



SOFTWARE VALUE ADDED RESELLER (SVAR)
Lead by the State of Arizona

Master Agreement #: ADSPO16-130651

Contractor: **SHI INTERNATIONAL CORPORATION**
Participating Entity: **STATE OF MISSISSIPPI**

This Participating Addendum is entered into by and between SHI International Corporation and the Mississippi Department of Information Technology Services (hereinafter referred to as "ITS" or "Participating Entity"), as contracting agent for the governmental agencies, educational institutions, and governing authorities of the State of Mississippi (hereinafter referred to as "Purchaser" or "Purchasing Entity"). ITS and Purchaser are sometimes collectively referred to herein as "State". Contractor and Participating Entity are hereinafter collectively referred to herein as "Parties".

MASTER AGREEMENT TERMS AND CONDITIONS:

1. **Scope:** This addendum covers *Software Value-Added Reseller (SVAR)* lead by the State of Arizona for use by state agencies and other entities located in the State of Mississippi authorized by Mississippi statutes to utilize statewide contracts with the prior approval of the State's Chief Procurement Official.
2. **Participation:** This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher learning, political subdivisions, and other entities authorized to use statewide contracts in the State of Mississippi. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official. **[Note: state entities purchasing software from this Participating Addendum must comply with the Instructions for Use Memorandum published on the ITS website.]**
3. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Nick Grappone
Address:	290 Davidson Avenue, Somerset, New Jersey 08873
Telephone:	732-564-8189
Email:	nick_grappone@shi.com

Participating Entity

Name:	Craig P. Orgeron, Ph.D.
Address:	3771 Eastwood Drive, Jackson, Mississippi 39211
Telephone:	601-432-8000
Fax:	601-713-6380
Email:	issprojects@its.ms.gov

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4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

The following contractual terms take precedence over all other parts (whether such other parts are specifically mentioned herein or not) of the Master Agreement entered into by and between the Lead State and Contractor:

1) **Term of Contract.** Any references to automatic renewals of the contract term are hereby deleted. This Participating Addendum will become effective the date it is signed by all parties and will continue in effect until April 7, 2019, unless terminated early. The contract term may be extended only by written agreement of the Parties.

2) **Timely Payments for Purchases by Public Bodies.** Any references to the payment of invoices and the imposition of late fees or interest within a specified time frame less than that allowed to a state agency for payment of invoices under the Mississippi statutes (Section 31-7-1 et seq., of the Mississippi Code and other relevant statutes) are hereby deleted. Contractor shall submit invoices with the appropriate documentation to Participating Entity as services are rendered. Contractor shall submit invoices and supporting documentation electronically during the term of the contract using the processes and procedures identified by ITS. Participating Entity agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by Participating Entity within forty-five (45) days of receipt of the invoice. All payments shall be in United States currency. Payments by state agencies using Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of the Contractor's choice.

3) **Penalties for Late Payments.** If payment of undisputed amounts is not made to Contractor within forty-five (45) days of Participating Entities' receipt of the invoice, Participating Entity shall be liable to Contractor for interest at a rate of one and one-half percent (1 ½ %) per month (or such lesser rate as may be the maximum permissible rate under the law) on the unpaid balance from the expiration of such forty-five (45) day period until such time as payment is made. This provision for late payments shall apply only to undisputed amounts for which payment has been authorized.

4) **Warranties.** Any provisions disclaiming implied warranties shall be null and void. See Section 11-7-18 and Section 75-2-719(4) of the Mississippi Code. The Contractor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose. Any references to Participating Entity limiting or waiving any common law warranty are deleted. Further, Participating Entity does not make any warranty.

5) Delivery; Risk of Loss; Installation, and Acceptance

5.1 Contractor shall deliver the Products to the location specified by Purchaser and pursuant to the delivery schedule set forth by Purchaser.

5.2 Contractor shall assume and shall bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout its possession thereof. Risk of loss to the Products will pass to Purchaser upon delivery.

5.3 If installation by Contractor is required, Contractor shall be responsible for installing all Products and materials in accordance with and agreed upon statement of work between the

parties and all state, federal and industry standards for such items. Further, Contractor acknowledges that installation shall be accomplished with minimal interruption of Purchaser's normal day to day operations.

5.4 If installation by Contractor is required, Contractor shall provide Purchaser with an installation schedule identifying the date, time and location within the scheduling deadlines agreed to by the parties. Contractor warrants that all Products shall be properly delivered, installed and integrated, if necessary, for acceptance testing within the scheduling deadlines set forth by Purchaser as the site is deemed ready for installation.

5.5 Contractor shall be responsible for replacing, restoring or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, sidewalks, and the like caused by its personnel and operations during the installation, subject to final approval of Purchaser. The repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.

5.6 Unless a different acceptance period is agreed upon by the Purchaser and Contractor and specified in the supplement/purchase order, Purchaser shall have a ten (10) working day testing period during which time Purchaser shall have the opportunity to evaluate and test the Products to confirm that it performs without defects. Purchaser may be deemed to have accepted the Product at the end of the ten (10) working day testing period, unless Purchaser notifies Contractor that the product fails to perform as stated herein.

5.7 In the event the Product fails to perform as stated in Article 5.6 herein, Purchaser shall notify Contractor. Unless a different period of time is agreed upon by the Contractor and Purchaser and specified in the supplement/purchase order, Contractor shall, within four (4) working days, correct the defects identified by Purchaser or replace the defective Product. If Contractor neither corrects the defect nor replaces the defective product, Purchaser reserves the right to return the Product to Contractor at the Contractor's expense; and to cancel the purchase order.

5.8 Upon receipt of a corrected or replaced Product, Purchaser shall have another acceptance period as set forth in Article 5.6 herein, in which to reevaluate/retest such Product.

5.9 If, after Contractor has tendered to Purchaser Contractor's attempt to correct the Product, and Purchaser again determines the Product to have a defect, Purchaser may take such actions as it deems appropriate, including but not limited to, either (i) notifying Contractor that it has elected to keep the Product despite such defects; (ii) returning the Product to Contractor and providing Contractor with an opportunity to deliver a substitute Product acceptable to Purchaser within the time period specified by Purchaser, or (iii) returning the Product to Contractor at Contractor's expense and canceling the purchase order. Purchaser may also pursue any remedy available to it in law or in equity.

6) **Confidential Information.** The parties understand and agree that the Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the Participating Entity without notification to Contractor. ITS will provide third party notice to Contractor of any requests received by ITS for any such confidential exhibits so as to allow Contractor the opportunity to protect the information by court order as outlined in ITS Public Records Procedures. The parties further understand and agree that pursuant to Section 25-61-9(7) of the Mississippi Code of 1972, as amended, the contract provisions specifying the

commodities purchased or the services provided; the price to be paid; and the terms of the Agreement shall not be deemed confidential information.

7) **Conflicts of Interest.** Contractor represents and warrants that no official or employee of the State of Mississippi or of Participating Entity and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement. The Contractor warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Contractor also warrants that in the performance of the Agreement no person having any such known interests shall be employed. Further, the Contractor represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from the Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Contractor to any officer or employee of the State of Mississippi with a view toward securing the Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event the Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Contractor as it would pursue in the event of a breach of contract by the Contractor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

8) **No Guarantee of Amount to be Purchased.** There is no guarantee that a minimum amount of goods or services will be purchased under the Agreement. Any estimated quantities are for solicitation purposes only and are not to be construed as a guarantee. Further, Contractor shall obtain approval of ITS prior to the fulfillment of any order under this Agreement.

9) **Mandatory Reports.** Contractor agrees to provide detailed quarterly utilization reports reflecting net sales to the State during the term of the Agreement. The reports will show the quantities and dollar volume of purchases by Purchasing Entity. Contractors shall submit to ITS the following quarterly reports:

(a) Reports shall contain at a minimum the following information:

- o Department/Agency Name
- o Customer type (State Agency, Local Government, Education K-12, Public University, etc.)
- o PO Date (Order Date)
- o PO Number
- o Product Description
- o Manufacturer (Publisher)
- o Quantity
- o Total Price

(b) Report modifications: contractor shall agree that ITS reserves the right to modify the

format and information in the quarterly reports by providing the contractors thirty (30) calendar days written notice.

(c) Reports should be submitted electronically to epsteam@its.ms.gov.

10) **Administrative Fees.** Contractor shall pay to ITS an Administrative Fee of one percent (1%) on the purchase price for all net sales to the State. The Administrative Fee must be rolled into Contractor's current pricing and not be shown as a separate line item on any invoice. ITS will invoice Contractor quarterly based on Contractor's sales to the State reported by Contractor per Item 9 herein and Contractor shall remit payment within forty-five (45) days. Contractor's failure to accurately and timely report total net sales, to submit usage reports, or remit payment of the Administrative Fee may be cause for suspension or termination of the Agreement or the exercise of any other remedies as provided by law.

11) **Volume License Agreements.** Contractor will fulfill the requirements of authorized reseller for administering statewide volume license agreements for Adobe software under the terms of the Adobe CLP Agreements for Government and Education and for IBM Lotus software under the terms of the IBM Lotus International Passport Advantage Agreements (Mississippi Government Number 33882 and Mississippi Education Entities Number 01162). Additional volume license agreements which also require an authorized reseller to administer may be added to this Participating Addendum by mutually agreed upon amendment.

12) **Instructions for Use.** Contractor will comply with the Instructions for Use Memorandum associated with this Participating Addendum and published on the ITS website.

13) **Data Ownership.** The State shall own all right, title and interest in all data used by, resulting from, and collected using the services provided. The Contractor shall not access Participating Entity accounts, or Participating Entity data, except (i) in the course of data center operation related to this solution; (ii) response to service or technical issues; (iii) as required by the express terms of this service; or (iv) at the Participating Entity's written request.

14) **Notification of Legal Requests.** The Contractor shall contact ITS upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of any Participating Entity. The Contractor shall not respond to subpoenas, service of process, and other legal requests related to any Participating Entity without first notifying the Participating Entity, unless prohibited by law from providing such notice.

15) **ITS as Contracting and Purchasing Agent.** By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the Executive Director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software, and services. The Contractor understands and agrees that ITS, as contracting agent, is not responsible or liable for the performance or non-performance of any of a Purchasing Entity's contractual obligations, financial or otherwise, contained within this Agreement. The parties further acknowledge that ITS is not responsible for ensuring compliance with any guidelines, conditions, or requirements mandated by a Purchasing Entity's funding source. Notwithstanding the above, the parties understand and agree that where ITS itself acts as a Purchasing Entity it is responsible for its actions or inactions under this agreement.

16) **Disputes.** Any dispute concerning a question of fact under this Participating Addendum which is not disposed of by agreement of the Contractor and Participating Entity and/or Purchasing Entity, shall be decided by the Executive Director of ITS or his/her designee. This decision shall be reduced

to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of either this Participating Addendum or Master Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

17) **Security Policies.** The Contractor acknowledges and agrees that it is important that the Contractor follow the same policies that the State of Mississippi follows to minimize security risks, to ensure State and Federal laws are followed, to address issues regarding mobile device accessibility, to prevent outages, and to ensure standard architecture practices within the State of Mississippi's technology environment. As such, Contractor agrees to comply with the following.

(a) **Enterprise Security Policy.** The parties understand and agree that all products and services provided by Contractor under this Agreement must be and remain in compliance with the State of Mississippi's Enterprise Security Policy. The parties understand and agree that the State's Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution. The State reserves the right to introduce a new policy during the term of this Agreement and require the Contractor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

(b) **Enterprise Cloud and Offsite Hosting Security Policy.** The parties understand and agree that all services provided by Contractor under this Agreement must be and remain in compliance with the State of Mississippi's Enterprise Cloud and Offsite Hosting Security Policy. The parties understand and agree that the State's Enterprise Cloud and Offsite Hosting Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution and augments the Enterprise Security Policy. The State reserves the right to introduce a new policy during the term of this Agreement and require the Contractor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

(c) **Mississippi Technology Policies, Standards, and Guidelines.** Contractor acknowledges and agrees to comply with the guidelines found at <http://www.its.ms.gov/Policies/Pages/default.aspx>.

18) **Statute of Limitations.** Any references to a statute of limitations running against Participating Entity are hereby deleted. See Section 104 of the Mississippi Constitution and Section 15-1-51 of the Mississippi Code of 1972, as amended.

19) **Soliciting/Hiring Contractor Employees.** Any provisions prohibiting the solicitation or hiring of Contractor employees by Participating Entity and assessing Participating Entity with any costs/damages shall be and hereby are deleted.

20) **Mississippi Employment Protection Act.** If applicable, Contractor represents that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq of the Mississippi Code Annotated (Supp 2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi (hereinafter sometimes referred to as "the State" or "State" or "Mississippi"). As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department

of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor understands and agrees that any breach of these warranties may subject Contractor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

21) Governing Law & Venue. ITS contracts are governed by and interpreted under the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Contractual terms required by the statutes of the State of Mississippi are incorporated herein as if copied fully in words and figures.

22) Availability of Funds. The continuance of any ITS contract is based on availability of funds. It is expressly understood and agreed that the obligation of Participating Entity to proceed under any contract is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under the contract. If the funds anticipated for the fulfillment of the contract are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Participating Entity for the payments or performance due under the contract, Participating Entity shall have the right to immediately terminate the contract, without damage, penalty, cost or expense to Participating Entity of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Participating Entity shall have the sole right to determine whether funds are available for the payments or performances due under the contract.

23) Taxes. The Contractor is liable for all taxes. Sections 27-65-1, et seq., and 27-67-1, et seq., of the Mississippi Code exempt ITS and other State institutions from State sales and use taxes. Likewise Participating Entity will not pay excise or personal property taxes and if the Contractor is liable for these they should be taken into consideration in formulating the pricing of bids. It is the Contractor's responsibility to contact local taxing authorities in the state and county where equipment will be located to determine possible taxing liabilities in connection therewith.

24) Limiting Liability. Any provisions limiting Contractor's liability are null and void.

25) Sovereign Immunities and Defenses. Participating Entity does not waive its sovereign immunities or defenses as provided by law by entering into the contract, and any references limiting Participating Entities' remedies are hereby deleted.

26) Assignment or Transfer. Neither party may assign or otherwise transfer the contract or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This contract shall be binding upon the parties' respective successors and assigns.

27) **No Liquidated Damages or Termination Fees.** Any references to Participating Entity paying liquidated damages or any amounts other than the cost of the products or services being provided by Contractor to Participating Entity are hereby deleted. Likewise, any requirement that Participating Entity pay any sort of early termination fee is also deleted. Participating Entity does not pay liquidated damages and termination fees.

28) **No Exclusivity.** Any references to granting the Contractor exclusivity are hereby deleted. Participating Entity complies with applicable state laws regarding public purchases.

29) **Right to Trial by Jury.** Any references to mediation or to binding arbitration or to Participating Entity waiving its rights to a trial by jury are hereby deleted.

30) **Attorney's Fees and Costs.** Any reference to attorney's fees or court costs to be paid by Participating Entity is deleted.

31) **Indemnification and Holding Harmless.** Any references to Participating Entity indemnifying or holding harmless the Contractor are deleted. Participating Entity does not agree to defend or indemnify any contractor.

32) **Accountability and Transparency Act.** In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of the Master Agreement, including this Participating Addendum and any subsequent amendments shall be posted to the State of Mississippi's accountability website at: <https://www.transparency.mississippi.gov>.

33) **Litigation Control.** Any provision giving Contractor exclusive control over litigation is deleted. Participating Entity does not agree that Contractor may represent, prosecute or defend legal actions in its name.

34) **Survival.** All articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Participating Addendum.

For the faithful performance of the terms of the contract, the parties have caused this Contract Addendum to be executed by their undersigned representatives.

State of Mississippi, Department of
Information Technology Services

SHI International Corporation

By: 
Authorized Signature

By: Priscilla Benavides
Authorized Signature

Printed Name: Craig P. Orgeron, Ph.D.

Printed Name: Priscilla Benavides

Title: Executive Director

Title: Sr Contract Specialist

Date: 2/1/19

Date: 01-31-2019