

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

MASTER AGREEMENT
SHI International
Master Agreement No: ADSP016-130651
(hereinafter " Contractor")

And

State of Montana (hereinafter
"Participating State/Entity")

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1. Scope: This addendum covers the *Software Value Added Reseller* contract led by the State of Arizona for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize State contracts with the prior approval of the state's chief procurement official.

2. Participation: Use of specific NASPO 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.

COOPERATIVE PURCHASING: Under Montana law, public procurement units, as defined in 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units. However, the State Procurement Bureau makes no guarantee of any public procurement unit participation in this contract.

3. Participating State Modifications or Additions to Master Agreement: *(These modifications or additions apply only to actions and relationships within the Participating State.)*

Participating State must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

3.1. ACCESS AND RETENTION OF RECORDS:

Contractor agrees to provide the department, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of seven years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

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3.2 **COMPLIANCE WITH LAWS:** Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.1. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

3.3 **NON-COMPLIANCE WITH DEPARTMENT OF ADMINISTRATION REQUIREMENTS:** The Department of Administration, pursuant to section 2-17-514, MCA, retains the right to cancel or modify any contract, with mutual written agreement of Contractor, project or activity that is not in compliance with the Department's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

3.4 **NON-EXCLUSIVE CONTRACT:** The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

ENTERPRISE SOFTWARE: Purchases of the below listed eight enterprise software titles, IF purchased via the *Software Value Added Reseller Contract*, shall only be made via this Participating Addendum with SHI, and no other participating contractor(s): 1) Adobe 2) Citrix 3) Microsoft 4) Airwatch 5) ESET 6) Oracle 7) Flexera 8) Tableau

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3.5 **REDUCTION OF FUNDING:** The State must by law terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. Any such termination shall not affect the State or Contractor's obligations on orders accepted prior to the date of termination. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

3.6 **REGISTRATION WITH THE SECRETARY OF STATE:** Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

3.7 **VENUE:** The parties agree that any litigation concerning Montana's usage of the subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA)

3.8 **ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** The Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA). Notwithstanding the foregoing, consistent with commercial practice, Contractor shall be permitted to subcontract with or engage with its commercial contract

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manufacturers, partners and third party service providers to perform its responsibilities under this Participating Addendum.

3.9. FINANCING: Financing IS authorized under this participating addendum.

3.10. INDEMNIFICATION: Supplementation is hereby made to Paragraph 14 of SHI Master Agreement ADSP016-130651: The Contractor shall defend, indemnify and hold harmless the Participating Entity, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from act(s), error(s), or omission(s) or alleged act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement and the Participating Addendum.

3.11. LIMITATION OF LIABILITY: The Limitation of Liability provision found in the 'Exceptions Document' of the Master Agreement is not applicable to this PA. The Contractor's liability for damages to the Participating Entity for each claim, 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 Participating Entity to the Contractor 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 Participating Entity 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 Participating Entity be liable for punitive, consequential, 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 Section 3.10. INDEMNIFICATION.

The Participating Entity'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 Participating Entity's sovereign immunity or any other immunity from suit provided by law.

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3.12. **REQUIRED REPORTING:** Contractor shall submit quarterly reports to the Contracts Officer (CO) assigned by the State to manage this contract. Contractor shall provide CO with an electronic usage report (Excel) which will list the following information at the minimum: purchasing entity, description of items purchased, date of purchase, contract price, and the extended price for each transaction. These reports are due no more than 30 days after the end of the quarter and should be submitted to: MasterContractReports@mt.gov

First Quarter:	July 1 through September 30
Second Quarter:	October 1 through December 31
Third Quarter:	January 1 through March 31
Fourth Quarter:	April 1 through June 30

3.13. **MONTANA ADMINISTRATIVE FEE:** Upon final execution of this PA, the State of Montana implements a 1.50% Administrative Fee, applying to all purchases made under this PA. The Contractor shall remit one and one-half percent (1.50%) of the net (sales, minus credits) quarterly sales amount, concurrent with the Required Usage Reporting in 3.12 above.

4. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Andrea Keno
Address	SHI International
Telephone	425-457-2462
E-mail	andrea_keno(@shi.com

Participating Entity

Name	Steve Haynes
Address	PO Box 200135 Helena, MT 59620
Telephone	406-444-2516
E-mail	SHaynes@mt.gov

5. **Orders:** Any order placed by a Participating Entity or Purchasing Entity for a product and/or

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service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

All orders should contain the following: 1) 'Purchase Order (PO) is subject to NASPO ValuePoint Master Agreement ADSP016-130651, and SHI-State of Montana Participating Addendum (PA).' 2) Purchaser Name, Organization, and Contact Information. 3) SHI Quote Number.

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

Participating State: Montana	Contractor: SHI International Corp.
By: 	By: 
Name: Cheryl Grey	Name: Natalie Slowik
Title: Administrator, State Financial Services Division	Title: Director of Response Team
Date: 3/2/2017	Date: 3/1/17
Approved as to Legal Content:	State of Montana CIO
By: 	By: 
Name: Mike Manion	Name: Ron Baldwin
Title: Chief Legal Counsel	Title: State CIO
Date: 2-6-2017	Date: