

AMENDMENT ONE

OF SWC 3999 NASPO COTS SOFTWARE (CONTRACT 63066)

This Amendment is made and entered into by and between the State of Tennessee, Department of General Services, Central Procurement Office, hereinafter referred to as the "State" and SHI International Corp. hereinafter referred to as the "Contractor". For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

Term of the Contract – Special Term # 2 of the Participating Addendum is deleted in its entirety and replaced with:

2. Term of Participating Addendum

This Participating Addendum shall be effective on June 10, 2019 ("Effective Date") and shall continue until January 7, 2022, which is co-terminous with the term of the Master Agreement, unless terminated earlier as set forth in this Participating Addendum ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury). By the State signing this Amendment, State acknowledges that it has obtained approvals by appropriate officials in accordance with applicable Tennessee laws and regulations.

Amendment Effective Date. The revisions set forth herein shall be effective April 7, 2021. All other terms and conditions of this Participating Addendum not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

SHI INTERNATIONAL CORP:



03/23/2021

SIGNATURE

DATE

Elisabeth Arnold - Lead Contracts Specialist

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF GENERAL SERVICES, CENTRAL PROCUREMENT OFFICE:

03.25.2021

MICHAEL F. PERRY, CHIEF PROCUREMENT OFFICER

DATE

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

MASTER AGREEMENT
SHI International Corporation
Master Agreement No: ADSPO16-130651
(hereinafter "Contractor")

And

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

Page 1 of 34

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.

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

Participating State/Entity 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.

This Participating Addendum with Tennessee State specific terms and conditions are attached below as Attachment A and if conflict, take precedence over the NASPO Value Point Master Contract #ADSPO16-130651 terms and conditions.

4. Lease Agreements: **"Reserved"**

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

Contractor

Name	Elaine Williams
Address	290 Davidson Avenue, Somerset, NJ 08873
Telephone	615-691-2551
Fax	
E-mail	Elaine_Williams@shi.com

Participating Entity

Name	Stephanie Zerda
Address	312 Rosa L. Parks Ave., Nashville, TN 37243
Telephone	615-741-2026
Fax	615-741-0684
E-mail	Stephanie.M.Zerda@tn.gov

6. **Subcontractors:** All contactors, dealers, and resellers authorized in the State of Tennessee, as shown on the dedicated SHI International Corporation (cooperative contract) website, are approved to provide sales and service support for participants in the NASPO ValuePoint Master Agreement. The SHI International Corporation dealer's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

7. **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.

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.
Signature:  <small>Digitally signed by Mike Perry DN: cn=Mike Perry, o=Chief Procurement Officer, ou=Department of General Services, email=mike.perry@tn.gov, c=US Date: 2019.05.22 14:53:28 -05'00'</small>	Signature: 
Name: Michael F. Perry	Name: Darek Awas
Title: Chief Procurement Officer	Title: Sr. Contracts Specialist
Date: 5/22/2019	Date: 5/21/2019

[Additional signatures as required by Participating State]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint
Cooperative Development Coordinator
Telephone
Email
tfosket@naspovaluepoint.org

Ted Fosket
(907) 723-3360

**PLEASE EMAIL FULLY EXECUTED PDF COPY OF THIS DOCUMENT TO
PA@naspovaluepoint.org TO SUPPORT DOCUMENTATION OF
PARTICIPATION AND POSTING IN APPROPRIATE DATA BASES**

Attachment A

**State of Tennessee
("State," "Participating Entity," or "Purchasing Entity")**

**NASPO ValuePoint Software Value Added Reseller
(SVAR)**

Additional Terms and Conditions



Standard Terms and Conditions

1. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits,

schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.

2. Estimated Liability

The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be \$50,000,000 ("Estimated Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

3. Hold Harmless. The Master Agreement Terms and Conditions Section 14. Indemnification will govern the matter of the State's general Hold Harmless and Indemnity rights, with the following addition "This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106."

4. Governing Law. This Participating Addendum shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Participating Addendum. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Participating Addendum shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 -408.

5. State and Federal Compliance. The contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.

6. Prohibition of Illegal Immigrants.

The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a) The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information-.html>, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All

Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

- b) Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
- c) The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d) The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e) For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

7. Modification and Amendment.

This Contract may be modified only by a written amendment signed by all parties and approved by all applicable State officials.

8. Records.

The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

9. Monitoring.

The Contractor's activities conducted and records maintained, pursuant to this Contract, shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

10. HIPAA Compliance.

In the event Contractor accesses protected health information of the State, the State and Contractor shall comply with obligations under the Health Insurance

Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a) Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b) Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c) The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d) The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

11. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its

employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

12. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
13. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.
14. Iran Divestment Act.
The requirements of Tenn. Code Ann. § 12-12-101, et seq., addressing contracting with persons as defined at Tenn. Code Ann. § 12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
15. Force Majeure.

"Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the party except to the extent that the non-performing party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

Special Terms and Conditions

1. F.O.B. Destination

For all state agencies, local government agencies and authorized non-profit enterprises located within the State of Tennessee, delivery shall be F.O.B. Destination.

2. Term of Participating Addendum

This Participating Addendum shall be effective on June 10, 2019 ("Effective Date") and shall continue until April 7, 2020, which is co-terminous with the term of the Master Agreement, unless terminated earlier as set forth in this Participating Addendum ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

3. Renewal Options

This Contract may be renewed upon satisfactory completion of the Term. If the Master Agreement is renewed by the Lead State, the State reserves the right to execute up to the same number of renewals under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

4. Debarment and Suspension

The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b) have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c) are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d) have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

5. Delivery.

Contractor shall provide all goods or services as required and described in this Contract and shall meet all service and delivery timelines specified in this Contract. Contractor shall provide goods or services required under this Contract within 30 days after receipt of a purchase order. All quotations shall be F.O.B. destination.

6. Statewide Contract Reports.

All reports shall be submitted electronically in Microsoft Excel format. Reports shall include the ability to sort or summarize data in accordance with the Contract Administrator's specifications. All reports shall be provided at no additional cost to the State.

Quarterly Reports: Contractor(s) will submit quarterly reports to the Contract Administrator no later than ten (10) days after the end of the State's quarter (e.g. a fiscal year quarter 2 report for October - December is due no later than January 10th). At the Contract Administrator's sole discretion, the State may extend the time allowed to complete quarterly reports. Quarterly reports shall provide statistical data on all purchases under this Contract by State Agencies, including State Agencies of the judicial or legislative branch, local governmental entities in the State of Tennessee, including but not limited to educational institutions, local governmental authorities, quasi-governmental bodies ("Other Governmental Bodies"), and certain not-for-profit entities under Tenn. Code Ann. § 33-2-1001. At minimum, the quarterly report's statistical data shall be detailed and broken down by line item to include:

1. Edison contract number
2. Contract line item number
3. Invoice date
4. Invoice number
5. Supplier part number
6. Item or bundle description
7. Quantity purchased
8. Unit of measure
9. Unit of measure description
10. Name of State Agency, Other Governmental Body or not-for-profit entity
11. Identity of purchaser: State entity or non-State entity
12. State Agency location
13. Unit/Contract price per line item
14. List price as listed in supplier's catalog if catalog item
15. Subtotals for each category above
16. Grand totals for each category above

Diversity Business and Subcontractor Usage Reports: The Contractor shall submit monthly reports of returns, credits, savings, net purchases, and percent of net purchases by subcontractors, small business enterprises, and businesses owned by minorities, women, persons with disabilities, and Tennessee service-disabled veterans. Such reports shall be submitted to the State of Tennessee Governor's Office of

Diversity Business Enterprise in the TN Diversity Software available online at:
<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

Custom Reports: When requested by the State, the Contractor shall submit custom reports to the Contract Administrator within thirty (30) days of the request.

7. Department of Revenue Registration.

Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract. For purposes of this registration requirement, the Department of Revenue may be contacted at: TN.Revenue@tn.gov. <https://tntap.tn.gov/eservices/> /

8. Insurance.

Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on its commercial general liability and automobile liability policies. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as

the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and at any time upon request by the State. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form

providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).

- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.
- d. Technology Professional Liability (Errors & Omissions) / Cyber Liability Insurance
- 1) The Contractor shall maintain cyber liability insurance appropriate to the Contractor's profession in an amount not less than two million dollars (\$2,000,000) per occurrence or claim and two million dollars (\$2,000,000) annual aggregate, covering all acts, errors, omissions, negligence, and infringement of intellectual property (except patent and trade secret). Coverage shall be sufficiently broad to respond to all duties and obligations as is undertaken by the Contractor in the Contract and shall include network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage, destruction, or alteration of electronic information, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential and private information, and including coverage for related regulatory fines, defenses, and penalties.
 - 2) Such coverage shall include data breach response expenses, in an amount not less than two million dollars (\$2,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for the State or on behalf of the State hereunder.
- e. Crime Insurance
- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for cyber theft and extortion if not provided as part of the Cyber Liability Insurance required by subsection d., above. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) year with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.
 - 2) Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate.
 - 3) This coverage may be written on a claims-made basis but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term.

9. Purchase Order Release.

Agency submission of a purchase order to Contractor authorizes Contractor to deliver goods or provide services.

10. Invoice Requirements.

The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section 1 Scope of this Participating Addendum., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to:

State Agency Billing Address

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
 - (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: State Agency & Division Name;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in this Participating Addendum) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:
 - (1) Only include charges for goods delivered or services provided as described in Section 1 Scope and in accordance with payment terms and conditions set forth in this Participating Addendum;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section.

11. Payment of Invoice

A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

12. Prerequisite Documentation

The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation. At the State's option, it may make payments to Contractor by automated clearing house ("ACH") or the State Purchasing Card ("P-Card").

- a. The Contractor shall complete, sign, and present to the State:
 - (1) An "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - (2) An "Authorization to Receive Payments by Purchasing Card Form" provided by the State. By doing so, the Contractor agrees that payments to the Contractor under this Contract may be made using the State P-Card and Contractor will provide level III data reporting information.
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

13. Intellectual Property Indemnity

The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

14. Travel Compensation

The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

15. Assignment and Subcontracting

The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

16. Authorized Users -- Statewide Contract

This Contract establishes a source or sources of supply for all Tennessee State Agencies. "Tennessee State Agency" refers to the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee with exceptions as addressed in Tenn. Comp. R. & Regs. 0690-03-01-.01. The Contractor shall provide all goods or services and deliverables as required by this Contract to all Tennessee State Agencies.

The Contractor shall make this Contract available to the following entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):

- a) all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government);
- b) Tennessee local governmental agencies;
- c) the board of trustees of the University of Tennessee system, the Tennessee board of regents system, or the State university boards;
- d) any private nonprofit institution of higher education chartered in Tennessee; and,
- e) any corporation which is exempted from taxation under 26 U.S.C. Section 501(c)(3), as amended, and which contracts with the Department of Mental Health and Substance Abuse Services or the Department of Intellectual and Developmental Disabilities to provide services to the public (Tenn. Code Ann. § 33-2-1001).

These Authorized Users may utilize this Contract by purchasing directly from the Contractor according to their own procurement policies and procedures. The State is not responsible or liable for the transactions between the Contractor and Authorized Users.

17. Bill of Materials

Establishing a Bill of Materials (BOM) shall be developed by Finance and Administration (F&A), Strategic Technology Solutions (STS) and the Contractor. No Partner can take part in this process. The BOM must list the NASPO ValuePoint current manufacturer catalog part number.

18. Software License Agreements

Contractor shall facilitate, as described below, in executing the State's End User License Agreement Rider ("EULA Rider") attached hereto as Attachment E between the State and third party licensor/publisher ("Licensor") of the software resold under this Agreement. The parties acknowledge that the EULA Rider shall serve to ensure the necessary terms and conditions of the State be incorporated in any applicable license agreement between the State and Licensor, to which Contractor shall:

- a) present the EULA Rider to Licensor when quoting the State;
- b) use reasonable efforts in facilitating the execution of the EULA Rider;
- c) notify the State if the Licensor refuses to sign the EULA Rider and the State shall determine whether it desires to engage in further negotiations with the Licensor or to pursue other sources of procurement; and
- d) keep a repository of all executed EULA Riders as mutually agreed upon by the parties.

19. Software Support and Maintenance Warranty

Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

20. Extraneous Terms and Conditions.

Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid, and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned on the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

21. Warranty.

The Master Agreement Terms and Conditions Section 29. Warranty will govern the matter of warranty.

22. Conflict of Interest.

The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

23. Administrative Fee

The Contractor shall pay the State an Administrative Fee of one (1) and one half (0.5) percent (1.5% or 0.015) in accordance with the Terms and Conditions of the Master Agreement no later than 60 days following the end of each calendar quarter. The State's

Administrative Fee shall be submitted quarterly and is based on sales of products and services (less any charges for taxes or shipping).

Period End	Admin Fee Due
March 31	May 31
June 30	August 31
September 30	November 30
December 31	February 28

The administrative fee **shall** be submitted to the following address:

Ron Plumb, Director of Financial Management
Department of General Services
W.R. Snodgrass TN. Tower 24th Floor
312 Rosa L. Parks Avenue
Nashville, TN 37243

24. Inspection and Acceptance.

The Master Agreement Section 28 Standard of Performance and Acceptance will govern the matter of Inspection and Acceptance.

25. Confidentiality of Records.

Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

26. Termination for Convenience.

The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

27. Termination for Cause.

If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

28. Contractor Hosted Services Confidential Data, Audit, and Other Requirements

a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:

(1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.

(2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.

(3) The Contractor shall maintain a Security Management Certification from the Federal Risk and Authorization Management Program ("FedRAMP"). A "Security Management Certification" shall mean written confirmation from FedRAMP that FedRAMP has assessed the Contractor's information technology Infrastructure, using a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services, and has certified that the Contractor meets FedRAMP standards. Information technology "Infrastructure" shall mean the Contractor's entire collection of hardware, software, networks, data centers, facilities and related equipment used to develop, test, operate, monitor, manage and/or support information technology services. The Contractor shall provide proof of current certification annually and upon State request. Contractor shall meet all applicable requirements of the most current version of Internal Revenue Service Publication 1075.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

(4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.

(5) Contractor shall be certified to host Payment Card Industry ("PCI") data in accordance with the current version of PCI DSS ("Data Security Standard"), maintained by the PCI Security Standards Council.

(6) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State

(7) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

(1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL:

<https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.

(2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.

(3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon thirty (30) days advance notice and during normal business hours, no more than one (1) time per calendar year, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall

include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation. For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit. Notwithstanding the provisions of this section 28, prior to commencement of any audit, the scope of the audit shall be discussed in good faith and mutually agreed upon by the parties.

d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:

(1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:

i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: 24 hours

ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: 48 hours

(3) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. Upon request, the Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

**FEDERALLY MANDATED REQUIREMENTS FOR
TECHNOLOGY SERVICES CONTRACTS WITH ACCESS TO
FEDERAL TAX RETURN INFORMATION**

Federal Tax Information ("FTI") includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.

CONTRACT LANGUAGE FOR TECHNOLOGY SERVICES

I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the Contractor or the Contractor's employees.
- (2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related

output will be given the same level of protection as required for the source material.

- (5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.
- (8) No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- (9) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
- (10) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall

also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial

certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the State, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

ATTACHMENT C

**ATTESTATION RE PERSONNEL USED IN CONTRACT
PERFORMANCE**

If the attestation applies to more than one contract, modify this row accordingly. SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

Darek Awas

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

Darek Awas, Sr. Contracts Specialist

PRINTED NAME AND TITLE OF SIGNATORY

5/21/2019

DATE OF ATTESTATION

ATTACHMENT D

RESPONDENT'S DIVERSITY UTILIZATION PLAN

Respondent's Company Name: SHI International Corp.		
Solicitation Event Name:		Event Number:
Respondent's Contact Name: Elaine Williams	Phone: (615) 691-2551	Email: elaine_williams@shi.com
Does the Respondent qualify as the diversity business enterprise? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, which designation does the Respondent qualify? <input checked="" type="checkbox"/> MBE <input checked="" type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> SDVBE <input type="checkbox"/> SBE		
Certifying Agency:		

Estimated level of participation by DBEs if awarded a contract:

Diversity Business Information (List all subcontractors, joint-ventures, and suppliers)	% of Contract	Estimated Amount	MBE/ WBE/ SDVBE/ SBE / DSBE Designation	Currently Certified (Yes or No)
Business Name:				
Contact Name:				
Contact Phone:				
Business Name:				
Contact Name:				
Contact Phone:				

If awarded a contract, we confirm our commitment to make reasonable business efforts to meet or exceed the commitment to diversity as represented in our Diversity Utilization Plan. We shall assist the State in monitoring our performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans and persons with disabilities. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>

We further agree to request in writing and receive prior approval from the Central Procurement Office for any changes to the use of the above listed diversity businesses.

Authorized Signature: Darek Awas Date: 05/21/2019

Printed Name and Title of Signatory Darek Awas, Sr. Contracts Specialist

ATTACHMENT E

The terms and conditions of this addendum (“**Rider**”) shall supplement the EULA (as defined below) between _____, the licensor and provider (“**Licensor**”), and the State of Tennessee (including any agency, office or commission), as licensee (“**State**” or “**Licensee**”), and are applicable to any procurement of Software and associated services from Licensor sold, licensed, transferred or otherwise provided to the State by Licensor or through a third-party reseller (“**Reseller**”) under the terms and conditions of [Co-op Master and SWC #] (“**Contract**”). As used in this Rider, “party” refers to Licensor or Licensee (*i.e.*, does not include a Reseller), individually, and “parties” means the Licensor and the Licensee, collectively.

The parties agree as follows:

1. Additional Definitions

“**EULA**” means any agreements between Licensor and Licensee that governs Licensee’s use of Software purchased under the Contract.

“**Software**” means is any set of machine-readable instructions provided to the State by or through Licensor that directs a computer’s processor to perform specific operations.

“**Service Level Agreement**” or “**SLA**” means the term setting forth the service levels that Licensor must meet in providing the Software.

2. Order of Precedence

This Rider takes precedence over any provision in the EULA or in any separate agreement between the Licensor and the State. In the event of a conflict between this Rider and the EULA, the Rider will prevail. Defined terms in this Rider or in the EULA will be given their ordinary meaning in this Rider.

3. Term and Survival

- 3.1 The term of this Rider shall be synonymous with the term of the EULA.
- 3.2 All provisions of this Rider that should by their nature survive termination will survive, including, Sections 5 (Limitation of Liability), 7 (Indemnification for Intellectual Property Infringement, 11 (Governing Law; Jurisdiction and Venue), (Fees), 14 (Warranties), and 15 (Miscellaneous).

4. Authorized Users

The authorized user of the Software is the State, including its employees, authorized agents, consultants, auditors, other independent contractors and any external users contemplated by the parties. This Section does not modify the quantity of users licensed.

5. Limitation Of Liability

- 5.1. Limitation of State’s Liability The State shall have no

liability except as specifically provided in this Rider. In no event will the State be liable to the Licensor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Rider otherwise.

5.2. Limitation of Licensor's Liability In accordance with Tenn. Code Ann. § 12-3-701, Licensor's liability for all claims arising under this Rider or the EULA shall be limited to an amount equal to two (2) times the total fees paid under the total of any purchase orders issued by the State under the Contract or otherwise paid by the State under the Contract for Licensor's Software and associated services, or the sum of one million dollars (\$1,000,000), whichever is greater. Except as set forth below, in no event will the Licensor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under the EULA, unless such damages are insured by any insurance coverages required by the EULA or would have been covered had the required insurance been purchased or maintained. PROVIDED THAT in no event shall this Section limit the liability of Licensor for: (i) intellectual property or any Licensor indemnity obligations for infringement

for third-party intellectual property rights; or (ii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

6. SLA

Licensor represents and warrants that the Software provided under the EULA will function: (i) as set forth in the EULA; (ii) in accordance with any agreed upon service levels; and (iii) in accordance with any documentation associated with the Software. SLA claims will not be deemed to be waived by the passage of time or the State's failure to report an issue.

7. Indemnification for Intellectual Property Infringement Licensor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement that arises from or is associated with the Software or associated services. In any such claim or action brought against the State, Licensor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and Licensor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give Licensor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Licensor of its obligations under this Section to the extent Licensor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant Licensor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

8. No Additional Terms Permitted

No online terms and conditions that are incorporated by reference in the EULA will be binding on Licensee. In addition, no shrink-wrap, click-wrap or other end user terms and conditions that are embedded in or provided with any Software or service are binding on Licensee, even if use of the Software requires an affirmative acceptance of those terms. Licensor shall fill all orders submitted by Reseller or the State under the Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any Software or service under the Contract shall contain any terms or conditions conflicting with any provision of this Rider.

9. No Portion of this Agreement may be Changed Unilaterally

No portion of the Rider or the EULA may be changed unilaterally. To be valid, any amendment to this Rider or the EULA must be in writing and signed by the parties. Any provision in the EULA to the contrary is deemed to conflict with this Rider and shall be null and void.

10. Use of Third Party Providers

Any subcontractor or Affiliate (as defined below) of Licensor that provides any Software or services in connection with this Agreement is deemed to be a subcontractor and must be approved in writing by the State to ensure that any such entity is qualified to do business with the State. As used in this paragraph, "Affiliate" means any parent, subsidiary or other entity that is (directly or indirectly) controlled by, or controls, Licensor.

11. Governing Law; Jurisdiction and Venue.

This Rider and the EULA shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal

courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Rider, the EULA, or the Contract. Licensor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Rider shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.

12. Fees

12.1. All fees and payments for License of Software or any services provided by Licensor under the EULA, this Rider, or the Contract shall be paid by State solely to Reseller. Licensor waives the right to collect any fees or payments from the State for any Software or services provided by Licensor under the Contract. Licensor's sole remedy shall be against Reseller, its Affiliates and assigns for any fees or payments owed for the State's for anything provided by Licensor under the EULA, this Rider, or the Contract. The State is not responsible for an early termination fee.

12.2. Rates and fees may only be increased pursuant to a written amendment to this Rider that has been signed by the parties. Overage and excess usage fees are not permitted in the absence of the State's prior written agreement.

12.3. The State will not be liable for any unauthorized use, including fees and charges that may become due to Licensor as a result of that use.

13. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this EULA. The Licensor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on

the list created pursuant to Tenn. Code Ann. § 12-12-106.

14. General License Terms The Licensor grants a license to the State to use all Software provided under this Contract in the course of the State's business and purposes during the Term. This paragraph does not modify the quantity of users or devices licensed. The State may copy the Software only for: (a) disaster recovery and back-up purposes, and (b) installation of any personal computer Software authorized hereunder. All copies remain the property of the Licensor. The State may deliver a copy of the Software to a disaster recovery contractor to perform temporary disaster recovery work for the State. Title to the Software and its documentation remains with Licensor and its licensors at all times. Copyright notices and other proprietary rights notices in the Software shall not be deleted or modified. The EULA does not transfer any ownership rights. Source code from which the Software object code is derived ("Source Code") is not being provided and is a trade secret of Contractor and Contractor's licensors to which access is not authorized. Neither the State, any authorized State agency, nor any other State user shall reverse engineer, reverse assemble or decompile the Software or in any way attempt to recreate the Source Code, except and only to the extent applicable laws specifically prohibit such restriction.

15. Warranties

15.1. Software Licensor represents and warrants that the Software provided under the EULA or this Rider will function in accordance with the documentation made available to the State.

15.2. Intellectual Property Licensor represents and warrants that it has the rights necessary to license the Software to the Licensee in accordance with the terms of the EULA and this Rider.

15.3. Malware Licensor warrants that the Software contains no: (i) viruses, worms, spyware or malware; (ii) coding that may disable the Software or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numerals, or other similar self-destruct mechanisms (e.g., "time bombs," "time locks," or "drop dead" devices); or (iii) coding that would permit the Licensor, or any third party to access the Software to cause disablement or impairment (e.g., a "trap door" device). This malware warranty shall apply until the later of the end of the warranty period specified in the order or one (1) year after the date on which the Software is accepted by the State.

15.4. General No warranties provided by the Reseller or Licensor will be invalidated by the failure of the State to install or otherwise use an available Software update (e.g., a new version or release).

16. Miscellaneous Any provision in the EULA containing the following shall be null, void, and unenforceable against the State: (i) any provision requiring the State to indemnify Licensor or any other entity; (ii) any provision regarding confidentiality obligations that are contrary to the Tennessee Public Records Act; (iii) any provision requiring the State to pay taxes or reimburse Licensor for tax payments; (iv) any provision requiring the State to submit to any alternative dispute resolution; (v) any provision allowing collection of attorneys fees or late payments against the State other

than as allowed under the Tennessee Prompt Pay Act; (vi) any provision allowing equitable or injunctive relief against the State; and (vii) any provision that may be illegal to include

in a contract with the State of Tennessee or to enforce against the State of Tennessee.
:

ACKNOWLEDGED AND ACCEPTED

BY:

Licensors: _____

Name: _____

Title: _____

Date: _____

Licensee: State of Tennessee _____

Name: _____

Title: _____

Date: _____