

Master Agreement #: AR2488

Contractor: **SHI INTERNATIONAL CORP.**

Participating Entity: **STATE OF ARKANSAS**

The following products or services are included in this contract portfolio:

- Platform as a Solution (PaaS)
- Infrastructure as a Solution (IaaS)
- Software as a Solution (SaaS)

Master Agreement Terms and Conditions:

1. Scope: This addendum covers *Cloud Solutions* led by the State of Utah 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: All eligible purchasers 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. State agencies **shall** be those defined by Ark. Code Ann. § 19-11-203(30)(A). Political subdivisions **shall** be those defined by Ark. Code Ann. § 19-11-203(19).
3. Access to Cloud Solutions Services Requires State CIO Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by state executive branch agencies are subject to the authority and prior approval of the State Chief Information Officer's Office. The State Chief Information 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.
4. Order of Precedence:
 - a. Arkansas's Participating Addendum ; 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.
 - b. Lead State's Master Agreement (includes negotiated Terms & Conditions and applicable exhibits to the Master Agreement)
 - c. The Solicitation including all Addendums;
 - d. Contractor's response to the solicitation; and
 - e. A Service Level Agreement (SLA) issued against the Participating Addendum.

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).

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

Contractor

Name:	Nick Grappone
Telephone:	732-564-8187
Email:	nick_grappone@shi.com

Participating Entity

Name:	Stephanie Cellers
Address:	1509 W 7 th St 3 rd Floor, Little Rock, AR 72201
Telephone:	501-371-6065
Fax:	501-324-9311
Email:	stephanie.cellers@dfa.arkansas.gov

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	sberry@naspovaluepoint.org

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.

6. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

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

- a. **Reporting.** The Contractor **must** provide annual sales/utilization reports electronically to the Office of State Procurement via email to OSP.ITContracts@dfa.arkansas.gov for the fiscal period of July 1 through June 30. The annual report **shall** be due no later than September 1st of each year. The Contract Activity Report format **must** be in Microsoft Excel format. The State **shall** have the right to request such sales/utilization reports to be produced for

other timeframes as deemed necessary. The reports **must** include at a minimum:

- i. Vendor Contract Number
- ii. State
- iii. Customer Type (State and Local Government, Education (K-12), and Education (Higher-Ed))
- iv. Bill To Name
- v. Customer PO Number
- vi. Customer Number
- vii. Order Date
- viii. Product/Service Description
- ix. Retail Price
- x. Discount Applied
- xi. Discounted Unit Price
- xii. Quantity
- xiii. Total Price

- b. **Payments.** Payments **shall** 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 shall 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 Code Annotated §19-11-224. The procuring agency shall make a good-faith effort to pay within thirty (30) days after the date of invoice.
- c. **Records.** 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 **shall** provide thirty (30) days written notice to the contractor of its intent to conduct such examination contemplated by this section.
- d. **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.
- e. **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. 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.
- f. **Cancellation.** In the event the State of Arkansas no longer needs the service or commodity specified in the contract or purchase order due to program changes,

changes in law, rules, regulations, lack of funds appropriated for this purpose, or relocation of offices, the State may cancel the contract or purchase order by giving the contractor written notice of such cancellation thirty (30) days prior to the date of cancellation.

- g. **Indemnification.** The following indemnification clause replaces in its entirety the General Indemnification clause specified in the Master Agreement.
- i. **GENERAL INDEMNIFICATION** - The Contractor shall be fully liable for the actions of its agents, employees, partners, 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 attorney's fees arising from or relating to personal injury and damage to real or personal property, to the extent caused by the negligence or intentional misconduct of Contractor, its agents, employees, partners, and subcontractors. Language in these terms and conditions **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.
 - ii. **INTELLECTUAL PROPERTY INDEMNIFICATION** – Subject to the NASPO Participant's compliance with the notice and defense requirements and exceptions set forth below, Contractor agrees to defend the NASPO Participants against any claims made by an unaffiliated third party that any intellectual property licensed by Contractor use infringes that third party's patent, copyright, or trademark or makes unlawful use of its trade secret (an "Intellectual Property Claim").
 - 1. Contractor's obligations under this section shall not extend to any claims based on:
 - a. Contractor's compliance with a Participating Entity's/Purchasing Entity's designs, specifications or instructions; or
 - b. Contractor's use of original technical information or original technology provided by the Participating Entity/Purchasing Entity; or
 - c. Non-Contractor intellectual property, modifications a Participating Entity/Purchasing Entity makes to, or any specifications or materials a Participating

- Entity/Purchasing Entity provides or makes available for, a Product; or
- d. Participating Entity's/Purchasing Entity's combination of the intellectual property with a Non-Contractor product, data or business process; or damages based on the use of a Non-Contractor product, data or business process; or
 - e. Participating Entity's/Purchasing Entity's use of either Contractor's trademarks or the use or redistribution of the intellectual property in violation of this Master Agreement, Participating Addendum, or any other agreement incorporating its terms; or
 - f. Participating Entity's/Purchasing Entity's use of the intellectual property after Contractor notifies Participating Entity/Purchasing Entity to discontinue that use due to a third party claim.
2. To qualify for such defense, the involved NASPO Participants (the "Indemnified Party") shall promptly notify Contractor of any Intellectual Property Claim of which the Indemnified Party become aware which may give rise to right of defense pursuant to this Section. Notice of any Intellectual Property Claim that is a legal proceeding, by suit or otherwise, must be provided to Contractor within thirty (30) days of the Indemnified Party's learning of such proceeding. If the Indemnified Party's laws require approval of a third party to defend the Indemnified Party, the Indemnified Party will seek such approval and if approval is not received, Contractor is not required to defend that Indemnified Party. In the event the Indemnified Party does not authorize sole control to Contractor over any claims that may arise under this subsection, then the parties agree that Contractor will be granted authorization to equally participate in any proceeding subject to this subsection. The Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

If Contractor reasonably believes that its intellectual property licensed to Participating Entity/Purchasing Entity may infringe or misappropriate a third-party's intellectual property rights, Contractor will seek to:

- i. procure for Participating Entities/Purchasing Entities the right to continue to use the Product or Service; or
- ii. modify or replace it with a functional equivalent to make it non-infringing and notify Participating Entities/Purchasing Entities to discontinue use of the prior version, which Participating Entities/Purchasing Entities must do immediately.

If the foregoing options are not commercially reasonable for Contractor, or if required by a valid judicial or government order, Contractor may terminate Participating Entities'/Purchasing Entities' license or access rights in the intellectual property. In such a case, Contractor will provide Participating Entities/Purchasing Entities with notice and refund any amounts Participating Entities/Purchasing Entities have paid for those rights to the intellectual property.

THE FOREGOING SHALL CONSTITUTE THE LEAD STATE'S AND EACH AND EVERY PARTICIPATING AND/OR PURCHASING ENTITIES' SOLE REMEDY AND CONTRACTOR'S SOLE AND EXCLUSIVE LIABILITY FOR ALL INTELLECTUAL PROPERTY CLAIMS.

iii. LIMITATION OF LIABILITY.

The Contractor, its subsidiaries, and subcontractors, and its personnel shall not be liable to the State for any claims, liabilities, or expenses relating to this Participating Addendum or any Order executed hereunder, or the Services ("Claims") for an aggregate amount in excess of the total fees paid by the State to the Contractor under the applicable Order to this Participating Addendum over the twenty-four (24) month period immediately preceding the date on which the first cause of action giving rise to a Claim under such Order accrues, except to the extent resulting from their recklessness, bad faith or intentional misconduct. In no event shall the Contractor, its subsidiaries or subcontractors, or its personnel be liable to the State for any loss of revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense, relating to this Participating Addendum, any Order executed hereunder, or the Services. In circumstances where any limitation on damages or

indemnification provision hereunder is unavailable, the aggregate liability of each party, its subsidiaries and subcontractor, and their respective personnel for any Claim shall not exceed an amount that is proportional to the relative fault that their conduct bears to all other conduct giving rise to the Claim.

- h. **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.
- i. **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.
- j. **Disclosure.** Under Arkansas law, the Office of State Procurement (OSP) is required to obtain and have a copy of EO 98-04 Disclosure Form on file for the Contractor. Contractor must submit the disclosure form prior to entering 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.
- k. **Certifications.** Under Arkansas law, OSP is required to obtain and have a copy of certain certifications, including but not limited to certification forms pursuant to Arkansas Code Annotated § 19-11-104 and Arkansas Code Annotated § 25-1-503. The Contractor shall promptly provide any and all such certifications, and any and all supporting documents reasonably requested, in the time and manner requested by OSP. Failure to provide any and all such certifications in the time and manner requested by OSP shall be a breach of this Participating Addendum.
- l. **Vendor Registration.** In order to receive payment, Contract Vendor must register online at <https://www.ark.org/vendor/index.html>
- m. **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 Contractor 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 CONTRACTOR 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:

- 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
- Presenting information, including prompts used for interactive communications, in formats intended for non-visual use
- After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired
- 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;
- Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact
- Integrating into networks used to share communications among employees, program participants, and the public
- 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

If the information technology product or system being offered by the Vendor does not completely meet these standards, the Contractor must provide an explanation within the Voluntary Product Accessibility Template (VPAT) detailing the deviation from these standards.

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.

- n. **Shared Technical Architecture.** The respondent's solution must comply with the state's shared Technical Architecture Program which is a set of policies and standards that can be viewed at: <http://www.dis.arkansas.gov/policiesStandards/Pages/default.aspx>. Only those standards which are fully promulgated or have been approved by the Governor's Office apply to this solution.
- o. **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@dfa.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. The Contractor must certify online at www.arkansas.gov/dfa/procurement that the Contractor does not employ or contract with any illegal immigrant prior to entering into this Addendum.

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.

7. **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 a Participating Addendum, each agency and political subdivision **shall** 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 Lead State has in the Master Agreement. 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.

8. **Purchase Order Instructions:** All purchase orders issued by Purchasing Entities within the jurisdiction of this participating addendum **shall** include the following:
 - A. The mutually agreed Statement of Work
 - B. NASPO Master Agreement number **AR2488**
 - C. State contract number [**SP-17-0134 4600041971**]
 - D. Agency Name, Address, Contact, and Phone-Number
 - E. Applicable approvals
 - F. Purchase orders shall be made out to the Contractor or Subcontractor

As set forth in the Master Agreement, Orders may include the licensing of specific software programs pursuant to individual End User License Agreements, in each case as executed by the Purchasing Entity and the applicable software publisher as a part of the Order. In addition, the terms set forth in Attachment E to the Master Agreement will apply to any Order where those publisher's products are a part of the Order.

Except as contemplated above, the Purchasing Entities shall not be required, by the Contractor or its subcontractors, to sign any additional terms and conditions when utilizing this Agreement.



9. **Subcontractors:** The Contractor may use 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
To be provided			

Subcontractors may be updated by mutual agreement.

10. **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.
11. **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 or this Participating Addendum.
12. **Entire Agreement:** This Participating Addendum and the Master Agreement number AR2488 (administered by the State of Utah 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 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.



CLOUD SOLUTIONS 2016-2026
Led by the State of Utah

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

Participating Entity:	Contractor: SHI International Corp.
Signature: <i>Randy Wright</i>	Signature: <i>Natalie Castagno</i>
Name: <i>Randy Wright</i>	Name: Natalie Castagno
Title: <i>Asst. Admin.</i>	Title: Director of Response Team
Date: <i>3/6/18</i>	Date: 2/27/18