

## **MASTER SERVICES AGREEMENT**

### **CLOUD SERVICES**

**Last Updated: September 23, 2013**

This Master Services Agreement (“MSA”) is between SHI International Corp. (“SHI”) and its affiliates, and you or the entity you represent (“you”). It contains the general terms and conditions that govern your access to and use of Cloud Services offered by or through SHI (“Service Offering” or “Services Offering” as appropriate).

This MSA takes effect (the “Effective Date”) the earlier of:

- i. when you click an “I Accept” button or check box presented with these terms;
- ii. the Signature Date as set forth in the executed MSA (if presented in physical form);
- iii. upon the first use of any Service Offering; or,
- iv. upon the issuance of a valid purchase order for any Service Offering.

You represent and warrant that you are over the age of eighteen and possess the legal capacity to bind yourself to this MSA. If you are entering into this MSA on behalf of a business organization or entity, you represent and warrant that you are duly authorized to bind that entity to this MSA.

#### **1. GENERAL**

- 1.1. The use of a specific set of Service Offerings may require your agreement to an addendum (“Cloud Service Addendum” or “CSA”) that may further include additional terms or modifications of this MSA. Should there be any conflict between the terms and conditions of the MSA and a CSA, the conflicting terms in the CSA shall take precedence.
- 1.2. The set of Service Offerings may be directly provided by SHI (“SHI Cloud Service Provider”) or by a third party vendor not affiliated with SHI (“Third-Party Cloud Service Provider”).

#### **2. THIRD-PARTY CLOUD SERVICE PROVIDER**

A Third-Party Cloud Service Provider is an Independent Contractor to SHI. Nothing in this MSA will in any way be construed to constitute the Third-Party Cloud Service Provider to be an agent, employee or representative of SHI. Without limiting the generality of the forgoing, the Third-Party Cloud Service Provider is not authorized to bind SHI to any liability or obligation or to represent that the Third-Party Cloud Service Provider has any such authority.

### 3. PRIVACY

See the SHI Cloud Services Privacy Statement, located at the following URL, which applies to this MSA: <http://cloud.shi.com/legal/privacy.pdf>.

### 4. SERVICE LEVEL AGREEMENT (SLA)

The SLA for a specific Service Offering is set forth in the corresponding CSA that includes that Service Offering.

### 5. FEES & PAYMENTS

5.1. **Service Fees.** SHI calculates and bills fees and charges monthly. Final payment terms are set forth in your invoice. All amounts payable under this MSA will be made without setoff or counterclaim, and without any deduction or withholding. Fees and charges for any new Service Offering, or new feature of a Service Offering, will be effective upon notice as set forth in **Section 16 (Notice)**.

5.2. **Taxes.** All fees and charges payable by you are exclusive of applicable taxes and duties, including VAT and applicable sales tax. You will provide SHI any information we reasonably request to determine whether we are obligated to collect VAT from you, including your VAT identification number. If you are legally entitled to an exemption from any sales, use, or similar transaction tax, you are responsible for providing us with legally-sufficient tax exemption certificates for each taxing jurisdiction. SHI will apply the tax exemption certificates to charges under your account occurring after the date we receive the tax exemption certificates. If any deduction or withholding is required by law, you will notify and pay SHI any additional amounts necessary to ensure that the net amount that we receive, after any deduction and withholding, equals the amount SHI would have received if no deduction or withholding had been required. Additionally, you will provide SHI with documentation showing that the withheld and deducted amounts have been paid to the relevant taxing authority.

### 6. END USER VIOLATIONS

You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this MSA, your Content, or your use of the Service Offerings. You are responsible for End Users' use of your Content and the Service Offerings. You will ensure that all End Users comply with your obligations under this MSA. If you become aware of any violation of your obligations under this MSA by an End User, you will immediately terminate such End User's access to Your Content and the affected Service Offerings.

## **7. PROPRIETARY RIGHTS**

- 7.1. Content. As between you and SHI, you or your licensors own all right, title, and interest in and to your Content. Except as provided in this Section 0, SHI obtains no rights under this MSA from you or your licensors to your Content, including any related intellectual property rights. You consent to SHI's use of your Content to provide the Service Offerings to you. We may disclose your Content to provide the Service Offerings to you or to comply with any request of a governmental or regulatory body (including subpoenas or court orders).
- 7.2. Adequate Rights. You represent and warrant to SHI that: (a) you or your licensors own all right, title, and interest in and to your Content; (b) you have all rights in your Content necessary to grant the rights contemplated by this MSA; and (c) none of your Content will violate the SHI Cloud Service Acceptable Use Policy: <http://cloud.shi.com/legal/aup.pdf>.
- 7.3. Suggestions. If you provide any Suggestions to SHI, our affiliates, or our vendors, under this MSA, SHI will own all right, title, and interest in and to the Suggestions, even if you have designated the Suggestions as confidential. SHI, our affiliates, and our vendors will be entitled to use the Suggestions without restriction. You hereby irrevocably assign to us all right, title, and interest in and to the Suggestions and agree to provide us any assistance we may require to document, perfect, and maintain our rights in the Suggestions.

## **8. INDEMNIFICATION**

- 8.1. You will defend, indemnify, and hold harmless SHI, its affiliates, licensors, and vendors, and each of their respective employees, officers, directors, and representatives (individually "Indemnitee" or collectively "Indemnitees") from and against any claims, costs, damages, fines, penalties, liabilities, losses, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning: (a) your use of the Service Offerings; (b) breach of this MSA or violation of applicable law by you; (c) or your Content or the combination of your Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by your Content or by the use, development, design, production, advertising or marketing of your Content. If any Indemnitee is obligated to respond to a third party subpoena or other compulsory legal order or process described above, you will also reimburse that Indemnitee for reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to the third party subpoena or other compulsory legal order or process at our then-current hourly rates.
- 8.2. In the event the Parties are jointly at fault or negligent, they agree to indemnify each

other in proportion to their relative fault or negligence.

8.3. SHI will promptly notify you of any claim subject to Section 8.1, but our failure to promptly notify you will only affect your obligations under Section 8.1 to the extent that our failure prejudices your ability to defend the claim. You may: (a) use counsel of your own choosing (subject to our written consent) to defend against any claim; and (b) settle the claim as you deem appropriate, provided that you obtain our prior written consent before entering into any settlement. We may also assume control of the defense and settlement of the claim at any time.

## **9. LIMITED REPRESENTATIONS AND WARRANTY**

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS MSA, OR IN A SUBSEQUENT CSA, SHI DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES TO YOU OR TO ANY OTHER THIRD PARTY WITH RESPECT TO THE SPECIFICATIONS, FEATURES, OR CAPABILITIES OF A CLOUD SERVICE, OR OF ANY MATERIALS THEREIN.

## **10. LIMITATION OF LIABILITY AND REMEDIES**

10.1. IF ANY PARTY DEFAULTS IN ANY OF ITS OBLIGATIONS UNDER THIS MSA AND SUBJECT TO THE LIABILITY CAP IN THIS SECTION, THE NON-BREACHING PARTY WILL BE ENTITLED TO RECOVER FROM THE BREACHING PARTY ONLY THE ACTUAL AND DIRECT DAMAGES THAT THE NON-BREACHING PARTY MAY INCUR ON ACCOUNT OF SUCH BREACH.

10.2. YOUR ACTUAL AND DIRECT DAMAGES WILL BE LIMITED TO THE RECOVERY OF FEES ACTUALLY PAID TO SHI IN CONNECTION WITH THIS MSA. EXCEPT IN CONNECTION WITH THE INDEMNIFICATION OBLIGATIONS UNDER **SECTION 8 (INDEMNIFICATION)**, NEITHER PARTY NOR ANY OF EITHER PARTY'S RESPECTIVE AFFILIATES, LICENSORS, OR VENDORS, WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING DAMAGES FOR:

10.2.1. LOSS OF PROFITS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, GOODWILL, USE, OR DATA;

10.2.2. ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES OFFERING FOR ANY REASON;

10.2.3. ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS MSA; OR

10.2.4. ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOU CONTENT OR OTHER DATA.

10.3. IN ANY CASE, EXCEPT IN CONNECTION WITH THE INDEMNIFICATION OBLIGATIONS UNDER **SECTION 8 (INDEMNIFICATION)**, NEITHER PARTY'S AGGREGATE LIABILITY UNDER THIS MSA WILL EXCEED THE LESSER OF THE AMOUNTS PAYABLE OR PAID BY YOU TO SHI IN CONNECTION WITH THIS MSA DURING THE SIX MONTHS PRECEDING THE CLAIM. NOTHING IN THIS SECTION WILL LIMIT YOUR OBLIGATION TO PAY SHI PURSUANT TO **SECTION 5 (FEES AND PAYMENT)**.

## 11. FORCE MAJEURE

SHI, or its affiliates, licensors, and vendors, will not be liable for any delay or failure to perform any obligation under this MSA where the delay or failure results from any cause beyond SHI's reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

## 12. SUSPENSION AND TERMINATION BY SHI FOR CAUSE

- 12.1. SHI may immediately (and without prior notification) suspend or terminate your access to a Service Offering, by sending you notice as set forth in **Section 16 (NOTICE)**, if one or more of the following occurs:
- 12.1.1. SHI discovers that you provided false information when you entered into this MSA or that you lacked the capacity to enter into this MSA at the time of its consummation;
  - 12.1.2. SHI determines, in its sole discretion, that your use of a Cloud Service poses a threat to the security or performance of the SHI network or to any of SHI's clients, licensors, or vendors;
  - 12.1.3. SHI determines, in its sole discretion, that your use of a Cloud Service is illegal, or that it misappropriates or infringes the property rights of a third party;
  - 12.1.4. SHI reasonably believes that your use of a Cloud Service has or will subject SHI or its affiliates, licensors, and vendors, to civil or criminal liability;
  - 12.1.5. you become the subject of an involuntary or voluntary bankruptcy or similar proceeding, or you assign all or substantially all of your assets for the benefit of creditors;
  - 12.1.6. you fail to make any payment when due or if your credit card is declined;
  - 12.1.7. you attempt to gain unauthorized access to computer systems (i.e., "hacking") using a Cloud Service, or with assets used to provide or provision a Cloud Service; or,
  - 12.1.8. you breach any of the other terms and conditions in this MSA.
- 12.2. Upon termination or suspension under this **Section 12**, you will still be responsible for any fees and payments due, as set forth in the relevant CSA.

### **13. TERMINATION**

Upon termination of all CSAs that reference this MSA, you may terminate this MSA at any time and for any reason (or no reason at all), by providing SHI with a written notice of termination in accordance with the notice provisions in **Section 16 (NOTICE)**.

### **14. EFFECT OF SUSPENSION AND TERMINATION**

- 14.1. **SUSPENSION.** Access to the Cloud Service, will be unavailable in whole or in part during any suspension, and you may not have access to your data. Fees may continue to accrue during a suspension, and SHI may charge you a reinstatement fee following any suspension.
- 14.2. **TERMINATION.** Effective immediately upon the termination of this MSA, access to the Cloud Service will no longer be available and SHI will permanently erase all data stored therein.
- 14.3. **SURVIVAL. ALL TERMS OF THIS MSA THAT SHOULD BY THEIR NATURE SURVIVE TERMINATION WILL SURVIVE, INCLUDING, SECTIONS 5.1 (SERVICE FEES), 5.2 (TAXES), 8 (INDEMNIFICATION), 9 (LIMITED REPRESENTATIONS AND WARRANTY, 10 (LIMITATION OF LIABILITY AND REMEDIES), 16 (NOTICE), & 17.2(GOVERNING LAW).**

### **15. AMENDMENTS**

Except as provided in this Section 15, no amendment to this MSA will be effective unless it is in writing and signed by both parties. SHI may amend this MSA, or documents referenced in this MSA, by posting the modified version online at: <http://cloud.shi.com/legal/msa.pdf>. Such amendments will become effective upon the earlier to occur of (i) your acceptance of the amended terms by clicking an online confirmation or acceptance button, or by clicking an acceptance link provided in an email we send to you; or (ii) upon thirty calendar days after SHI provides you with notice of the amendment in accordance with the notice provisions in **Section 16 (NOTICE)**. Your continued use of the Cloud Service offered therein, after the effective date of the amendment, will be deemed to be your acceptance of that amendment.

### **16. NOTICE**

- 16.1. Notices under this must be sent in writing to the recipient at the recipient's own cost, either (i) by email; or (ii) by certified mail, return receipt requested, or nationally recognized courier (e.g., FedEx or U.P.S.) with a signature required.
- 16.2. A non-email notice under this MSA is effective when signed for as indicated by the signed delivery receipt. An email notice under this MSA will be deemed received when sent (even if not actually received).
- 16.3. Notwithstanding Section 16.2, a modification of the Notice Contact Information is only effective upon acknowledgement in writing by the other party.

## 17. MISCELLANEOUS

### 17.1. **Successors and Assigns**

This MSA may not be assigned by either party hereto without the prior written consent of the other party; provided that, without such consent, Buyer may transfer or assign this MSA, in whole or in part or from time to time, to one or more of its Affiliates, but no such transfer or assignment will relieve Buyer of its obligations hereunder. Subject to the foregoing, all of the terms and provisions of this MSA shall inure to the benefit of and be binding upon the parties hereto and their respective executors, heirs, personal representatives, successors and assigns.

### 17.2. **Governing Law**

Unless otherwise provided, you and SHI agree that all matters relating to this MSA shall be governed by the statutes and laws of the State of New Jersey and United States of America, excluding: (1) conflict of law principles thereof; (2) the United Nations Convention on Contracts for the International Sale of Goods; and, (3) the Uniform Computer Information Transactions Act ("UCITA"). You and SHI also agree and hereby submit to the exclusive personal jurisdiction and venue of the state and federal courts of the State of New Jersey with respect to such matters.

### 17.3. **Entire Agreement**

This MSA and the other documents, instruments and agreements specifically referred to herein or therein or delivered pursuant hereto or thereto set forth the entire understanding of the parties hereto with respect to the transactions contemplated by this MSA. Any and all previous agreements and understandings between or among the parties regarding the subject matter hereof, whether written or oral, are superseded by this agreement, except for any **Confidentiality Agreement** between the parties, which shall continue in full force and effect in accordance with its terms.

### 17.4. **Severability**

Any provision of this MSA which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

### 17.5. **Import and Export Compliance.**

In connection with this MSA, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control.

### 17.6. **Non-Confidentiality**

Unless otherwise explicitly stated herein, any non-personal information or material sent to SHI will be deemed NOT to be confidential. By sending SHI any non-personal information or material, you grant SHI an unrestricted, irrevocable

license to use, reproduce, display, perform, modify, transmit and distribute those materials or information, and you also agree that SHI is free to use any ideas, concepts, know-how or techniques that you send us for any purpose. However, we will not release your name or otherwise publicize the fact that you submitted materials or other information to us unless: (a) you grant us permission to do so; (b) we first notify you that the materials or other information you submit to a particular part of a site will be published or otherwise used with your name on it; or (c) we are required to do so by law.

17.7. **Marks**

The trademarks, logos and service marks ("Marks") displayed in association with the Cloud Service are the property of SHI or other third parties. You are not permitted to use the Marks without the prior written consent of SHI or such third party which may own the Marks. "SHI", the SHI logo, and the SHI Cloud logo are trademarks of Software House International, Inc.

18. **DEFINITIONS**

**"Cloud Computing"** is a model for enabling convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.

**"Cloud Service"** means a specific implementation of Cloud Computing.

**"Content"** means software (including machine images), data, text, audio, video, images or other content

**"End User"** means any individual or entity that directly or indirectly through another user: (a) accesses or uses your Content; or (b) otherwise accesses or uses the Service Offerings under your account.

**"Service(s) Offering"** means the Cloud Services (including associated APIs), the Content, the Marks, the SHI Site, and any other product or service offered by SHI under this MSA.

**"Suggestions"** means all suggested improvements to the Service Offerings that you provide to SHI.