall, upon receipt of written notice from County describing a breach of the foregoing Warranty in such reasonable detail as is requested by Consultant, perform the services described in such written notice so as to conform to generally-accepted industry standards and practices.
- 17.5 These warranties do not cover defects or nonperformance due to causes and products external to the Licensed Software, and are not valid with respect to such defects or nonperformance.
- 17.6 If the Licensed Software is not in substantial compliance with the warranties contained in this Agreement at the end of the Warranty Period, Consultant shall extend the Warranty Period until the Licensed Software is brought into such compliance.

- 17.7 If any modification is made to the Licensed Software by County without Consultant's approval, this Warranty shall immediately be terminated with respect to such modified software. Correction for difficulties or defects traceable to County's unauthorized modifications or unauthorized systems changes shall be billed to County at Consultant's standard time and material charges.
- 17.8 Consultant makes no warranties with regard to Third Party Materials. Along with the transfer of title, Consultant agrees to transfer and assign to County all of Consultant's rights and interests in and with respect to all purchase agreements for Third Party Materials being supplied under this Agreement between Consultant and other manufacturers and distributors, subject to any limitations set forth in such agreements relating to such transfers. Upon request by County, all purchase agreements will be submitted to County for prior approval. Consultant will execute any documents or instruments reasonably necessary to affect the transfer and assignment of Consultant's rights and interests thereunder. Consultant makes no representation as to the effectiveness, adequacy, or enforceability of such transferred rights.
- 17.9 Except as otherwise specifically provided by this Agreement, Consultant's sole liability for any damages relating to the (a) performance of the Licensed Software and sufficiency of the services hereunder or (b) matters covered by this Warranty, shall be limited to the provisions of this Article regardless of whether any liability is based on contract or other theory.
- 17.10 The warranties in this article are limited warranties and are the only warranties made by Consultant. Consultant makes and County receives no additional warranty, express, implied, or statutory, including but not limited to all warranties of merchantability or fitness for a particular purpose. No agent, contractor, or employee of Consultant, except Consultant's duly authorized representative, is authorized to alter or exceed the warranty obligations of Consultant as set forth herein.

ARTICLE XVIII

Proprietary Rights Indemnity

- 18.1 Consultant shall defend, indemnify and hold harmless County with respect to any claim, demand, cause of action, or liability, including attorneys' fees, to the extent that such is based upon a claim that the Licensed Software, (including any deliverables pursuant to Work Orders) used by County within the scope of the licenses granted hereunder, infringes any United States, UK, Hong Kong, France, Germany, Switzerland, or Japan patent, any United States copyright, or any trade secret or other intellectual property rights; provided that Consultant is promptly notified in writing of such claim and provided further that Consultant shall have the exclusive right to control such defense. The acceptance, by Consultant, of tender of defense of any claim shall give Consultant the right to select legal counsel and manage the defense, provided that County shall be given regular notice and opportunity to participate in such litigation, at County's expense. In no event shall County settle any claim, lawsuit or proceeding without Consultant's prior written approval. County may, at its own expense, assist in such defense if it so chooses.

- 18.2 In the event of any such claim, litigation or threat thereof, Consultant, at its sole option and expense, may procure for County the right to continue to use the Licensed Software or, at its sole option and expense, may replace or modify the Licensed Software with functionally-compatible, non-infringing software. If such settlement or such modification is not reasonably practical in the sole opinion of Consultant, after giving due consideration to all factors including financial expense, or if a temporary or final injunction or other judgment is obtained against Consultant with respect to the Licensed Software or any part thereof, Consultant may cancel this Agreement or the applicable Work Order and the licenses granted thereunder upon fifteen (15) days written notice to County and shall refund to County the unamortized portion of the amounts paid to Consultant by County for the development and/or acquisition thereof based upon five (5) year straight-line depreciation, such depreciation to commence on the date on which the Licensed Software was first accepted hereunder. Upon such repayment Consultant shall be discharged of all further liability hereunder except for the obligations set forth in Section 17.1 hereof.
- 18.3 To the extent its agreement with a vendor of Third Party Materials permits, Consultant will pass through to County any proprietary rights indemnity relating to such Third Party Materials; provided, however, that Consultant gives no additional or supplemental indemnity with respect thereto.
- 18.4 The foregoing states the entire liability of Consultant and the exclusive remedies of County with respect to the infringement of any proprietary rights by the Licensed Software or any parts thereof, and County hereby expressly waives any other such liabilities.

ARTICLE XIX

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado
 Probation Department
 3974 Durock Rd, Suite 205
 Shingle Springs CA 95682

Attn: Andrew Craven
 Deputy Chief Probation Officer

With a copy to:

County of El Dorado
 Chief Administrative Office
 330 Fair Lane
 Placerville California 95667

Attn: Michele Weimer
 Procurement and Contracts Manager

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Noble Software Group
1320 Yuba St., Ste. 208
Redding CA 96001

Attn: Aaron Picton, Chief Financial Officer

or to such other location as Consultant directs.

ARTICLE XX

Change of Address: In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify County in writing as provided in ARTICLE XIX, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XXI

Indemnity: To the fullest extent permitted by law, Consultant shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Consultant or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XXII

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.

- D. In the event Consultant is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County; and
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Consultant's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.

- L. The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

ARTICLE XXIII

Confidentiality:

- 23.1 Any information which a party considers to be confidential or proprietary shall, if tangible, be marked as such or, if communicated orally, designated at the time and promptly confirmed in writing as such. Information which is so marked or designated and confirmed, and the Licensed Software regardless of form or designation, shall be "Confidential Information" under this Agreement. Information received by Consultant while on the premises of County shall be deemed Confidential Information whether marked as such or not.
- 23.2 Confidential Information shall be held in trust and used only as necessary for the performance of this Agreement. Confidential Information shall be treated with the same degree of care to avoid disclosure to third parties as is used with respect to the recipient party's own Confidential Information, but not less than a reasonable degree of care.
- 23.3 Confidential Information shall be disclosed only to those employees or agents of a party who have a need to know such information and are under a binding obligation of confidentiality with respect to any such information received. Confidential Information shall not be disclosed to any other third party without the prior written consent of the party disclosing the Confidential Information. The party receiving Confidential Information shall defend, indemnify and save the disclosing party harmless from and against any and all damages, including reasonable attorneys' fees, sustained as a result of the unauthorized use or disclosure of the disclosing party's Confidential Information.
- 23.4 Confidential Information shall not include information (a) at the time of its disclosure was known to the party to whom disclosed; (b) is already in the public domain or becomes generally known or published without breach of this Agreement; (c) is lawfully disclosed by a third party free to disclose such information; (d) is independently developed by the party to whom disclosed without reference to or use of the Confidential Information; or (e) is legally required to be disclosed provided that the party so compelled shall promptly notify the other party so as to permit such other party to appear

and object to the disclosure and further provided that such disclosure shall not change or diminish the confidential and/or proprietary status of the Confidential Information.

- 23.5 Notwithstanding the restrictions of this Section, Consultant or County may announce the parties' relationship in a press release subject to the reasonable written approval of the other party.

ARTICLE XXIV

Force Majeure: Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

- A. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
- B. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

ARTICLE XXV

Waiver: No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

ARTICLE XXVI

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Consultant and performing work for County and who are considered to be consultant within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Consultant covenants that during the term of this Agreement neither it, or any officer or employee of Consultant, has or shall acquire any interest, directly or indirectly, in any of the following:

- A. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
- B. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
- C. Any officer or employee of County that are involved in this Agreement.

If Consultant becomes aware of a conflict of interest related to this Agreement, Consultant shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in ARTICLE XVI, Default, Termination, or Cancellation.

ARTICLE XXVII

Nondiscrimination:

- A. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Consultant shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Sections 12990 and Title 2, California Code of Regulations, Section 11102.

ARTICLE XXVIII

California Residency (Form 590): If Consultant is a California resident, Consultant must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has a permanent place of business in California. Consultant will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Consultant during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XXIX

County Payee Data Record Form: All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

ARTICLE XXX

Business License: County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Consultant warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

ARTICLE XXXI

Licenses: Consultant hereby represents and warrants that Consultant and any of its subconsultants employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Consultant and its subconsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Consultant and its subconsultants shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

ARTICLE XXXII

California Forum and Law: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXXIII

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Andrew Craven, Deputy Chief Probation Officer, Probation Department, or successor.

ARTICLE XXXIV

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

ARTICLE XXXV

Partial Invalidity: If any provision, sentence, or phrase of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, sentences, and phrases will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXXVI

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

ARTICLE XXXVII

Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

ARTICLE XXXVIII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: 3/15/22
By: Roni Parlin
Chair
Board of Supervisors
"County"

ATTEST:
Kim Dawson
Clerk of the Board of Supervisors

By: Kyle Huffman Dated: 3/15/22
Deputy Clerk

-- CONSULTANT --

NOBLE SOFTWARE GROUP, LLC
A WASHINGTON LIMITED LIABILITY COMPANY

By: Aaron Picton Dated: 2/24/22
Chief Financial Officer
"Consultant"