

PARTICIPATING ADDENDUM
NASPO Valuepoint COOPERATIVE PURCHASING PROGRAM
Software Value Added Reseller
Administered by the State of Arizona
(hereinafter "Lead State")
MASTER AGREEMENT
Master Agreement No: CTR060028
SHI International Corp
(hereinafter "Contractor" or "Contract Vendor")
and
State of Arkansas
Contract No: 4600052437
(hereinafter "Participating State/Entity")

A. 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 [or State Entity] authorized by that state's statutes to utilize State contracts with the prior approval of the state's chief procurement official.

B. PARTICIPATION:

All eligible purchasers ("Purchasing Entity" or "Participating Entity") within the State of Arkansas, including State agencies, K-12 educational institutions, and local public procurement units (cities, counties, municipalities), are authorized to purchase products and services under the terms and conditions of this Agreement.

C. INDIVIDUAL CUSTOMER:

Each State agency and political subdivision, as a Participating Entity, that purchases products/services **shall** be treated as if they were Individual Customers. Except to the extent modified by the State of Arkansas Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they **shall** have the same rights and responsibilities for their purchases as the State has in the Master Agreement and this Participating Addendum. Each agency and political subdivision **shall** be responsible for their own charges, fees, and liabilities. Each agency and political subdivision **shall** have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor **shall** apply the charges to each Participating Entity individually.

D. ACCESS TO CLOUD PRODUCTS AND SERVICES REQUIRE STATE CTO APPROVAL:

Unless otherwise stipulated in this Participating Addendum, Cloud Products & Services accessed through this Participating Addendum by State executive branch agencies are subject to the authority and prior approval of the State Chief Technology Officer's Office. The Contractor **shall** provide the Department of Information Systems (DIS) with a monthly report detailing cloud products and services purchased during the reporting period. Reporting **must** be submitted to DIS.Software.Contracts@arkansas.gov by the 15th of the following month. Such reports shall contain the following fields and data:

- Customer name;
- Customer purchase order number;
- order date;
- invoice date;
- product name;
- manufacturer part number;
- quantity;
- Customer unit price;
- Customer extended price; and
- UNSPSC codes (as further described below).
 - Cloud related UNSPSC codes to be reported:
 - 43231500 business function specific software;
 - 43232100 content authoring and editing software;

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- 43232500 educational or reference software;
- 43232600 industry specific software;
- 43232700 network applications software;
- 43232900 networking software; and
- 81112100 internet services.

The State Chief Technology Officer means the individual designated by the State Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a State.

E. CLOUD PRODUCTS AND SERVICES:

All servers and data associated with the Arkansas instance of the Contractor provided Cloud Products and Services **must** reside in the continental United States. Contractor **shall** perform all work on the Cloud Products and Services from within the continental United States of America. The Cloud Products and Services **must not** be accessed from outside of the U.S.

F. ORDER OF PRECEDENCE:

1. Arkansas's Participating Addendum (PA); Arkansas's Participating Addendum **shall not** diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contractor under the Terms of the Lead State's Master Agreement.
2. Lead State's Master Agreement (includes negotiated Terms & Conditions)
3. The Solicitation including all Addendums; and
4. Contractor's response to the solicitation.

These documents **shall** be read to be consistent and complementary. Any conflict among these documents **shall** be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to the Master Agreement are only those that are expressly accepted by the Lead State and **must** be in writing and attached to the Master Agreement as an Exhibit or Attachment. Notwithstanding the foregoing, ordering documents (purchase orders) may contain transaction-specific terms and each ordering document that is accepted by the Contractor shall become a part of this Agreement as to the products and services listed on the ordering document only. No other terms and conditions **shall** apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or references on the Contractor's website, in the Contractor's quotation/sales order or in similar documents subsequently provided by the Contractor (unless such terms are referenced in the Master Agreement).

G. STATE MODIFICATIONS TO MASTER AGREEMENT:

These modifications or additions apply only to actions and relationships with the Participating Entity.

H. PAYMENTS AND INVOICE PROVISIONS:

Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance by the Agency. The Participating State may not be invoiced in advance of delivery and acceptance of any products or services. Payment will be made only after the Contractor has successfully satisfied the ordering agency as to the goods and/or services purchased, rented or leased. Contractors should invoice the ordering agency by an itemized list of charges. Purchase Order Number and/or Contract Number should be referenced on each invoice.

Payments will be submitted to the Contractor at the address shown on the invoice. Payments should be tendered to the contractor within thirty (30) days of the date of invoice. After the sixtieth (60) day from the date of invoice, unless mutually agreed to, interest may be paid on the unpaid balance due to the contractor at the rate of one half (1/2) of one (1) percent per month in accordance with Arkansas

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Code Annotated §19-11-224. The Purchasing Entity will make a good-faith effort to pay within thirty (30) days after the date of invoice. The State shall have the right to dispute billed goods or services and withhold payment for those goods or services that are in dispute. Interest shall not be charged on disputed amounts while in dispute.

Contractor **shall** ensure that all invoices are sent directly to the State agency or local public procurement unit that purchased products from them.

All invoices should be forwarded to:

Agency Name
Attention: Accounts Payable
Address
City, Arkansas Zip Code

I. PURCHASE ORDER INSTRUCTIONS:

All Purchasing Entities issuing valid purchase orders within the jurisdiction of this participating addendum should include the following:

1. NASPO Valuepoint Master Agreement number **CTR060028**
2. State contract number 4600052437
3. Agency Name, Address, Contact, and Phone-Number
4. Applicable approvals
5. Orders shall be made out to the Contractor or Reseller

With the exception of an End User License Agreement (EULA), the Purchasing Entities shall not be required, by the Contractor or its subcontractors, to sign any additional terms and conditions when utilizing this Agreement.

J. CONVENIENCE FEE:

1. Convenience Fee
Contractor **shall** remit a convenience fee in the amount of one percent (1%) of all Contract Sales made to State, State Departments, and to local entities as defined in Arkansas Code Annotated § 19-11-206 (i.e. local governments, cities, counties, school districts, water districts, and other participants, collectively "State"). The convenience fee is based on Contractor invoice date and is effective upon the date of execution of this addendum. Contract Sales is defined as gross sale amounts less credits, taxes, regulatory fees and separately stated shipping charges not included in the unit prices. The State, at its sole discretion, may expand the applicability of this fee after providing notice to Contractors.

Unit prices are inclusive of the convenience fee and Contractor is not to charge the fee directly to the State in the form of a separate line item. Contracts **shall not** have separate or different prices for State Agency customers and local entities as defined in Arkansas Code Annotated § 19-11-206 participants.

2. Quarterly Reporting and Fee Remittance
Contractor **shall** submit a Sales Report documenting all contract sales, made to State and such submission, including any supplemental information submitted, is deemed public record.

The Sales Report **shall** be submitted, and the related convenience fee **shall** be remitted no later than thirty (30) calendar days after the end of each calendar quarter. The calendar quarters will end March 31, June 30, September 30, and December 31. The Sales Report **must** contain the following information:

- a. Complete and accurate details of all sales, credits, returns, refunds, and the like for the reporting quarter

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- b. Purchasing entity
 - c. Total of Convenience Fee amount due
 - d. Such other information as the State may reasonably request
 - e. If no Sales were made to State during the reporting quarter, then a report shall be submitted showing zero sales and zero convenience fees due.
 3. Payment of Convenience Fee
The Contractor **shall** timely remit Convenience Fee via Automated Clearing House (ACH) transactions, unless otherwise directed by State, to the bank account directed by the State. Failure to remit convenience fees timely and accurately in accordance with State requirements may result in Contractor's goods and services being made ineligible for purchase by State or any other recourse available, including contract cancellation, or as further provided for by law.
 4. Retention and Inspection of Records
The Contractor **shall** keep records of Sales to State in sufficient detail to enable the State to determine the Convenience Fee payable by the Contractor. At a maximum of one time per calendar year, unless otherwise mandated by law, and upon thirty (30) days prior written notice, State may examine and audit, at its own expense, Contractor's sales records and Sales Reports for completeness and accuracy. In the event that such examination reveals underpayment of the Convenience Fee, the Contractor shall immediately pay to the State the amount of deficiency. If the examination reveals an underpayment of 5% or more, then the Contractor **shall** reimburse the State for the cost of the audit.
 5. State and Contractor agree that the pricing may be one percent (1%) higher than that proposed under the Master Agreement #CTR060028. These prices are inclusive of the convenience fee and Contractor shall not charge the fee directly to the State in the form of a separate line item.
- K. RECORD RETENTION:**
Financial and accounting records relevant to State of Arkansas transactions under this Addendum **shall** be subject to examination by appropriate Arkansas government authorities for a period of five (5) years from the expiration date and final payment under this Addendum or extension thereof, provided, however, that such government authorities will provide thirty (30) days written notice to the Contractor of its intent to conduct such examination contemplated by this section.
- L. GOVERNING LAW:**
The laws of the State of Arkansas **shall** govern this Agreement. Nothing under this Agreement or the Master Agreement shall be deemed or construed as a waiver of the State's right of sovereign immunity.
- M. VENUE AND JURISDICTION:**
Venue for any claim, dispute, or action concerning an order placed against the contract **shall** be Pulaski County, Arkansas. Any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas State Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.
- N. TAXES:**
Personal Property tax will not be charged to Arkansas state agencies.
- O. TRAVEL EXPENSES:**
Expenses for travel **shall not** be reimbursed unless specifically permitted under the duties of the Contractor. All travel **must** be approved in advance by the State. Approved expenditures made by the contractor for travel will be reimbursed at the current rate paid by the State and in accordance with Arkansas Travel Guidelines and Procedures.

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P. SOFTWARE TERMS AND CONDITIONS:

Purchasing Entities that acquire software **shall** be subject to the license agreements distributed with such software ("EULA"); however, any language in a EULA which violates a Purchasing Entity's constitution, statute or other applicable law will be deemed void, and of no force or effect, as applied to the Purchasing Entity.

Q. CANCELLATION:

1. **For Convenience.** The State may cancel this Agreement for any reason by giving the Contractor written notice of such cancellation sixty (60) days prior to the date of cancellation.
2. **For Cause.** The State may cancel this Agreement for cause when the Contractor fails to perform its obligations under it by giving the Contractor written notice of such cancellation at least thirty (30) days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the State will advise the Contractor in writing of the reasons why the State is considering cancelling the Agreement and will provide the Contractor with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. The parties may endeavor to agree to reasonable modifications in the Agreement to accommodate the causes of the cancellation for cause and avoid the cancellation, to the extent permitted by law, and at the discretion of each party individually.
3. If upon cancellation the Contractor has provided services which the State has accepted, and there are no funds legally available to pay for the services, the Contractor may file a claim with the Arkansas State Claims Commission under the laws and regulations governing the filing of such claims.

R. INDEMNIFICATION:

The following indemnification clause replaces in its entirety the Indemnification clause specified in the Master Agreement.

INDEMNIFICATION - The Contractor shall be fully liable for the actions of its agents, employees, and subcontractors and shall fully indemnify, defend, and hold harmless the Purchasing Entity and the State, and their officers, agents, and employees from suits, actions, damages, and costs of every name and description, including reasonable attorney's fees arising from or relating to personal injury and damage to real or personal property, alleged to be caused in whole or in part by the Contractor, its agents, employees, and subcontractors. Language in this clause **shall not** be construed or deemed as the State's waiver of its right of sovereign immunity. The Contractor agrees that any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas State Claims Commission as provided by Arkansas law, and **shall** be governed accordingly. This section is not subject to any limitations of liability in the Master Agreement or in any other document executed in conjunction with the Master Agreement.

S. CONFIDENTIAL INFORMATION:

Under Arkansas law, the release of public records is governed by The Arkansas Freedom of Information Act found at Section 25-19-101 et. seq. of the Arkansas Statutes.

T. CONTINGENT FEE:

The Contractor guarantees that Contractor has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Contractor for the purpose of securing business.

U. DISCLOSURE:

Under Arkansas law, the Office of State Procurement (OSP) is required to have a copy of EO 98-04 Disclosure Form on file for the Contractor. Contractor shall submit the disclosure form prior to entering

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into this Addendum. Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, shall be a material breach of the terms of this Addendum. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the State.

V. RESTRICTION OF BOYCOTT OF ISRAEL:

Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in and agrees for the duration of the contract not to engage in, a boycott of Israel. By signing this Participating Addendum, a Prospective Contractor agrees and certifies that they do not, and will not for the duration of the contract, boycott Israel.

W. VENDOR REGISTRATION:

In order to receive payment, Contractor must register online at <https://www.ark.org/vendor/index.html>

X. TECHNOLOGY ACCESS:

When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Vendor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that technology meets the statutory Requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.

ACCORDINGLY, THE VENDOR EXPRESSLY REPRESENTS AND WARRANTS to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) for 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:

1. Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means.
2. Presenting information, including prompts used for interactive communications, in formats intended for non-visual use.
3. After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.
4. Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means.
5. Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact.
6. Integrating into networks used to share communications among employees, program participants, and the public.

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7. Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

State agencies cannot claim a product as a whole is not reasonably available because no product in the marketplace meets all the standards. Agencies must evaluate products to determine which product best meets the standards. If an agency purchases a product that does not best meet the standards, the agency must provide written documentation supporting the selection of a different product, including any required reasonable accommodations.

For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired **shall** be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.

If the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

Y. SHARED TECHNICAL ARCHITECTURE:

Solutions **must** comply with the State's shared Technical Architecture Program which is a set of policies and standards that can be viewed at: <https://www.transform.ar.gov/information-systems/policies-standards/> and <https://www.transform.ar.gov/information-systems/policies-standards/standards/>. Only those standards which are fully promulgated or have been approved by the Governor's Office apply to this solution.

Z. FOR SERVICES ONLY:

1. **Equal Opportunity Policy.** In compliance with Arkansas Code Annotated § 19-11-104, if a state agency is purchasing services, the Office of State Procurement (OSP) is required to have a copy of the Contractor's *Equal Opportunity (EO) Policy* prior to entering into this Addendum. *EO Policies* may be submitted in electronic format to the following email address: eeopolicy.osp@arkansas.gov or Contractor may submit a hard copy with this Addendum. The submission of an *EO Policy* to OSP is a one-time requirement. Contractor is responsible for providing updates or changes to its policy, and for supplying *EO Policies* upon request to other State agencies that must also comply with this statute. If Contractor is not required by law to have an *EO Policy*, Contractor must submit a written statement to that effect.
2. **Prohibition of Employment of Illegal Immigrants.** Pursuant to Arkansas Code Annotated § 19-11-105, if a state agency is purchasing services, the Office of State Procurement (OSP) is required to have a certification on file from the Contractor stating that the Contractor does not employ or contract with illegal immigrants.

By signing this Participating Addendum, the Contractor agrees and certifies that they do not employ or contract with illegal immigrants and that they will not employ or contract with illegal immigrants during the aggregate term of the contract.

3. **Performance Standards** Under Arkansas law, all state agencies, boards, commissions, and institutions of higher education must include performance standards when purchasing services. Performance standards shall be mutually agreed upon by the parties hereto for any services purchased.

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AA. LEASING:

Leasing **shall not** be authorized under this Participating Addendum.

BB. VALUE ADDED SERVICES:

The Contractor **shall not** propose or provide value-added services unless it meets one (1) or more of the following criteria:

- It is of no cost to the purchasing entity;
- Services are linked to items the entity has purchased through a current or past transaction.

CC. SUBCONTRACTORS:

The Contractor may use subcontractors; however, the Contractor will be responsible for any agreements with the subcontractors. The Participating State/Entity is not agreeing to and is not responsible for any terms and conditions with a subcontractor. The following subcontractors are authorized to provide product delivery and services:

Subcontractor	Contact Name	Email	Phone
None			

Subcontractors may be updated by mutual agreement

DD. ORDERS:

Any Order placed by a Participating Entity or 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) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

EE. TERMS:

The Participating State/Entity is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with Arkansas law.

FF. PRIMARY CONTACTS:

The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Lead Entity

Name:	State of Arizona
Contact Person:	Eric Bell
Address:	
Telephone:	602-542-921
E-Mail:	Eric.Bell@azdoa.gov

Contractor

Company Name:	SHI
Contact Person	Jason Jaco
Address:	
Telephone:	501-690-6569
E-Mail:	Jason_Jaco@shi.com

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Arkansas Contact

Company Name:	TSS Office of State Procurement
Contact Person	Shane Phillips
Address:	501 Woodlane Street, Suite 220, Little Rock, Arkansas 72201
Telephone:	501-324-9322
E-Mail:	Shane.Phillips@arkansas.gov

The contacts listed above can be changed by the parties from time to time in writing. Such updates do not require an amendment to this Addendum.

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This Participating Addendum and the Master Agreement number CTR060028 (administered by the State of Arizona) together with its exhibits (including any terms referenced in the Master Agreement), 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 Addendum and the Master Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Agreement and its exhibits, 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 Participating Addendum and the Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

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

Participating State:	Contractor: SHI International Corp.
By: <i>E. Armstrong</i>	By: <i>Darek Awas</i>
Name: <i>Edward Armstrong</i>	Name: Darek Awas
Title: <i>State Procurement Direct</i>	Title: Manager - Contracts
Date: <i>11/9/2023</i>	Date: 11/30/2022