

## STATE OF NEW JERSEY

### PARTICIPATING ADDENDUM AND STANDARD TERMS AND CONDITIONS

Under

**NASPO ValuePoint Contract for Cloud Solutions  
[State of Utah Master Contract Number AR2488]**

This Participating Addendum is made as of the last date of signature below (the "Effective Date"), by and between, SHI International Corp., whose address is 290 Davidson Avenue Somerset, NJ 08873 ("Contractor" or "contractor"), and the State of New Jersey, Department of the Treasury, Division of Purchase and Property ("Participating State" or "State") whose address is 33 West State Street, 8th Floor, P.O. Box 039, Trenton, New Jersey 08625, on behalf of the State of New Jersey and all "Authorized Purchasers" (as defined below). For clarification of references throughout this document, the term "State," in any form, refers to the State and any Authorized Purchaser, unless otherwise indicated. Capitalized terms used but not defined shall have the meaning ascribed to them in the Master Agreement (as defined below).

**WHEREAS**, pursuant to N.J.S.A. 52:34-6.2, the Director of the Division of Purchase and Property the "Director"), within the Department of the Treasury ("DPP") "may enter into cooperative purchasing agreements with one or more states for the purchase of goods and services;" and

**WHEREAS**, the State of Utah ("Lead State") and Contractor have entered into Master Agreement # AR2488 (the "Master Agreement"), which may be found at the following URL: <http://www.naspovaluepoint.org/#/contract-details/71/overview/general>, awarded in accordance with the State of Utah Solicitation CH16012 for Cloud Solutions; and

**WHEREAS**, the State of New Jersey participated in the publicly advertised, competitive bidding process with fifteen other states and evaluated the proposals; and

**WHEREAS**, the Director has determined that entering into a Participating Addendum with Contractor under the Master Agreement to provide cloud solutions is the most cost effective method of procuring these Products and Services, and that it is in the best interest of the State to enter into a Participating Addendum with Contractor; and

**WHEREAS**, the parties seek to enter into this Participating Addendum to memorialize the terms of their contractual relationship;

**NOW THEREFORE**, for good and valuable consideration, receipt of which hereby acknowledged, the parties to this Participating Addendum hereby agree as follows:

#### **1.0 Term and Extension Option; Order of Precedence; Entire Agreement**

1. The term of this Participating Addendum shall be effective from the Effective Date and shall continue for a period ending on the Termination Date of the Master Agreement or when this Participating Addendum is terminated in accordance with the Master Agreement or this Participating Addendum, whichever shall occur first. Notwithstanding anything to the contrary contained in the Master Agreement, the State reserves the right, in its sole discretion, to extend this Participating Addendum upon an extension of the Master Agreement under the same terms and conditions as stated in this Participating Addendum. There shall be no automatic renewals of the Participating Addendum.
2. The entire agreement, and all rights and obligations between the parties, shall consist of the following documents (which shall be collectively referred to as the "Agreement"):
  - a. This Participating Addendum and the State of New Jersey Compliance Terms and Conditions, attached to the State of Utah Bid Solicitation CH16012 ("Solicitation") within Attachment E, and attached hereto as Exhibit A;

- b. SHI's NASPO ValuePoint Master Agreement AR2488, as amended, ("Master Agreement"), attached hereto as Exhibit B;
  - c. Rider For Purchases Funded In Whole Or In Part By Federal Funds (the "Federal Rider"), dated November 12, 2020, incorporated herein as Exhibit C;
  - d. The Solicitation;
  - e. The Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State; and
  - f. A Service Level Agreement and/or Statement of Work issued against the Participating Addendum.
3. These documents shall be read to be consistent and complimentary. In the event of any conflict between the terms of the documents comprising the Agreement, the conflict shall be resolved by giving priority to these documents in the order listed above.
4. The Agreement sets forth the entire agreement between the parties and supersedes all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. No Contractor terms and conditions shall apply to this Participating Addendum except those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment as of the Effective Date of this Participating Addendum, as may be superseded, amended or rejected by this Participating Addendum.
5. In the event the Lead State approves Contractor to offer new or additional Products and Services under the Master Agreement after the Effective Date of this Participating Addendum and such Products or Services incorporate any different, inconsistent, or additional terms into the Master Agreement, including, but not limited to any software license agreement or service level agreement, such terms and conditions shall not be made part of the Agreement without a written amendment to the Participating Addendum signed by both parties.
6. In the event that Contractor presents terms and conditions, including but not limited to software license agreement or service level agreement, in response to an order by an Authorized Purchaser, through any medium whatsoever, that have not been previously accepted by the Division as part of this Participating Addendum, or as an amendment to this Participating Addendum, are expressly rejected and shall not become part of the Agreement.
7. References to external documentation; Software License Agreements and Service Level Agreements
  - a. Any external information incorporated by reference within any of the documents comprising the Agreement, including, without limitation, click-through, shrink-wrap, software license agreements or service level agreements, are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.
  - b. Any changes in the information incorporated by reference by any of the documents that comprise the Agreement, including, without limitation, click-through, shrink-wrap, software license agreements or service level agreements, are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.
  - c. Any reference in Contractor's documents to website URLs that contain additional terms and conditions are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.
8. Amendments – This Participating Addendum may not be amended except in a writing signed by both parties.

## **2.0 Scope of Participating Addendum**

1. The scope of Products and Services that may be procured by Authorized Purchasers defined in Section 6.0(1) of this Participating Addendum (State Agencies) shall be those Products and

Services established in the Scope Addendum attached to this Participating Addendum as Attachment 1 as may be amended by the parties in writing from time to time. For all other Authorized Purchasers, the full suite of Product and Service offerings available under the Master Agreement may be procured under this Participating Addendum.

2. Contractor shall demonstrate to the State that each Product or Service included in an order is within the scope of the Master Agreement as approved by the Lead State.

### **3.0 Reporting Requirements**

The Contractor shall deliver a copy of the detailed sales data reports described in Section 42 of the Master Agreement ("Reports") to the Procurement Specialist and State Contract Manager within ten (10) days of providing the Reports to the Lead State and NASPO ValuePoint Cooperative Development Team. The Reports may be limited to sales made to Authorized Purchasers under this Participating Addendum.

### **4.0 Restrictions**

1. Any restrictions or limitations regarding the State's use of this Agreement will be set forth in the State's Method of Operation, as may be amended from time to time and posted on the State's website.
2. Financing, leasing, and renting is not permitted under this Participating Addendum for State agencies. Authorized Purchasers, as defined in Section 6.0(2)-(5) may finance their purchase, if permitted under law. If financing is through a lease agreement, that agreement is separate from this Participating Addendum and is between the Contractor and the respective Authorized Purchaser only.

### **5.0 Termination of Contract**

1. For Convenience-
  - A. Notwithstanding any provision or language in the Agreement to the contrary, the Director may terminate at any time, in whole or in part, this Participating Addendum or any contract entered into with Contractor pursuant to this Participating Addendum, for the convenience of the State, upon no less than forty-five (45) days written notice to the Contractor.
  - B. Contractor shall not have the right to terminate this Participating Addendum for convenience.
2. For Cause-
  - A. Where the Contractor fails to perform or comply with the Agreement or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate this Participating Addendum, in whole or in part, upon thirty (30) days' notice to the Contractor with an opportunity to respond and cure within the thirty day period.
  - B. Where in the reasonable opinion of the Director, the Contractor continues to perform poorly under the Agreement as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the Contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint the Director may terminate this Participating Addendum, in whole or in part, upon thirty (30) days' notice to the Contractor with an opportunity to respond prior to termination.
3. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.

4. In the event of termination under this section, the Contractor will be compensated for work performed or goods shipped in accordance with the Agreement, up to the date of termination. Such compensation may be subject to adjustments. In the event of a termination for convenience under Section 5.0(1), there shall be no refund of pre-paid fees. In the event of a termination for cause under Section 5.0(2), Contractor shall issue Authorized Purchaser(s) a pro-rata refund of unused pre-paid fees.
5. The Contractor shall not have the right to terminate this Participating Addendum. Any provisions in the Agreement regarding the Contractor's right to terminate or cancel this Participating Addendum are superseded by and replaced in their entirety by this Section 5.0 of this Participating Addendum. However, in the event that an Authorized Purchaser violates its obligations under the Agreement, Contractor may refuse to accept or process orders from such Authorized Purchaser immediately upon written notice to the State and such Authorized Purchaser, until such time as Authorized Purchaser submits a plan to correct such violations satisfactory to Contractor, which approval will not be unreasonably withheld. Notwithstanding anything to the contrary, Contractor shall continue to process orders submitted by other Authorized Purchasers. Section 7, Termination and Suspension of Service, in the applicable Exhibit to the Master Agreement shall apply in the event of a termination or cancellation pursuant to this section.
6. Any termination under this provision shall not affect the rights and obligations attending Orders outstanding at the time of termination, including but not limited to any right of any Authorized Purchaser to indemnification by the Contractor, rights of payment for Services delivered and accepted, data ownership, Contractor obligations regarding Purchasing Entity Data, rights attending default in performance in an applicable Service Level of Agreement or Statement of Work, Contractor obligations under Section 7, Termination and Suspension of Service, in the applicable Exhibit to the Master Agreement, and any responsibilities arising out of a Security Incident or Data Breach.
7. The State may, for valid reason, issue a stop order directing the Contractor to suspend Products, work, and/or Services for a specific time. The Contractor shall be paid for Products ordered, Products delivered, and Services requested and performed until the effective date of the stop order. The Contractor shall resume Products, work, and/or Services upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the Contractor's approved schedule of performance. The Director may make an equitable adjustment, if any is required, to the Statement of Work price. The Contractor shall provide whatever information that Director may require related to the equitable adjustment. In the event Contractor disagrees with the final adjusted contract price, Section 12.0 (Miscellaneous – Alternative Dispute Resolution) shall apply. Section 7, Termination and Suspension of Service, in the applicable Exhibit to the Master Agreement shall apply in the event of a suspension made pursuant to this section.
8. Notwithstanding anything to the contrary in any of the documents comprising the Agreement, Orders shall not automatically renew. Following the expiration of an Order's term, Contractor shall treat such period as a suspension under Section 7, Termination and Suspension of Service, of the applicable Exhibit to the Master Agreement, unless the Authorized Purchaser notifies Contractor in writing of an intent not to renew in which case the remaining provisions of Section 7, Termination and Suspension of Service, shall apply.

#### **6.0 Authorized Purchasers**

"Authorized Purchasers" under this Participating Addendum shall mean the State and the following:

1. State agencies.
2. Quasi-State Agencies - A "Quasi-State Agency" is any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any

bi-state governmental entity of which the State of New Jersey is a member, as defined in N.J.S.A. 52:27B-56.1, provided that any sale to any such bi-state governmental entity is for use solely within the State of New Jersey.

3. Political Subdivisions, Volunteer Fire Departments And First Aid Squads, And Independent Institutions Of Higher Education - Counties, municipalities and school districts as defined in N.J.S.A. 52:25-16.1., volunteer fire departments, volunteer first aid squads and rescue squads as defined in N.J.S.A. 52:25-16.2, independent institutions of higher education as defined in N.J.S.A. 52:25-16.5, provided that each purchase by the independent institution of higher education shall have a minimum cost of \$500. The extension to counties, municipalities, school districts, volunteer fire departments, first aid squads and independent institutions of higher education must be under the same terms and conditions, including price, applicable to the State.
4. State Colleges –in accordance with N.J.S.A. 18A:64-60.
5. County Colleges - in accordance with N.J.S.A. 18A:64A- 25.9.

Authorized Purchasers as defined in Section 6.0(2)-(5) are responsible for the full cost of their purchases. The State and Authorized Purchasers as defined in Section 6.0(1) are responsible for the full cost of their purchases.

#### **7.0 Modified Master Agreement Terms**

1. **Section 8 Confidentiality, Non-Disclosure, and Injunctive Relief**, in the Master Agreement is amended to add the following:
  - e. The State's obligation to maintain the confidentiality of Contractor Confidential Information (as defined below) provided to the State under the Agreement is conditioned upon and subject to the State's obligations under the New Jersey Public Records Act, N.J.S.A. 47:1A-1 et seq., ("OPRA"), the New Jersey common law right to know, and any lawful document request or subpoena.
  - f. Contractor's confidential information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure ("Contractor Confidential Information"). Notwithstanding the previous sentence, the Contractor acknowledges the terms and pricing of the contract are subject to disclosure under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena.
  - g. In the event that the State receives a request for Contractor Confidential Information related to the Agreement pursuant to a court order, subpoena, lawful document request or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such request. Contractor shall take any action it deems appropriate to protect its documents and/or information.
  - h. In addition, in the event Contractor receives a request for Confidential Information (as defined in the Master Agreement and amended by this Participating Agreement) pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such request. The State shall take any action it deems appropriate to protect its documents and/or information. Notice to the State shall not relieve the Contractor of its obligation to take action to protect such information if the Contractor is aware of a legal reason to do so.
  - i. Notwithstanding the requirements of nondisclosure described in this Section either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (a) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as

described in subsection (g) above, or if Contractor is unsuccessful in defending its rights as described in subsection (g), or (b) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights as described in subsection (h) above, or if the State is unsuccessful in defending its rights as described in subsection (h).

- j. Except as permitted above and for confidentiality obligations related to information about a party's intellectual property, which shall never expire, neither party will use or disclose the other's Confidential Information for seven (7) years after the termination of the Agreement or such longer time period as required by applicable law.
2. **Section 10 Defaults and Remedies**, in the Master Agreement is amended to delete paragraph (d) and replace with the following:
- Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable law.
3. **Section 13 Indemnification**, in the Master Agreement is amended to delete paragraph (a) and replace with the following:

The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees (collectively, the "Indemnified Party") as well as any person or entity for which they may be liable, from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising (i) directly or indirectly from the negligent or willful act(s), error(s), or omission(s) of the Contractor or its employees or volunteers, at any tier, relating to the performance under the Master Agreement; and (ii) directly or indirectly from the negligent or willful act(s), error(s), or omission(s) of Contractor's Subcontractors at any tier, relating to the performance under the Master Agreement. "Subcontractor" means the firm, person, or corporation at any tier having a contract with Contractor for the performance of any part of Services. Contractor's duties under this provision are dependent on the Indemnified Party giving Contractor:

- (1) written notice of such third party claim, ~~not later than thirty days~~ within a reasonable time after the Indemnified Party receives notice of the claim

4. Section 13 Indemnification, the Master Agreement is amended to delete Paragraph (b)(2) add replace it with the following:

For an Intellectual Property Claim the Indemnified Party shall provide the Contractor:

- (1) written notice of such third party claim, within a reasonable time after the Indemnified Party receives notice of the claim; and
- (2) authority over the defense and any settlement negotiations.
  - i. However, if a claim arising under this Section involves State-specific issues, as hereinafter defined, then the State retains the right to assume the defense and settlement of any State-specific issues(s). "State-specific issues" shall include any claims, arguments or positions concerning the State's sovereign, statutory or other immunities. Where the Contractor is in control over the defense or settlement, the Contractor agrees that the State may observe the proceedings and confer with the Contractor at the State's expense; and,
  - ii. The State shall give the Contractor the information and assistance the Contractor needs to defend against or negotiate a settlement to the claim. Any settlement to the claim must be approved in writing by the State if such settlement places an

obligation on the State to (i) pay money, (ii) make any admissions, or (iii) imposes prospective injunctive relief on the State.

Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor and then only to the extent of the prejudice or expenses. If the Contractor investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible subject to 4(2)(i) and (ii) above. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense.

If Contractor reasonably believes that a Service may infringe or misappropriate a third party's intellectual property rights, Contractor will seek to (i) procure for Participating Entity/Purchasing Entity the rights to continue to use the Service or (ii) modify or replace it with a functional equivalent to make it non-infringing and notify Participating Entity/Purchasing Entity to discontinue use of the prior version, which Participating Entity/Purchasing Entity must do immediately. If the foregoing options are not commercially reasonable for Contractor, or if required by a valid judicial or government order, Contractor may terminate Participating Entity/Purchasing Entity's license or access rights in the Service.

If a license or access to a Service is to be terminated, then the Participating Entity/Purchasing Entity shall be entitled to a prorated refund of fees paid for the remainder of the term or an amortization of costs for perpetual licenses over the 5-year period of use.

5. **Section 13 Indemnification**, in the Master Agreement is amended to add the following:

- c. Neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of New Jersey or any Authorized Purchaser, nor purport to act as legal representative of the State of New Jersey or any Authorized Purchaser, without having provided notice to the Director of the Division of Law in the New Jersey Department of Law and Public Safety and to the Director of DPP.
- d. Notwithstanding anything to the contrary contained in the Agreement, the State shall not be responsible for the Contractor's attorney fees and/or expenses.
- e. The Contractor's indemnification and liability obligations under the Agreement are not limited by, but are in addition to the insurance obligations contained in the Agreement.
- f. Notwithstanding anything to the contrary in the Agreement or any contract document, under no circumstances will the State indemnify, defend or hold harmless Contractor, and any such provision in the Agreement or any contract document shall be of no force and effect. The State will not pay or reimburse for claims absent compliance with the terms of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the Contractual Liability Act, N.J.S.A. 59:13-1 et seq. and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.

6. **Section 16 Insurance**, in the Master Agreement is amended as follows:

- a. Subsection 16(b)(3) is amended to state the following:
  - i. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

\$1,000,000 BODILY INJURY, EACH OCCURRENCE

\$1,000,000 DISEASE EACH EMPLOYEE  
\$1,000,000 DISEASE AGGREGATE LIMIT

b. The following section is added as subparagraph (g):

g. New Jersey Requirements:

- i. The Provider shall provide the State with current certificates of insurance for all coverages and renewals thereof. If the Provider receives a notice of cancellation, the Provider will promptly replace such coverage so that no lapse in insurance occurs.
- ii. The Provider shall not begin to provide services or goods to the State until evidence of the required insurance is provided.
- iii. The certificates of insurance shall indicate the contract number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates shall be emailed to the State at [ccau.certificate@treas.state.nj.us](mailto:ccau.certificate@treas.state.nj.us).

7. **Section 28 System Failure or Damage**, in the Master Agreement is deleted and replaced with the following:

In the event of system failure or damage caused by Contractor or its Services, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity. Prior to placing an order, an Authorized Purchaser should ensure that the data has been backed-up in accordance with the Authorized Purchaser's practices.

8. **Section 31 Warranty**, paragraph f., in the Master Agreement is amended to add the following:

To the extent reasonably practicable using current industry standards, the Contractor warrants that the Products that it provides under this Master Agreement that are owned or created by itself or its parents or subsidiaries are free of malware.

9. **Section 34 Assignment of Antitrust Rights**, in the Master Agreement is amended to add the following:

In connection with this assignment, the following are the express obligations of the Contractor:

1. It will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder.
2. It will advise the Attorney General of New Jersey:
  - a. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
  - b. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
3. It shall notify the defendants in any antitrust suit of the fact of the within assignment at the earliest practicable opportunity after the Contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice will be sent to the Attorney General of New Jersey.

Furthermore, it is understood and agreed that in the event any payment under any such claim or cause of action is made to the Contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

10. **Section 40 Contract Provisions for Order Utilizing Federal Funds**, in the Master Agreement is deleted and replaced with the following:

Pursuant to Section 40 of the Master Agreement, the Participating Entity has proposed RIDER FOR PURCHASES FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS (the "Federal Rider"), dated November 12, 2020. The Federal Rider is incorporated herein by reference and shall apply to any Order that is subject to Appendix II to 2 CFR Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

11. **Section 43 Entire Agreement** in the Master Agreement is deleted and replaced with the following:

This Master Agreement, along with any attachment, contains the entire understanding of the parties hereto with respect to the Master Agreement unless a term is modified in a Participating Addendum with a Participating Entity. No click-through, or other end user terms and conditions or agreements required by the Contractor ("Additional Terms") provided with any Services hereunder shall be binding on Participating Entities or Purchasing Entities, even if use of such Services requires an affirmative "acceptance" of those Additional Terms before access is permitted.

12. **Section 44 Limitation of Liability**, in the Master Agreement is deleted and replaced with the following:

1. Unless otherwise agreed in writing and signed by the Director, the following limitation of liability shall apply:
  - a. Contractor's liability arising out of or in connection with each Order(s) is limited to two times (2x) the amount paid by the State under the applicable Order(s) over the prior twelve months. Notwithstanding the preceding sentence, in no event shall the limit of liability be less than \$250,000.
  - b. In no event shall Contractor be liable for any punitive, special, indirect, or consequential damages arising out of this Participating Addendum.
  - c. This limitation of liability shall not apply to:
    - i. Contractor's obligation to indemnify, defend, and save harmless the State and its employees as described in Section 13, Indemnification, of the Master Agreement as amended by this Participating Addendum,
    - ii. Claims arising from Section 8, Confidentiality, Non-Disclosure, and Injunctive Relief, of the Master Agreement as amended by this Participating Addendum, or
    - iii. Claims arising from Section 30, Data Privacy, of the Master Agreement.
  - d. Notwithstanding the foregoing exclusions, where a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release as reasonably determined by the State, the Contractor shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state or federal law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) completing all corrective actions as reasonably determined by Contractor based on root cause of the Data Breach.
2. Where Contractor, Authorized Purchaser, and the Director agree in writing to a different limitation of liability than that established in this Section 8.0 ("Negotiated LOL"), the Negotiated LOL shall only apply to the specific Order for that Authorized Purchaser. The Negotiated LOL shall not be deemed an amendment to this Participating Addendum. For

the avoidance of doubt, all other terms of the Order shall be subject to the order of precedence established in Section 1.0 of this Participating Addendum.

## **8.0 Contractor Business Models; Roles and Responsibilities**

1. Contractor may use one of three models, or a combination thereof, to provide Products and Services to Authorized Purchasers under this Agreement: (A) direct provision of Contractor's Products and Services, with or without Subcontractors (as that term is defined below), (B) offering of Fulfillment Partner Products and Services or (C) pass through of cloud service provider solutions.
  - a. Where Contractor provides Contractor's Products and Services directly to Authorized Purchasers, Contractor may, with the prior written consent of the Director, utilize Subcontractors. As used in this Participating Addendum, Subcontractor shall mean an entity having an arrangement with Contractor, whereby Contractor uses the Products and/or Services of that entity to fulfill some of its obligations under this Agreement. Authorized Purchasers do not pay Subcontractors directly. Where Contractor utilizes a Subcontractor, Contractor shall provide to the State items 1 and 9, as enumerated in Section 14.0, The State of New Jersey Mandatory Certification Requirements, of this Participating Addendum ("Subcontractor Certifications") for each proposed Subcontractor along with Contractor's written request for approval thereof.
    - i. Where a Subcontractor is approved, Contractor may not substitute another Subcontractor without the prior written consent of the Director and until Contractor provides to the State Subcontractor Certifications for the new proposed Subcontractor along with Contractor's written request for approval thereof.
    - ii. If, at the time of the execution of the Agreement, Contractor is generally utilizing a subcontractor to provide technical support and/or other non-contract related Services to its customers, such subcontractor need not be disclosed, and Contractor may substitute a different subcontractor without the Director's prior approval.
  - b. In the event Contractor offers Fulfillment Partner Products and Services to Authorized Purchasers, each Fulfillment Partner must be approved by the State. Such approved Fulfillment Partner may, to the extent authorized by Contractor, fulfill any of the requirements of this Master Agreement including but not limited to providing Products and Services under the Agreement and directly invoicing and receiving payment from Authorized Purchasers. A Fulfillment Partner has no authority to amend this Agreement or to bind Contractor, State, or Authorized Purchasers to any additional terms and conditions.
    - i. Contractor may add Fulfillment Partners to its Participating Addendum at any time during the contract term, upon the written consent of the Director. To add a Fulfillment Partner, Contractor shall submit to the State a written request with:
      1. Evidence that all Products and Services were approved by the Lead State under the Master Agreement; and
      2. Items 1 through 9, as enumerated in Section 14.0, The State of New Jersey Mandatory Certification Requirements, of this Participating Addendum for each Fulfillment Partner.
    - ii. In the event Contractor submits a written request to delete a Fulfillment Partner's Products and Services from the scope of Contractor's Participating Addendum, Contractor shall provide State and Authorized Purchaser(s) at least thirty (30) days' advance written notice of the request and shall, upon State or Authorized Purchaser request, provide State and Authorized Purchaser(s) assistance and advice regarding the exit and/or transition strategy for all digital content and Data (as that term is defined in the Master Agreement) affected by the requested deletion at no cost to the State or Authorized Purchaser. If the State approves the request to delete a Fulfillment Partner:
      1. The deletion shall not terminate the Participating Addendum or other Products and Services unaffected by the deletion, however, such

Fulfillment Partner deletion shall be deemed a termination for cause for purposes of digital content and Data retention and destruction discussed in Section 7, Termination and Suspension of Service, in the applicable Exhibit to the Master Agreement; and

2. In the event of any pre-paid fees for Products or Services to Contractor or Fulfillment Partner affected by the deletion, such Fulfillment Partner deletion shall be deemed a termination for cause as to those pre-paid fees for purposes of Section 5.0(4) of this Participating Addendum.
- c. With the prior written consent of the Director, Contractor may pass through or resell third party cloud service provider Products and Services to Authorized Purchasers. Where Contractor is passing through third party cloud service provider Products and Services, the cloud service provider shall only provide web-based computing capabilities and related remote technical support. Authorized Purchasers shall not pay cloud service providers directly and cloud service providers shall not be deemed Subcontractors.
- i. Where a third party cloud service provider is approved, Contractor may not substitute another cloud service provider without the prior written consent of the Director.
  - ii. In the event Contractor submits a written request to remove a cloud service provider's Products and Services from the scope of Contractor's Participating Addendum, Contractor shall provide State and Authorized Purchaser(s) at least thirty (30) days' advance written notice of the request and shall, upon State or Authorized Purchaser request, provide State and Authorized Purchaser(s) assistance and advice regarding the exit and/or transition strategy for all digital content and Data (as that term is defined in the Master Agreement) affected by the requested deletion at no cost to the State or Authorized Purchaser. If the State approves the request to delete a cloud service provider:
    1. The deletion shall not terminate the Participating Addendum or other Products and Services unaffected by the deletion, however, such cloud service provider deletion shall be deemed a termination for cause for purposes of digital content and Data retention and destruction discussed in Section 7, Termination and Suspension of Service, in the applicable Exhibit to the Master Agreement; and
    2. In the event of any pre-paid fees for Products or Services to Contractor or Fulfillment Partner affected by the deletion, such cloud service provider Partner deletion shall be deemed a termination for cause as to those pre-paid fees for purposes of Section 5.0(4) of this Participating Addendum.
2. Regardless of the model used and whether prior approval is required or given, Contractor shall remain primarily responsible to the State and Authorized Purchasers for all Products and Services provided to the State under the Agreement including, but not limited to: (I) performance; (II) compliance with all of the terms and conditions of the Agreement and (III) compliance with the requirements of all applicable laws. Furthermore, Contractor's use of one or more Subcontractors, Fulfillment Partners, or cloud service providers does not create privity of contract between any of the Subcontractors, Fulfillment Partners, or cloud service providers and the State.
3. This Participating Addendum may not be subcontracted or assigned by the Contractor, in whole or in part, without the prior written consent of the Director, which shall not be unreasonably withheld.
4. For the avoidance of doubt, the Contractor shall be responsible for obtaining all required forms outlined in Section 14.0, The State of New Jersey Mandatory Certification Requirements, of this Participating Addendum from each Subcontractor or Fulfillment Partner and submit the required forms to the State along with Contractor's written request for approval thereof. The State will not accept forms directly from a Subcontractor or Fulfillment Partner.

## **9.0 Ordering and Compensation**

1. Pricing shall be in accordance with the terms set forth in the Master Agreement, as amended by this Participating Addendum.
2. The State of New Jersey Contract number and the Master Agreement number ("M-4002, AR2488") MUST be shown on all Service Level Agreements, Statement of Work documents, and Purchase Orders issued against this Participating Addendum.
3. All orders and payments will be issued to either the Contractor or the Fulfillment Partner and shall be in accordance with the terms set forth in the Agreement, as amended by this Section 9.0 of this Participating Addendum.
4. As stated in Section 5.0 Termination of Contract, Orders shall not automatically renew.
5. The State of New Jersey's obligation to make payment under the Agreement is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State of New Jersey for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency which is an Authorized Purchaser by the New Jersey State Legislature and made available through receipt of revenues. Notwithstanding the foregoing, the parties agree that performance under this contract is contingent upon the appropriation of funds.
6. Contractors or Fulfillment Partners may be paid by the State through the Procurement card (p-card) at the time the original order is placed. P-card transactions do not require the submission of either a contractor invoice or a State payment voucher. Purchasing transactions utilizing the p-card will usually result in payment to the Contractor or the Fulfillment Partners in three (3) days. The Contractor and the Fulfillment Partner should take note that there will be a transaction processing fee for each p-card transaction. To participate, the Contractor or Fulfillment Partner must be capable of accepting the applicable credit card.
7. Payments shall be made to the Contractor or Fulfillment Partners pursuant to the provisions of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq. The Act requires state agencies to pay for goods and services within sixty (60) days of the state agency's receipt of a properly executed State Payment Voucher. Interest will be paid on delinquent accounts at a rate established by the New Jersey State Treasurer (the "State Treasurer"). Interest will not be paid until it exceeds \$5.00 per properly executed invoice.
8. Cash discounts and other payment terms included as part of the Agreement are not affected by the New Jersey Prompt Payment Act.
9. Contractor and Fulfillment Partners are encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the lowest quote.  
  
Discount periods shall be calculated starting from the next business day after the recipient has accepted the goods or services received a properly signed and executed State Payment Voucher form and, when required, a properly executed performance security, whichever is latest.
10. The date on the check issued by the State in payment of that Voucher shall be deemed the date of the State's response to that Voucher.

## **10.0 Additions to the State of New Jersey Compliance Terms and Conditions**

### **1. Compliance With State Laws-**

It is agreed and understood that any contracts and/or orders placed under this Participating Addendum and any claims and any and all litigation arising there from or related thereto shall be governed and construed and the rights and obligations of the parties hereto and of the Authorized Purchasers shall be determined in accordance with the laws of the State of New Jersey, including without limitation, by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq., and governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles, and any and all litigation arising therefrom or related thereto shall be filed in the appropriate Division of the New Jersey Superior Court.

### **2. Open Public Records Act-**

All documents and information submitted by Contractor to the State under this Participating Addendum are considered public information, notwithstanding any disclaimers to the contrary submitted by a Contractor, except as may be exempted from public disclosure by the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law.

### **3. Maintenance of Records-**

In accordance with N.J.A.C. 17:44-2.2, the Contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

### **4. Organ and Tissue Donation –**

As required by N.J.S.A. 52:32-33.1, the State encourages Contractors to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. §1320b-8 to serve in this State.

### **5. Tax Exemption-**

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

## **11.0 Miscellaneous**

### **1. Mergers, Acquisitions and Dissolutions-**

#### *Merger or Acquisition:*

If, during the term of this Participating Addendum, the Contractor shall merge with or be acquired by another firm, the Contractor shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. Any such merger or acquisition will require the assignment of the Agreement, as amended by this Participating Addendum, pursuant to the provisions related thereto set forth therein. The Contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the Contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents shall be submitted within thirty (30) days of the request. Failure to do so may result in termination of this Participating Addendum for cause.

#### *Dissolution:*

If, during the term of this Participating Addendum, the Contractor's partnership, joint venture or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director, in writing, the names of the parties proposed to perform under this Participating Addendum and the names of the parties to whom payment should be made. No payment will be made until all parties to the dissolved business entity submit the required documents to the Director.

## **2. *Announcements and/or Advertisements-***

All publicity and/or public announcements pertaining to this Participating Addendum shall be approved in writing by the State prior to release.

Contractor must obtain prior written (email) approval, no less than seven (7) business days before release for any and all advertisements pertaining to this Participating Addendum during its effective term. Any and all Fulfillment Partners may not directly send advertisements to any and all Authorized Purchasers without explicit written approval from the Contractor.

## **3. *Contractor and/or Fulfillment Partner Audit-***

The State and Authorized Purchasers reserve the right to audit the Contractor and/or Fulfillment Partner's compliance with the Agreement. Such audit shall be in accordance with Section 26, Records Administration and Audit, in the Master Agreement. The State or Authorized Purchaser shall provide Contractor and/or Fulfillment Partner thirty (30) days' written notice of intent to audit and such audit such be conducted during normal business hours.

## **4. *Request for Additional Information-***

The Director reserves the right to request relevant information from the Contractor, including factors necessary to evaluate the Contractor's financial capabilities to perform the Agreement.

## **5. *Audit of Authorized Purchaser use of Intellectual Property -***

1. Notwithstanding anything to the contrary in the Agreement , in the event that the Contractor seeks to exercise a right in the Agreement to audit the State's use of Contractor's intellectual property, the Contractor shall deliver simultaneous written notice, no less than thirty (30) days in advance of the audit start date (unless the Contractor's notice provides a longer notice period), to:
  - a. the Director of the New Jersey Department of Treasury, Division of Purchase and Property:  
Procurement Bureau, Technology Unit  
P.O. Box 230  
Trenton, NJ 08625-0230
  - b. the Chief Data Officer of the New Jersey Office of Information Technology:  
Office of the Chief Technology Officer  
300 Riverview Plaza  
Trenton, NJ 08625
  - c. and the State Contract Manager for this contract.
2. The notice shall reference the specific audit provision(s) in the Agreement being exercised and include copies of same, specify the means by which the Contractor will conduct the audit, and shall require the audit to be conducted in accordance with generally accepted standards in the field of such audits.
3. To the extent the agreement permits Contractor to conduct periodic audits of the State's usage of the Products and/or Services provided thereunder, such provision is amended to include the following dispute resolution process:

If the State, in good faith, provides Contractor with written notice of an alleged error in the amount of underpaid fees due Contractor as a result of an audit (the "dispute"), then the parties will endeavor to resolve the dispute in accordance with this paragraph. Each party will appoint a Vice President, Assistant Director, or the equivalent (hereinafter referred to as "Representative") to discuss the dispute and no formal proceedings for the judicial resolution

of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such Representative concludes, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely. In addition, the parties shall refrain from exercising any termination right related to the dispute being considered under this paragraph and shall continue to perform their respective obligations under the license agreement, while they endeavor to resolve the dispute under this paragraph.

4. Notwithstanding anything to the contrary in the Agreement, the State will not pay or reimburse Contractor for costs or expenses associated with the performance of an audit.
5. In the event that the Agreement does not permit audits of the State's usage of the Contractor's Intellectual Property this provision shall not be interpreted to provide such an audit right.

## **6. Dispute Resolution –**

The State and Contractor will attempt to resolve any dispute through face-to-face negotiation with persons fully authorized to resolve the dispute or through non-binding mediation utilizing a mediator agreed to by the parties, rather than through litigation. No formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such persons conclude, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely.

## **7. Arbitration or Mediation –**

Any provision regarding arbitration or binding mediation within the Agreement is deleted in its entirety.

## **12.0 Waiver**

No term or provision of this Participating Addendum shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or any subsequent breach, except as may be expressly provided in the waiver or consent.

## **13.0 The State of New Jersey Mandatory Certification Requirements**

The following are New Jersey procurement requirements that Contractor agrees to fulfill prior to the Effective Date. Some Authorized Purchasers may have additional requirements when placing an order and Contractor shall comply with same as necessary.

1. New Jersey Business Registration (N.J.S.A. 52:32-44);
2. Ownership Disclosure (N.J.S.A. 52:25-24.2);
3. Disclosure of Investment Activities in Iran (N.J.S.A. 52:32-55 et seq.)
4. Executed MacBride Principles (N.J.S.A. 52:34-12.2);
5. Completed Contractor Certification and Disclosure of Political Contributions (N.J.S.A. 19:44A-20:13 et. seq.);
6. Disclosure of Investigations and Actions Involving Bidder
7. Vendor Certification (P.L. 2005, c.271);
8. Proof of insurance as specified herein;
9. Proof of compliance with New Jersey Affirmative Action requirements (N.J.A.C. 17:27-1.1 et. seq.):
  - a. New Jersey Form AA-302 Affirmative Action Employee Information Report; or
  - b. New Jersey Affirmative Action Certificate; or
  - c. Federal Affirmative Action Approval Letter.

#### **14.0 Primary Contacts**

The Division of Purchase and Property contact for this Participating Addendum is as follows:

Name: Angelica Morales  
Title: Procurement Specialist  
Participating Entity Name: Division of Purchase and Property,  
Department of the Treasury  
State of New Jersey  
Address: 33 West State Street, 8<sup>th</sup> Floor  
PO Box 230  
Trenton, New Jersey 08625-0230  
Telephone: (609) 292-6839  
E-mail: Angelica.Morales@treas.nj.gov

The State Contract Manager for this Participating Addendum is as follows:

Name: Lynne Gash  
Title: State Contract Manager  
Participating Entity Name: Office of Information Technology,  
State of New Jersey  
Address: 300 Riverview Plaza  
Trenton, New Jersey 08625  
Telephone: (609) 376-0888  
E-mail: Lynne.Gash@tech.nj.gov

The primary Contractor contact for this Participating Addendum is as follows:

Name: John Minnella  
Title: District Manager  
Contractor: SHI International Corp.  
Address: 290 Davidson Avenue  
Somerset, NJ 08873  
Telephone: (908) 421-2498  
E-mail: John\_Minnella@SHI.com

The parties hereto agree that this Participating Addendum may be executed in counterpart, each original signed page to become part of the original document.

[Remainder of page intentionally blank. Signature page to follow.]

**IN WITNESS WHEREOF**, authorized representatives of Contractor and the State have executed this Participating Addendum to be effective on the Effective Date.

**SHI International Corp.**

Kristina Mann  
Kristina Mann, Senior Lead Contract Specialist

11/30/20  
Date

**The State of New Jersey**  
**Department of the Treasury - Division of Purchase and Property**

MA Griffin  
Maurice A. Griffin, Acting Director

12/21/2020  
Date

**Approved as to Form:**  
**Gurbir S. Grewal, Attorney General of the State of New Jersey**

Aimee Manocchio Nason  
Signature

11/30/2020  
Date

Aimee M. Nason, Deputy Attorney General  
Print Name and Title

## State of New Jersey Compliance Terms and Conditions

The following terms and conditions shall be deemed incorporated by reference into each Participating Addendum entered into by the State of New Jersey under an awarded Master Agreement. The State of New Jersey reserves the right to add additional terms and conditions to each Participating Addendum.

**1. LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS -**

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625. The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the solutions and/or services performed by Contractor or Contractor's subcontractor and provided hereunder. The contractor must comply with all State and Federal data and privacy laws, rules and regulations applicable to contractor under the contract.

**1.1 BUSINESS REGISTRATION** – Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

**1.2 ANTI-DISCRIMINATION** - All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.

**1.3 ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS -**

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- a) The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- b) The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- c) The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows;

1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

# State of New Jersey

## Compliance Terms and Conditions

3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
  4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.
- 1.4 PREVAILING WAGE ACT** - Pursuant to the New Jersey Prevailing Wage Act (N.J.S.A. 34: 11-56.26 et seq.), contractor guarantees that it has not been suspended or debarred by the Commissioner, New Jersey Department of Labor and Workforce Development, for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; contractor also guarantees that it will comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required and to the extent applicable to this contract.
- 1.5 AMERICANS WITH DISABILITIES ACT** - The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.
- 1.6 MACBRIDE PRINCIPLES** – The contractor must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.
- 1.7 PAY TO PLAY PROHIBITIONS** – Pursuant to N.J.S.A. 19:44A-20.13 et seq. (L.2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:
- a. make or solicit a contribution in violation of the statute;
  - b. knowingly conceal or misrepresent a contribution given or received;
  - c. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
  - d. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee;
  - e. engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
  - f. fund contributions made by third parties, including consultants, attorneys, family members, and employees;
  - g. engage in any exchange of contributions to circumvent the intent of the Legislation; or
  - h. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.
- 1.8 POLITICAL CONTRIBUTION DISCLOSURE** – The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888) 313-3532 or on the internet at <http://www.elec.state.nj.us/>.
- 1.9 STANDARDS PROHIBITING CONFLICTS OF INTEREST** - The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).
- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee,

# State of New Jersey

## Compliance Terms and Conditions

- or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g.
- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
  - c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
  - d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
  - e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
  - f. The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

- 1.10 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE** - Pursuant to L 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 *et seq.*), to the taxpayer shall be stayed.

- 1.11 COMPLIANCE - STATE LAWS; JURISDICTION** - It is agreed and understood that any contracts and/or orders shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY, without giving effect to its conflict of laws. Any action brought regarding the contract or products or services purchased thereunder shall be filed in the appropriate Division of the State of New Jersey Superior Court.
- 1.12 OWNERSHIP DISCLOSURE** – In accordance with N.J.S.A. 52:25-24.2, contractor shall disclose the names and addresses of all of its owners holding 10% or more of the corporation's stock or interest during the term of the contract, by submitting an Ownership Disclosure Form at time of contract award. The contractor has the continuing obligation to notify the Division of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed.
- 1.13 PROHIBITED INVESTMENT IN IRAN** - Pursuant to N.J.S.A. 52:32-55 et seq., the contractor must utilize the Disclosure of Investment Activities in Iran form to certify that neither the contractor, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the contractor, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in

# State of New Jersey

## Compliance Terms and Conditions

N.J.S.A. 52:32-56(f). If the contractor is unable to so certify, the contractor shall provide a detailed and precise description of such activities as directed on the form.

### 2. LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT

- 2.1 **COMPLIANCE - CODES** – The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.
- 2.2 **PUBLIC WORKS CONTRACTOR REGISTRATION ACT** - The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.
- 2.3 **COMPLIANCE WITH ACCESSIBILITY STANDARDS** – The contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.
- 2.4 **BUILDING SERVICE** – Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.
- 2.5 **THE WORKER AND COMMUNITY RIGHT TO KNOW ACT** - The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.
- 2.6 **BUY AMERICAN** – Pursuant to N.J.S.A. 52:32-1, if applicable to the contract, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the contractor shall be required to so certify.

**Exhibit B - SHI International Corp. Master Agreement - AR2488**

**Exhibit C – Rider For Purchases Funded In Whole Or In Part By Federal Funds, dated  
November 12, 2020**



## STATE OF NEW JERSEY RIDER FOR PURCHASES FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS (REVISED 11/12/2020)

The provisions set forth in this Rider apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

### I. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.

Pursuant to 2 CFR 200.321, the State must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are to be made the Contractor shall:

- (1) Include qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
- (5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

### II. DOMESTIC PREFERENCE FOR PROCUREMENTS

Pursuant to 2 CFR 200.322, where appropriate, the State has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). If subawards are to be made the Contractor shall include a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### III. PROCUREMENT OF RECOVERED MATERIALS

Where applicable, in the performance of contract, pursuant to 2 CFR 200.323, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

To the extent that the scope of work or specifications in the contract requires the contractor to provide recovered materials the scope of work or specifications are modified to require that as follows.

- i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
  1. Competitively within a timeframe providing for compliance with the contract performance schedule;
  2. Meeting contract performance requirements; or
  3. At a reasonable price.
- ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

### IV. EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing

regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." See 2 CFR Part 200, Appendix II, para. C. During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:  
Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may

require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### V. DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

#### VI. COPELAND ANTI\_KICK-BACK ACT

Where applicable, the Contractor must comply with Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

- a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
- b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### VII. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708

Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The unauthorized user shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid

wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

#### VIII. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

#### IX. CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED

Where applicable, Contract and subgrants of amounts in excess of \$150,000, must comply with the following:

##### Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

##### Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### X. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State or authorized user. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or authorized user, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### XI. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

XII. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPEMENT

- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
- (1) Procure or obtain;
  - (2) Extend or renew a contract to procure or obtain; or
  - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in *Public Law 115–232*, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
    - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

|                                      |
|--------------------------------------|
| <b>Attachment 1 – Scope Addendum</b> |
|--------------------------------------|

**STATE OF NEW JERSEY**

**PARTICIPATING ADDENDUM AND STANDARD TERMS AND CONDITIONS**

**Under**

**NASPO ValuePoint Contract for Cloud Solutions  
[State of Utah Master Contract Number AR2488]**

**Scope Addendum**

As set forth in Section 2.0, Scope of Participating Addendum, the scope of Products and Services that may be procured by Authorized Purchasers defined in Section 6.0(1) of this Participating Addendum (State Agencies) shall be those Products and Services established below. Contractor may only offer State Agencies the Products and Services from the following cloud service providers:

- Pega
- Amazon Web Services
- Microsoft
- IBM
- Acquia
- Google
- Socrata
- Oracle
- Salesforce

Contractor may also provide State Agencies cloud related Services within the scope of its Master Agreement.

For all other Authorized Purchasers, the full suite of Product and Service offerings available under the Master Agreement may be procured under this Participating Addendum.