

PARTICIPATING ADDENDUM
NASPO VALUEPOINT COOPERATIVE PURCHASING ORGANIZATION
Software Value Added Reseller (SVAR)
Administered by the State of Arizona (hereinafter "Lead State")

MASTER AGREEMENT No: ADSPO16-130651
SHI International Corp. (hereinafter "Contractor")

And

State of Idaho (hereinafter "Participating State")

PADD17200277

1. **Scope:** This Participating Addendum ("PA") covers the *Software Value Added Reseller (SVAR) Master Agreement* led by the State of Arizona for use by State of Idaho agencies and other entities located in the State of Idaho (the "State"). All state governmental entities within the State of Idaho and public agencies (as defined by Idaho Code, Section 67-2327) (referred to as "Purchasing Entities" within this PA) are authorized to purchase products and services under the terms and conditions of the NASPO ValuePoint (formerly "WSCA" or "WSCA-NASPO") (hereinafter "ValuePoint") Contract (Master Agreement). These public agencies include any city or political subdivision of the State of Idaho, including, but not limited to counties; school districts; highway districts; port authorities; instrumentalities of counties, cities, or any political subdivision created under the laws of the State of Idaho; and public schools and institutions of higher education. It will be the responsibility of the public agency to independently contract (i.e., issue purchase orders) with the Contractor and/or comply with any other applicable provisions of Idaho Code governing public contracts.

2. **Participation:** Use of specific ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. **Individual Customer:** Each ordering agency ("Purchasing Entity") that places an order under this PA will be treated as if it is an individual customer. Except to the extent modified by this PA, each Purchasing Entity will be responsible to follow the terms and conditions of the Master Agreement and this PA; and will have the same rights and responsibilities for its purchases as the Lead State has in the Master Agreement. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities; and will have the same rights to any indemnity or to recover any costs allowed in the Master Agreement for its individual purchases.

Additionally, the Division of Purchasing is entering into this PA for the convenience of Purchasing Entities, and the Division of Purchasing bears no responsibility for any agreements such as end user license agreements and service level agreements to which Purchasing Entities agree. It shall be the responsibility of Purchasing Entities to seek their own agencies' legal counsel prior to agreeing to the terms of any end user license agreements.

4. **Term:** The term of this PA will be effective upon execution by the parties and continue through June 3, 2018, unless extended, renewed or terminated earlier.

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5. Participating State Modifications or Additions to Master Agreement: The following modifications or additions apply only to actions and relationships within the Participating State and supplement and/or add to the Master Agreement ("Contract").

- a. **Parties.** The parties to this PA are SHI International Corp. ("Contractor") and the State of Idaho by and through its statutory agent, the Division of Purchasing within the Department of Administration ("State") on behalf of the entities identified in the paragraph titled "Scope" of this PA (Purchasing Entities).
- b. **Reporting.** The Contractor shall provide:
 - i. Any reports specifically required by the Master Agreement to be reported to Participating States.
 - ii. At the Division of Purchasing's request, custom reports, which may include, but not be limited to, reporting on the most common items purchased; comparisons between Purchasing Entities; reports to aid Purchasing Entities in inventory control; and reports that identify delivery times per order. Contractor will provide custom reports in Excel format as requested by the Division of Purchasing, on an occasional basis (no more frequently than four (4) times per contract year), at no additional charge.
- c. **Idaho Administrative Fee.** A 1.25% Administrative Fee will apply to all purchases made under the resulting PA by any state or public agency in Idaho. On a quarterly basis, the Contractor shall remit to the State of Idaho an amount equal to one and one-quarter percent (1.25%) of the Contractor's net (sales minus credits) quarterly sales made under the PA. Administrative Fee payments and reports to the State of Idaho are due no later than 30 calendar days after the end of each calendar quarter. Pricing has been adjusted to incorporate the Administrative Fee so that the price to Purchasing Entities will reflect the adjustment. Notwithstanding the adjustment, all pricing updates and other terms and conditions of pricing shall be as set forth in the Arizona Master Agreement (ADSPO16-130651).

State of Idaho Reporting Time Line:

1st Quarter: July 1 – September 30
2nd Quarter: October 1 – December 31
3rd Quarter: January 1 – March 31
4th Quarter: April 1 – June 30

Report of Contract Purchases:

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Quarterly reports must accompany each Administrative Fee payment; and be furnished electronically in Microsoft Excel format. These reports will include the names of the accounts corresponding to the account numbers. For each account number, you must provide a listing of all items purchased during the prior quarter indicating the item # and description, the quantity delivered, the delivery destination, the date of delivery, the unit prices, and the total dollar amount (as well as any other data elements required by the State of Idaho). Accounts must be grouped, with state agencies grouped separately from political subdivisions (e.g., cities, counties, school districts, water districts, etc.). The reports shall also include the Contractor's name the PA number.

The report must be emailed to: purchasing@adm.idaho.gov.

Administrative Fee Payment checks must be made out and mailed to:

Division of Purchasing, State of Idaho
P.O. Box 83720
Boise, ID 83720-0075

- d. Restrictions.** Purchases under this PA are restricted to purchases of Commercial-Off-the-Shelf (COTS) (factoring the exception in the paragraph directly below) products that are listed on the Pricing Sheet provided to and accepted by the state of Idaho (see the document with the heading "Pricing Sheet – Rates by Publisher – for Idaho"). The Pricing Sheet may be changed during the term of the PA via mutual, written agreement between the parties as part of an amendment to this PA.

Each Purchasing Entity may also purchase third party IT services required for installation, maintenance, and upgrade of the procured software. Purchases for any other services are not allowed under this PA. Purchases for Microsoft O365 are allowed under this PA. Other SaaS (Software as a Service) products may be purchased under this PA, as long as the following two criteria are met:

1. It is a product provided by a publisher listed on the Pricing Sheet.
2. The product has previously been packaged and delivered in a traditional COTS manner (such as via CD or DVD), and the publisher now only provides the product as SaaS (does not provide via CD or DVD).

Further, purchases of software products under other current Idaho contracts are excluded from

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this PA, with the exception that, for any existing Idaho contract for software value added reseller, the same products offered on such contract(s) may also be purchased under this PA.

Additionally, there are other restrictions listed in the Pricing Sheet.

- e. **Governing Law.** The State of Idaho's PA and all purchase orders issued thereunder by Purchasing Entities shall be construed in accordance with, and governed by the laws of the State of Idaho, and the parties hereto consent to the jurisdiction and exclusive venue of the state courts of Ada County in the State of Idaho in the event of any dispute with respect to the PA.
- f. **Assignment.** Contractor shall not assign this PA, or its rights, obligations, or any other interest arising from this PA, or delegate any of its performance obligations, without the express written consent of the Administrator of the Division of Purchasing. Transfer without such approval shall cause the annulment of the PA, at the option of the State. All rights of action, however, for any breach of the PA are reserved to the State. (I.C. § 67-5726(1)).

Notwithstanding the foregoing, to the extent required by applicable law (including I.C. § 28-9-406), Contractor may assign its right to payment on an account provided that the State shall have no obligation to make payment to an assignee until thirty days after Contractor (not the assignee) has provided the responsible procurement officer with (a) proof of the assignment, (b) the identity of the specific state contract to which the assignment applies, and (c) the name of the assignee and the exact address to which assigned payments should be made. The state may treat violation of the clause as an event of default.

- g. **Amendments.** Amendments to the Master Agreement (including, but not limited to extensions, renewals, and modifications to the terms, conditions and pricing) will automatically be incorporated in this PA unless the State of Idaho elects not to incorporate an

amendment by providing written notification to Contractor; which notice must be provided within ten (10) business days of the date of the amendment to the Master Agreement, in order to be effective. Failure to provide notice in accordance with this Section 5.g will result in the Master Agreement amendment automatically being incorporated in this PA.

- h. **Insurance.** Notwithstanding section 6.A. of the Special Terms and Conditions of the Contract, the Contract is supplemented with the following provisions:

REQUIREMENT TO PROVIDE PROOF OF INSURANCE: The Contractor and its subcontractors (if the Contractor has any subcontractors that will provide goods or services to the State under the

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PA) shall provide certificates of insurance to the State of Idaho in accordance with section 6 of the Special Terms and Conditions of the Contract. These certificates must be provided within seven (7) business days after the effective date of this PA.

STATE OF IDAHO REQUIREMENTS FOR WORKERS' COMPENSATION INSURANCE: The Contractor shall provide and maintain Workers' Compensation Insurance and Employer's Liability for the term of the PA. The employer's liability shall have limits not less than \$100,000 each accident for bodily insurance by accident, \$500,000 disease policy limit, and \$100,000 disease, each employee.

For Workers' Compensation Insurance, the Contractor must provide either a certificate of Workers' Compensation insurance issued by a surety licensed to write Workers' Compensation Insurance in the State of Idaho or an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Idaho Industrial Commission.

- i. **Priority of Documents.** This PA consists of and precedence is established by the order of the following documents:
1. This PA; and
 2. The Master Agreement (including Contract Order of Precedence).

The parties intend to include all items necessary for the proper completion of the scope of work. The documents set forth above are complementary and what is required by one shall be binding as if required by all. However, in the case of any conflict or inconsistency arising under the documents, a lower numbered document shall supersede a higher numbered document to the extent necessary to resolve any such conflict or inconsistency. Provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur.

Where terms and conditions specified in the Contract differ from the terms in this PA, the terms and conditions of this PA shall apply.

- j. **Price Agreement Numbers.** All purchase orders issued by Purchasing Entities within the jurisdiction of this PA shall include the following price agreement numbers:

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k. Terms and Conditions in the Master that Do Not Apply to this PA. Any terms or conditions contained in the Master Agreement that do the following are not applicable to this PA:

1. Waive the sovereign immunity of the state of Idaho;
2. Subject the state of Idaho, its agencies, or political subdivisions of the state of Idaho to the jurisdiction of the courts of other states;
3. Limit the time in which the state of Idaho, its agencies, or political subdivisions of the state of Idaho may bring a legal claim to a period shorter than that provided in Idaho law;
4. Impose a payment obligation, including a rate of interest for late payments, less favorable than the obligations set forth in Section 67-2302, Idaho Code; or,
5. Require the state of Idaho, its agencies, or political subdivisions of the state of Idaho to accept arbitration or to waive right to a jury trial.
6. Require indemnification not specifically authorized by the Idaho legislature or subject to appropriation (pursuant to Section 67-9213, Idaho Code, and Section 59-1016, Idaho Code).
7. Hold employees or officers of the state of Idaho and of political subdivisions of the state of Idaho personally liable.

l. Product Additions and Deletions. Over the term of the PA, product needs or volumes may change and publishers may be added to or deleted from the Pricing Sheet by amendment to the PA. Upon receiving such a request to add or delete a publisher, Contractor agrees to disclose to the State if they are unable to do business with a software publisher for any reason. Should the State request products to be added, Contractor will contact the Division of Purchasing and advise of any obstructions to adding the product.

m. Limitation of Liability. The Limitation of Liability provision found in the "Exceptions Document" of the Master Agreement is not applicable to this PA. For the first year of the term of this PA, the Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to one million five hundred thousand dollars (\$1,500,000.00), Thereafter, the Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two (2) times the fees paid or payable by the State to the Contractor

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under this PA for the year previous to the incident which gave cause for such liability.

The foregoing limitation of liability shall not apply to claims arising under provisions of this PA calling for indemnification for third party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by the Contractor's negligence or willful misconduct.

In no event will either the Contractor or the State be liable for incidental, indirect, or special damages, even if notification has been given as to the possibility of such damages, except to the extent that Contractor's liability for such damages arises out of the preceding paragraph.

In no event will either the Contractor or the State be liable for consequential damages, even if notification has been given as to the possibility of such damages

The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to any applicable statutory limit on damages. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.

n. Use of Government Credit Cards. The Contractor must not accept credit cards for purchases made under this PA.

6. Primary Contacts: The primary contact individuals for this PA are as follows (or their named successors):

Contractor

Name	Andrea Keno
Address	SHI International Corp.
Telephone	(425) 425-2462
E-mail	Andrew_Keno@SHI.com

Participating State

Name	Jason Urquhart, Purchasing Officer
Address	Division of Purchasing 650 W. State St., RM. B-15 P.O. Box 83720 Boise, ID 83720-0075
Telephone	208-332-1608

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Fax	208-327-7320
E-mail	Jason.urquhart@adm.idaho.gov

7. **Applicable Terms:** The State agrees to the terms of the Master Agreement only to the extent the terms are not in conflict with this PA or with State law.

8. **Orders:** Any Order placed by a Purchasing Entity for a Product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

9. **Records Maintenance:** The Contractor shall maintain or supervise the maintenance of all financial records necessary to properly account for all payments made to the Contractor for the costs authorized by the PA. These financial records shall be retained by the Contractor for at least three (3) years after the PA terminates, or until all audits initiated within the three (3) years have been completed, whichever is later.

10. **Entire Agreement:** This PA and the Master Agreement together with their exhibits and attachments, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this PA and the Master Agreement, together with their exhibits and attachments, shall not be added to or incorporated into this PA or the Master Agreement or their exhibits and attachments, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this PA and the Master Agreement and their exhibits and attachments shall prevail and govern in the case of any such inconsistent or additional terms.

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IN WITNESS WHEREOF, the parties have executed this PA as of the date of execution by both parties below.

Participating State:	Contractor:
By: 	By: 
Name: <i>Jason R. Urquhart</i>	Name: Cassie Skelton
Title: <i>Purchasing Officer</i>	Title: Senior Contract Specialist
Date: <i>11/18/16</i>	Date: November 16, 2016