State of New Mexico
General Services Department
State Purchasing Division
Statewide Price Agreement Cover Page

Awarded Vendor:
0000143684
Noble Software Group LLC
1320 Yuba St. Suite 200
Redding CA 93001-1057

Attn: Aaron Picton
Email: apicton@noble sg.com
Telephone No.: (530) 276-8487

Contract Number: 90-000-18-00016
Payment Terms: Net 30
F.O.B.: Destination
Delivery: As Requested

Ship To:
All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Invoice:
As Requested at Time of Order

For questions regarding this contract please contact: Julie Krupcale (505) 827-4951

Procurement Specialist: Natalie Martinez
Telephone No.: (505) 827-0251
Email: natalie.martinez1@state.nm.us

Title: DWI Offender Screening Program
Term: November 14, 2019 – November 13, 2020

The attached Price Agreement is made subject to the “terms and conditions” as indicated.

Purchasing Division: 1100 St. Francis Drive, Santa Fe, NM 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472
State of New Mexico
Statewide Price Agreement
DWI Offender Screening Program

Statewide Price Agreement No. 90-000-18-00016

THIS Agreement ("Agreement" or "Contract" or "Price Agreement") is made by and between the State of New Mexico on behalf of the Department of Finance and Administration, Local Government Division (DFA/LGD), hereinafter referred to as the "Procuring Agency" and Noble Software Group, LLC, hereinafter referred to as the "Contractor" and collectively referred to as the "Parties".

WHEREAS, the LDWI (Local Driving While Intoxicated) Grant Program Act, Section 11-6A-1 et. seq., NMSA 1978, establishes a DWI Grant Program to be administered by DFA/LGD; and

WHEREAS, in accordance with Section 66-8-102(L) NMSA 1978, upon conviction, a DWI offender shall participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program approved by DFA; and

WHEREAS, pursuant to the Procurement Code, Section 13-1-28 et. seq. NMSA 1978, and Procurement Code Regulations, NMAC 1.4.1 et. seq. the Contractor has held itself out as an entity with the ability to provide the required services to implement the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, the Contractor will provide DFA’s approved DWI Offender Screening Program as described in the Scope of Work; and

WHEREAS, all terms and conditions of RFP #90-000-18-00016 DWI Offender Screening Program and the Contractor’s response to such document(s) are incorporated herein by reference.

NOW, THEREFORE, THE FOLLOWING TERMS AND CONDITIONS ARE MUTUALLY AGREED BETWEEN THE PARTIES:

1. Definitions

A. "Administrator" means the individual responsible for assigning permissions in each of the designated thirty three county platforms within the Screening Program.

B. "Authorized Purchaser" means local public bodies, court screening providers, and applicable state agencies including DFA/LGD authorized to place orders against this Agreement.

C. "Local public body" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof.
D. "New Mexico State Purchasing Agent" or "NMSPA" means the purchasing agent for the State of New Mexico or a designated representative. May be used interchangeably with "State Purchasing Agent" or "SPA".

E. "Price Agreement" means a definite quantity contract or indefinite quantity contract which requires the Contractor to furnish items of tangible personal property or service to the Authorized Purchaser which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

E. "RFP" means Request for Proposals as defined in statute and rule.

F. "Services" refers to support services, educational services, services to customize software, custom application software development services, application design and analysis, or other professional services to be performed within the scope of the Contract.

G. "Single statewide DWI Offender Screening program" means a database where all users have the ability to access information regardless of county of origin.

H. "Thirty-three County platforms" means each county’s unique platform containing the data pertinent to the clients or cases with convictions in their county.

I. "User" means any member of a local public body, court screening provider or applicable state agency who has the necessary permissions to enter data into the Screening Program.

J. "You" and "your" refers to Noble Software Group, LLC. "We," "us" or "our" refers to the State of New Mexico, local public bodies, court screening providers, and applicable state agencies allowed by law to participate in the Agreement and whose accounts are created under this Agreement.

2. **Scope of Work.**

   The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference. Exhibit B, attached hereto and incorporated herein by reference shall outline the implementation of the project plan.

3. **Compensation.**

   A. **Compensation Schedule.** The Authorized Purchaser shall pay to the Contractor based upon fixed prices for each deliverable, per the schedule outlined in Exhibit A, less retainage, if any, as identified in paragraph C of this Clause.

   Payment shall be made upon acceptance of each deliverable and upon the receipt and acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor’s designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of acceptance. All Payment Invoices MUST BE received by the
Authorized Purchaser no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

B. Taxes. The Contractor shall be reimbursed by the Authorized Purchaser for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Authorized Purchaser harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker’s Compensation.

C. Retainage.
Not Applicable – The Parties agree there is no retainage.

D. Performance Bond
Not Applicable. The Parties agree there is no Performance Bond.

4. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE STATE PURCHASING AGENT. The term of this Agreement shall be for one year from the date approved by the State Purchasing Agent, with the option to extend for a period of five (5) additional years, on a year-to-year basis, by mutual agreement of all parties and approval of the State Purchasing Agent at the same price, terms and conditions. This Agreement shall not exceed six (6) years including any renewals.

5. Termination

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency’s uncured, material breach of this Agreement.

B. Notice: Procuring Agency Opportunity to Cure.
1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency’s material breaches of this Agreement upon which the termination is based
and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor’s notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency’s sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor’s receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party’s liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination.

*This provision is not exclusive and does not waive the Procuring Agency’s other legal rights and remedies caused by the Contractor’s default/breach of this Agreement.*

6. **Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor. The Procuring Agency’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

7. **Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.
8. **Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency’s contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency’s making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator’s family; (iii) the Contractor is not a business in which a legislator or a legislator’s family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator’s family, or a business in which a legislator or a legislator’s family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.
C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

9. **Amendment.**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced funding.

10. **Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

11. **Penalties for violation of law.**

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

12. **Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures
that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

13. **Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

14. **Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

15. **Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement’s term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, the Department of Finance and Administration, and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

16. **Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

17. **Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.
18. **Non-Collusion**

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

19. **Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the State Procurement Office:

Mark R. Hayden, State Purchasing Agent  
1100 S. St. Francis Drive  
Joseph Montoya Building, Rm 2016  
PO Box 6850  
Santa Fe, NM  87505  
Mark.hayden@state.nm.us

With a copy to DFA/LGD as the Procuring Agency:

Julie Krupcale, LDWI Bureau Chief  
Bataan Memorial Building, Room 203  
407 Galisteo Street  
Santa Fe, NM  87501  
Julie.krupcale@state.nm.us

To the Contractor:

Mr. Aaron Picton  
Noble Software Group, LLC  
1320 Yuba St; Suite 212  
Redding, CA 96001  
apicton@noblesg.com

20. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

21. **Headings**

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.
22. **Default/Breach.**

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

23. **Equitable Remedies.**

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency’s obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency’s rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

24. **New Mexico Employees Health Coverage.**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: [http://www.insurenewmexico.state.nm.us/](http://www.insurenewmexico.state.nm.us/).

25. **Indemnification.**

The Contractor shall defend, indemnify and hold harmless the Procuring Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors, or agents resulting in injury or damage to persons or
property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has performed or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Procuring Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

26. **Default and Force Majeure.**

The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

27. **Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Procuring Agency.

28. **Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

29. **Inspection of Plant.**

The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor’s regular business hours and upon prior written notice, the Contractor’s plant or place of business, or any subcontractor’s plant or place of business, which is related to the performance of this Agreement.
30. **Commercial Warranty.**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

31. **Condition of Proposed Items.**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

32. **Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

33. **Confidentiality.**

Any confidential information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

34. **Contractor Personnel.**

A. **Key Personnel.** Contractor’s key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

- Diana Norris, President of Noble Software Group
- Aaron Picton, Director of Engineering/Chief Financial Officer
- Mark Winterman, Senior Developer

B. **Personnel Changes.** Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor’s personnel assigned to the Project
is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor’s personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency’s expectations.

35.  **Incorporation by Reference and Precedence.**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); and (2) the Contractor’s response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; and (4) the Contractor’s response to the request for proposals.

36.  **Inspection.**

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor’s risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

37.  **Inspection of Services.**

If this Agreement is for the purchase of services, the following terms shall apply.

A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the State Purchasing Agent or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the State Purchasing Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.
C. The State Purchasing Agent or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor’s performance.

D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:
   (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
   (2) reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:
   (1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or
   (2) terminate the Agreement for default.

**THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PARTIES’ TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR’S DEFAULT/BREACH OF THIS AGREEMENT.**

38. **Insurance.**

If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: $100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:
   a. Bodily injury: $1,000,000 per person /$1,000,000 per occurrence.
   b. Property damage or combined single limit coverage: $1,000,000.
   c. Automobile liability (including non-owned automobile coverage): $1,000,000.
   d. Umbrella: $1,000,000.
C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

39. **Arbitration.**

Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 et seq.

40. **Supremacy.**

This Agreement incorporates the additional terms set forth in Exhibit C; however, in the event of any conflict or inconsistency between any term in Sections 1 through 40 of this Agreement and any term set forth in Exhibit C hereto, the term in Sections 1 through 40 of this Agreement will prevail and apply over any term set forth in Exhibit C.

[Remainder of page intentionally left blank.]
IN WITNESS WHEREOF, the parties have executed this Agreement. The effective date is the date of approval by New Mexico General Services Department set out hereinafter.

STATE OF NEW MEXICO
General Services Department

By: [Signature]  
Date: 11-14-2019  
Title: STATE PURCHASING DIVISION

STATE OF NEW MEXICO
General Services Department

By: [Signature]  
Date: 11-13/19  
Title: State Purchasing Division Attorney

STATE OF NEW MEXICO
Department of Finance and Administration

By: [Signature]  
Date: 9/16/19  
Title: DFA General Counsel (as to legal sufficiency only)

CONTRACTOR:

By: [Signature]  
Date: 9/9/19  
Title: [Signature]

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

NM TAX ID Number: 03-506266-00-5

By: [Signature]  
Date: 09-16-19  
Taxation and Revenue Department
Exhibit “A”

Scope of Work

DWI Offender Screening Program

I. Purpose Statement/Objective

The said project aims to build the Procuring Agency a single statewide DWI Offender Screening program that allows for each of the thirty-three county programs to have their own individual platform. In addition each of the thirty-three county programs would have at the minimum read-only permissions to the other county user platforms, and the ability to export client data if needed. The solution will work independently of each county, using an identifying and unique factor such as a social security number to prevent duplicate entries of the same offender across counties. The system will allow for the 33 county users to see identical data elements within the offender’s record.

II. Scope of Work

The contractor must provide a scalable, secured, web-based screening program that will be used by local public bodies, court screening providers, and applicable state agencies to screen, track, and evaluate DWI offenders and to determine the effectiveness of local DWI programs in reducing the incidence of DWI, alcoholism, alcohol abuse, and alcohol related domestic violence in New Mexico. The information contained in the screening program must be accessible by applicable users to query and manipulate data for analysis, reporting, research, and evaluation purposes. The system must have the storage capacity to meet current needs starting at 250,000 client records with an anticipated growth of up to 10,000 client records annually. By default, all administrators will have both user roles and administrator roles enabled. An administrator or record owner must have the ability to grant users permissions to access a record and allow for different levels of access within the system.

The screening program shall include at a minimum the required elements as stated below:

a. A built in DWI Screening Tool, using the Impaired Driving Assessment or IDA that is developed at an approximately 8th grade reading level, and available in English and Spanish. The screening tool is developed to be administered by non-clinicians who are trained to implement the tool without any specific credentials or licensure. The screening tool has the ability to collect offender demographics, current conviction data and criminal history. The screening tool will be used to help to provide a risk level and assist with determining treatment and offender supervision options.

b. A built in Case Management tool that is a web-based database that has the capability to monitor and track the offenders’ court ordered sanctions and the offender progress in each of the court ordered sanctions, and produce a status report for each offender in the system. The tool will contain standardized fields statewide with each of the thirty three counties DWI programs having at a minimum of read-only access to all offender data, and the ability to enter data into cases specific to the county of conviction.
c. A built-in graphical tool designed for additional data collection area. The system shall have an area to collect and store additional data to help local DWI programs monitor the effectiveness of their efforts in reducing the incidence of DWI, alcoholism, alcohol abuse, and alcohol-related domestic violence. Additional data fields shall include but are not limited to DWI, alcoholism, and alcohol abuse prevention activities, and DWI law enforcement prevention activities and statistics.

d. A built-in evaluation framework. The system shall allow for evaluation of the data it contains as well as data from other sources. Applicable users shall have the ability to extract data from the screening tool, case management tool, and additional data collection area, import data from other sources, extract data on a county and statewide level, provide data analysis, and develop reports.

III. Technical Support and System Maintenance

The contractor shall provide technical support and maintenance, in addition to training materials for users throughout the agreement period. Technical support shall include but is not limited to the following: technical assistance in the implementation and use of the system, as needed, including on-site; virtual and telephone (via a toll-free number) troubleshooting and support in the use of the system 7am to 5pm Pacific Time, Monday through Friday. System maintenance shall include but is not limited to the following: modifying a data collect screen to add a new data element data, or system errors and adding or deleting data fields as needed and approved by the Procuring Agency.

IV. Transition Requirement

The contractor must work with the existing Contractor to transition services within ninety (90) calendar days of agreement execution. Upon termination of the agreement resulting from the RFP, the Contractor must work with the new Contractor to transition services within ninety (90) calendar days of agreement execution.

V. Confidentiality Agreement

The contractor must be fully bound by the provision of Federal Regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2 and Health Information Portability and Accountability Act (HIPAA) as applicable. The Contractor must guarantee the security of any information about offenders or clients in the program that is received, stored, or processed.

VI. Schedule

Contractor will gather the requirements, analyze, design, develop, implement, test and integrate the screening program according to the guidelines and schedules stated in the project plan in ‘Exhibit B.’
VII. Compensation

Compensation Schedule. The Procuring Agency shall pay to the Contractor based upon fixed prices for each deliverable as follows:
Initial Implementation services to include all costs associated with the implementation and the transfer of approximately 250,000 records is included in the costs listed below:

Year 1
Technical Training to include all costs associated with implementation training, troubleshooting and support services not to exceed $10,000.00.
Annual system user costs of $350.00 per user will be procured from each county DWI Program. The number of users will vary by county DWI Program and each county DWI Program will establish user rights and permissions as each user is established.
The cost includes all costs associated with the implementation, transfer of data, training, system maintenance, and cost per user for the first year. The cost also includes all costs for training, system maintenance, customization, and cost per user for subsequent years.
Year 2-6
Annual system user costs of $350.00 per user will be procured from each county DWI Program. The number of users will vary by county DWI Program and each county DWI Program will establish user rights and permissions as each user is established.
The cost includes all costs associated with the implementation, transfer of data, training, and system maintenance for each subsequent year. The cost also includes all costs for training, system maintenance, customization, and cost per user for subsequent years.

VIII. Key Assumptions

Delays in design approval from Procuring Agency will lead to project kick-off delays, etc.

IX. Acceptance

The Procuring Agency along with selected users will inspect, review, test, and go through a validation process, approval process, client sign-offs and acceptance. To include the acceptance criteria:

a. Is what was agreed on
b. Is Feasible
c. Is Accurate
d. Solution fit in with requirements
e. Meets standards

X. Project Management Reporting: The Procuring Agency is responsible for signing off on deliverables, approving scope, changes/adjustments, and handling support and maintenance.
## Exhibit “B”
### Project Plan

<table>
<thead>
<tr>
<th>TASK</th>
<th>Start date</th>
<th>Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Signing</td>
<td>9/10/19</td>
<td></td>
</tr>
<tr>
<td>Kickoff Meeting - Teleconference</td>
<td>9/12/19</td>
<td></td>
</tr>
<tr>
<td>Determine Hardware Requirements – Integration (only if integrating)</td>
<td>9/12/19</td>
<td>9/18/19</td>
</tr>
<tr>
<td>Obtain Server Environment</td>
<td>9/12/19</td>
<td></td>
</tr>
<tr>
<td>Install System</td>
<td>9/12/19</td>
<td></td>
</tr>
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</table>

### Implement and Validate Integration

<table>
<thead>
<tr>
<th>Task</th>
<th>Start date</th>
<th>Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deliver Integration Materials</td>
<td>9/12/19</td>
<td></td>
</tr>
<tr>
<td>Develop Integration</td>
<td>9/12/19</td>
<td>10/14/19</td>
</tr>
<tr>
<td>Test Integration</td>
<td>10/14/19</td>
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### Legal Codes

<table>
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<tr>
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<th>Due date</th>
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</thead>
<tbody>
<tr>
<td>Obtain NM legal codes</td>
<td>9/12/19</td>
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### Case Plans

<table>
<thead>
<tr>
<th>Task</th>
<th>Start date</th>
<th>Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Determine if Case Plan Needed</td>
<td>9/12/19</td>
<td></td>
</tr>
<tr>
<td>Create/Implement Case Plan (if needed)</td>
<td>9/12/19</td>
<td>9/20/19</td>
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</tbody>
</table>

### Configurations

<table>
<thead>
<tr>
<th>Task</th>
<th>Start date</th>
<th>Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Determine and set configuration options</td>
<td>9/12/19</td>
<td>10/14/19</td>
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</tbody>
</table>

### Testing

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<tr>
<th>Task</th>
<th>Start date</th>
<th>Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identify test team</td>
<td>9/12/19</td>
<td>9/18/19</td>
</tr>
<tr>
<td>Test the system for conformity</td>
<td>10/14/19</td>
<td>10/25/19</td>
</tr>
<tr>
<td>Resolve any identified issues</td>
<td>10/28/19</td>
<td>11/08/19</td>
</tr>
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</table>

### Initial Trainings

<table>
<thead>
<tr>
<th>Task</th>
<th>Start date</th>
<th>Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>User Training</td>
<td></td>
<td>11/12/19</td>
</tr>
</tbody>
</table>

### Go Live Process

<table>
<thead>
<tr>
<th>Task</th>
<th>Start date</th>
<th>Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>User Communication</td>
<td>10/10/19</td>
<td>11/12/19</td>
</tr>
<tr>
<td>Begin using system</td>
<td></td>
<td>11/13/19</td>
</tr>
</tbody>
</table>
Exhibit “C”

Additional terms subject to the Supremacy Clause referenced in the State of New Mexico Statewide Price Agreement DWI Offender Screening Program Agreement No. 90-000-18-00016

1. DEFINITIONS

"Documentation": Text materials which describe the design, function, operation and use of the Licensed Software and which are customarily delivered by Noble to licensees thereof.

"Licensed Software": The source and object code software identified below as Licensed Software, delivered solely by the Hosting Site.

"Third Party Materials": Those products specified below which will be procured by Noble from a third party for delivery to Client. Unless identified in document below or upon notice and written approval of Client, Noble will not deliver any Third Party Materials.

"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.

"Work Order": A written document, in substantial conformity with the model work order outlined below, signed by both parties, specifying the mutually-agreed upon terms for the performance of additional tasks by Noble 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 section 4, below, and the acceptance criteria for such software.

“Hosted Site”: An internet-based website maintained by Noble for the purposes of delivering the Licensed Software to Client.

2. SCOPE OF TASKS

Upon execution of this Agreement and receipt of the license fees due hereunder, Noble will promptly deliver a hosted website with the Licensed Software to Client and accomplish its responsibilities under this Agreement provided that Client timely completes its responsibilities under this Agreement, specifically including those set forth below in Client Tasks. Client is responsible for meeting the environmental site requirements set forth below: Client Tasks in a timely manner and at the Client's cost. Client may request the performance of additional tasks. If Noble 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 Agrement shall apply to performance of the Work Order. The pricing for T&M work shall be at Noble customary pricing schedules unless a specific price is set forth in the Work Order.

3. ACCEPTANCE

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.

If a Work Order calls for installation and acceptance testing, the parties agree to the following procedure.

Following proper installation of the Licensed Software by Noble pursuant to the Work Order, unless specified in the Work Order, the parties will perform the acceptance tests provided by Noble 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 Client's functional requirements for such software. If the Licensed Software (including newly developed software) substantially performs the acceptance tests, Client shall notify Noble 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.

If Client fails to notify Noble of any material defect within thirty (30) days of installation of the Licensed Software, the Licensed Software shall be deemed accepted by Client.

If Client notifies Noble in writing and demonstrates to Noble that the Licensed Software has not substantially met the acceptance tests, Noble 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.

Corrections and modifications will be accomplished on a timely basis to make the Licensed Software ready for retesting by Client. The parties shall repeat the acceptance tests as soon as reasonably requested by Noble and Client shall notify Noble 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), Client may issue a conditional acceptance, upon terms acceptable to both parties, which will permit utilization in production and continued correction by Noble of any defects. If Client declines to grant conditional acceptance, then Client may terminate this Agreement in accordance with section 8.5. Otherwise, the date of the last such test shall be the acceptance date.

In the event the Licensed Software (or parts thereof) does not pass the applicable acceptance test(s), but is utilized by Client 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).

4. TITLE

Noble 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 ("Noble Property").

Client shall retain title to all intellectual property rights embodied in software, and any modification or enhancement thereof, that is provided or developed solely by Client without any violation of the terms of this Agreement and which is not Noble Property ("Client Property").

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 Noble Property and/or Client Property, which may be delivered by Noble or embedded in Noble'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:

New Property which contains Client's proprietary or confidential information shall belong to Client to the extent it contains such information; and

New Property which contains Noble's proprietary or confidential information shall belong to Noble to the extent it contains such information; and

Any other New Property for which ownership is not allocated by Work Order or by the above default rules shall belong to Noble.

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.

In as far as data entered into the system by Client, such data shall be deemed to be owned by Client. Noble 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.
5. LICENSE

In accordance with the terms herein, Noble grants to Client, and Client accepts from Noble, a personal, non-exclusive and non-transferable (except as otherwise specifically provided by this Agreement) Hosted Site to use the current version of Licensed Software (or any other version provided to Client by Noble) on Noble's hosting servers for the specified number of User Positions for the term of this agreement.

Software shall be able to be used at any of Client's business premises without the prior approval of Noble. The Licensed Software may not be used at other locations unless Noble 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 Client, provided (1) the total number of User Positions at which the Licensed Software is used by Client does not exceed the number of User Positions specified below and (2) Client provides Noble with written notice within thirty (30) days after such transfer.

The Licensed Software shall be used only for the processing of Client's own business, which may include servicing and maintaining records on behalf of its customers and clients. Client shall not permit any third party to use the Licensed Software. Authorized agents or contractors of Client acting for Client shall not be considered "third parties" for purposes of such limitation provided, however that disclosure of Noble Confidential Information to such agents or contractors will be subject to the provisions of Section 10 ("Confidentiality").

Client 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 Client's business premises by persons not employed by or under contract with Client; 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.

Client shall not, either directly, or through a third party, reverse engineer, disassemble or decompile any software provided by Noble, 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 Client reproduce or distribute, the Licensed Software or Hosted Site, or any part thereof, as part of any other software program. Further, Client may not create any software program which makes direct function calls to any libraries which are Third Party Materials and which are designated as unavailable for such purposes.

Client is strictly prohibited from installing any third party software on Noble's servers without the express written authorization of Noble.

In the event that the authorized third party software disrupts Noble's server, Noble shall have the right to temporarily disable the software until the problem can be resolved.
In the event that the Client installs third party software on Noble's servers without the express written authorization of Noble's, Noble shall have the right to terminate the Services without notice pursuant to Section 8 herein.
6. TERM AND TERMINATION

Notwithstanding anything herein, pursuant to Sections 7.7 and 11, Noble may immediately terminate this agreement and withdraw the hosting services in the event that in the sole discretion of Noble, it determines that:

Client is using or allowing, authorizing or assisting the Hosted Site to be used for illegal purposes; or

Client downloads or installs third party software to its Hosted Site without the express written authorization of Noble.

7. WARRANTIES

Noble warrants that, for thirty (30) days following Client 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 Section 5.2(a) ("Warranty"). To the extent that Client notifies Noble in writing during the applicable Warranty Period of any material non-conformity of the Licensed Software or deliverables with such acceptance level, and provides Noble with (a) Client's estimation of the severity of such non-conformity and (b) such printouts, typescripts, documentation and other details of such non-conformity as Noble shall request, Noble'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, Noble shall be entitled to take into account the severity of the defect. In the event that Noble determines that the Licensed Software is not defective in such respect, Client shall reimburse Noble for its services at Noble's then current consulting rate for such services.

To the extent its agreement with a supplier of Third Party Materials permits, Noble shall pass through to Client any performance warranty relative to such Third Party Materials; provided, however, that Noble makes no additional or supplemental warranty with respect thereto. Noble 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 Noble is a party or by which it is bound.

Noble 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, Noble shall, upon receipt of written notice from Client describing a breach of the foregoing Warranty in such reasonable detail as is requested by Noble, perform the services described in such written notice so as to conform to generally-accepted industry standards and practices.

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.

If the Licensed Software is not in substantial compliance with the warranties contained in this Agreement at the end of the Warranty Period, Noble shall extend the Warranty Period until the Licensed Software is brought into such compliance.
If any modification is made to the Licensed Software by Client without Noble's approval, this Warranty shall immediately be terminated with respect to such modified software. Correction for difficulties or defects traceable to Client's unauthorized modifications or unauthorized systems changes shall be billed to Client at Noble's standard time and material charges. Noble makes no warranties with regard to Third Party Materials. Along with the transfer of title, Noble agrees to transfer and assign to Client all of Noble's rights and interests in and with respect to all purchase agreements for Third Party Materials being supplied under this Agreement between Noble and other manufacturers and distributors, subject to any limitations set forth in such agreements relating to such transfers. Upon request by Client, all purchase agreements will be submitted to Client for prior approval. Noble will execute any documents or instruments reasonably necessary to effect the transfer and assignment of Noble's rights and interests thereunder. Noble makes no representation as to the effectiveness, adequacy or enforceability of such transferred rights.

Except as otherwise specifically provided by this Agreement, Noble'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 Section 9 regardless of whether any liability is based on contract or other theory.

THE WARRANTIES IN THIS SECTION ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY NOBLE. NOBLE MAKES AND CLIENT 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 NOBLE, EXCEPT NOBLE'S DULY AUTHORIZED REPRESENTATIVE, IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF NOBLE AS SET FORTH HEREIN.

8. PROPRIETARY RIGHTS INDEMNITY

Noble shall defend, indemnify and hold harmless Client 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 Client 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 Noble is promptly notified in writing of such claim and provided further that Noble shall have the exclusive right to control such defense. The acceptance, by Noble, of tender of defense of any claim shall give Noble the right to select legal counsel and manage the defense, provided that Client shall be given regular notice and opportunity to participate in such litigation, at Client's expense. In no event shall Client settle any claim, lawsuit or proceeding without Noble's prior written approval. Client may, at its own expense, assist in such defense if it so chooses.

In the event of any such claim, litigation or threat thereof, Noble, at its sole option and expense, may procure for Client 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 Noble, after giving due consideration to all factors including financial expense, or if a temporary or final injunction or other judgment is obtained against Noble with respect to the Licensed Software or any part thereof, Noble may cancel this Agreement or the applicable Work Order and the licenses granted thereunder upon fifteen (15) days written notice to Client and shall refund to Client the unamortized portion of the amounts paid to Noble by Client 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 Noble shall be discharged of all further liability hereunder except for the obligations set forth.

To the extent its agreement with a vendor of Third Party Materials permits, Noble will pass through to Client any proprietary rights indemnity relating to such Third Party Materials; provided, however, that Noble gives no additional or supplemental indemnity with respect thereto.

The foregoing states the entire liability of Noble and the exclusive remedies of Client with respect to the infringement of any proprietary rights by the Licensed Software or any parts thereof, and Client hereby expressly waives any other such liabilities.

9. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES OF THE OTHER PARTY OR OF DIRECT DAMAGES GREATER THAN THE LIMITATIONS ESTABLISHED HEREIN EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Noble shall not be liable to Client for cumulative direct damages greater than the lesser of (1) the total amount having then been paid by Client to Noble under this Agreement, or (2) if such damages arise in connection with the performance of any Work Order, the amount having then been paid by Client to Noble under such Work Order; provided, however, that the limitation of this sentence shall not apply to Noble's obligations set forth in "Proprietary Rights Indemnity" or in "General Indemnity" of this Agreement.

Except where the limitation does not apply as described above, Client releases Noble from all obligations, liability, claims, or demands relating to the Licensed Software and Documentation and this Agreement in excess of the limitations provided for in this Section. The parties acknowledge that the limitation set forth in this Section is integral to the amount of fees levied in connection with the license of the Licensed Software and Documentation and the services rendered hereunder and that, were Noble to assume any further liability other than as set forth herein, such fees would of necessity be set substantially higher.

Client further agrees that it shall have no claim or cause of action against third party licensors to Noble of any Third Party Materials which are embedded in the Licensed Software, except to the extent such rights have been duly assigned to Client.
10. CONFIDENTIALITY

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 Noble while on the premises of Client shall be deemed Confidential Information whether marked as such or not.

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.

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.

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 (d) 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.

Notwithstanding the restrictions of this Section 18, Noble or Client may announce the parties' relationship in a press release subject to the reasonable written approval of the other party.

LICENSED SOFTWARE

LICENSED SOFTWARE

All listed Licensed Software will be delivered by a Hosted Site, created and maintained by Noble for the purposes of delivering the Licensed Software to Client via the Internet.

<table>
<thead>
<tr>
<th>PRODUCT</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noble Assessment Platform</td>
<td>Hosted, web-based application for the delivery of assessment and case planning tools.</td>
</tr>
</tbody>
</table>
USE OF LICENSED SOFTWARE

The Licensed Software listed above may be used in accordance with the Software License Agreement to support the following:
Up to 400 named users

THIRD PARTY MATERIALS

OVERVIEW

Noble is not responsible for the procurement and delivery of any third-party materials to the Client as part of the execution of this agreement.

CLIENT TASKS

OVERVIEW

This document describes the major activities required of the Client staff or their consultants or agents in the execution of this Agreement.

CLIENT TASKS

The Client will provide the necessary hardware, operating system software, web server software, and database software for the installation of the Licensed Software, as agreed between Noble and the Client. Implementation services such as installation, implementation, and training will be executed as a separate Work Order referencing this Agreement;
The Client will provide an appropriate environment, during normal business hours, upon reasonable notice, for Noble on-site support personnel and training staff to work at Client's site;
The Client will provide network related services to allow clients to access the Licensed Software;
The Client will provide client operating systems and platforms with Microsoft Internet Explorer 11 or better, as well as Adobe Reader for the viewing of any reports;
If Client elects to utilize integration services, Client will develop and maintain the middleware component required for integration;
If Client elects to migrate data from previous assessment systems, Client will provide Noble with the data to be migrated in SQL Server backup file format and authorize Noble to access and utilize provided data for the purposes of migrating data to the Noble Assessment Platform.

LICENSED SOFTWARE
The Licensee may use the following Software at the locations listed/defined in this Agreement.

INSTALLATION/DELIVERY SERVICES/ACCEPTANCE
In order to ensure the effectiveness and success of the delivery services, Noble will assign the following project team:
(1) Client Representative
(1) Systems Engineer
(1) Application Consultant
At times additional staff may be required for the current tasks, and equally at other times the number of staff working on a project may be less than that indicated above. The team members listed above will charge their time as agreed by Customer and Noble toward the services agreement as listed above.

ACCEPTANCE CRITERIA

ASSESSMENT PLATFORM
All Active Enterprise Component software (as delineated above) is deemed accepted after delivery to client and five days of the system running without a severity 1 error.

CASE PLANNING
The Case Planning module will be considered accepted following all case plan reports allowed for are able to be completed and be saved for a subject.

INTEGRATION
Integration will be deemed accepted after the system successfully imports data for all areas of the application for which the customer has implemented integration methods per the documentation.

The system may not be considered acceptable if it encounters any unresolved severity 1 problems as defined in the Noble Software Maintenance Agreement. Customer will accept the system in parts as indicated in the project plan and in conjunction with the system test plans.

TRAINING PROGRAM

In an attempt to meet Customer’s training requirements the following schedule has been constructed to offer a purchased block of training for classes up to 25 students. The following classes are currently available:

<table>
<thead>
<tr>
<th>PRODUCT</th>
<th>DAYS</th>
</tr>
</thead>
<tbody>
<tr>
<td>IDA Training</td>
<td>xx</td>
</tr>
</tbody>
</table>

SAMPLE NOBLE SOFTWARE GROUP, LLC WORK ORDER

Addendum Reference (Date/Number/Code) ______________
This addendum specifies additional software licenses and services to be provided by Noble Software Group, LLC ("NOBLE") to New Mexico State Purchasing Agent on behalf of the Department of Finance and Administration, Local Government Division (DFA/LGD) ("Client"). All terms and conditions of the Software License Agreement between Noble and Client, dated ("Agreement"), apply to this addendum as if the same had been set forth herein in full. In case of conflict between the terms of this addendum and the Agreement, the terms of this addendum shall prevail.

1. PROJECT IDENTIFICATION AND DESCRIPTIVE INTRODUCTION
2. DESCRIPTION OF SOFTWARE LICENSED AND/OR SERVICES
2.1 Software and Authorized Sites. The software under this addendum consists of the following components which may be used at the following authorized sites:
2.2 Services. The implementation or other services consist of the following
3. FEES
3.1 Software. Individual prices and the total price are as follows:
3.2 Maintenance on Software
Quartely rate: $_____ or the following percentage of the software list price:
_____%
Maintenance is under the terms of the _________________ agreement dated
______________ ("Maintenance Agreement")
3.3 Services (e.g., installation, support, training). Services will be performed on either a time-and-materials-and-expenses basis or a fixed price basis at the following rates/fees:
3.4 Hardware (if any)
3.5 Expenses (e.g., travel, meals, hotel)
4. PAYMENT SCHEDULE (WHEN ARE TO BE PAID)
4.1 Software license fees
4.2 Services
4.3 Maintenance fees
4.4 Hardware
5. PROJECT PLAN/PERFORMANCE SCHEDULE
6. ACCEPTANCE CRITERIA AND PROCEDURE. UNLESS SPECIFIED BELOW, ACCEPTANCE IS UPON DELIVERY.
7. WARRANTY
8. PREREQUISITES/CLIENT TASKS
9. OWNERSHIP OF THE DELIVERABLES