NASPO ValuePoint

PARTICIPATING ADDENDUM

SOFTWARE VALUE ADDED RESELLER (SVAR)
LED BY THE STATE OF ARIZONA

Master Agreement #:	CTR060028
Contractor:	SHI International Corp.
Participating Entity:	**STATE OF MONTANA**

This Participating Addendum is entered into by Contractor and Participating Entity (collectively, the "Parties").

Scope and Participation:

1. Scope:

   ☒ This Participating Addendum includes the entire scope of the products and services available through the Master Agreement referenced above. Any scope exclusions specified herein apply only to this Participating Addendum and shall not amend or affect other participating addendums or the Master Agreement itself.

2. Pricing:
   Pricing shall be based on Maximum Markup on Reseller's Invoiced Cost.

3. Participation: This Participating Addendum covers participation of Participating Entity in the above-referenced Master Agreement between the State of Arizona and Contractor for Software Value Added Reseller (SVAR). This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

4. Term:

   ☒ This Participating Addendum shall become effective as of July 1, 2023, and shall terminate upon the expiration or termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.

5. Order of Precedence:

   The Order of Precedence is:

   a. State of Montana Participating Addendum, including
      i. Attachment A: State Information Terms and Conditions
      ii. Attachment B: Federal Terms and Conditions
      iii. Attachment C: Executive Branch Agencies

b. ValuePoint Master Agreement #/CTR060028, including all attachments
c. A purchase order or statement of work issued against this Participating Addendum
d. The Solicitation

6. Primary Contacts: The following (or their named successors) are the primary contact individuals for this Participating Addendum:

CONTRACTOR:

Name:	David Barcroft
Address:	290 Davidson Ave. Somerset, NJ 08873
Telephone:	(406) 439-8364
Fax:	
Email:	David_Barcroft@shi.com

PARTICIPATING ENTITY CONTRACTS OFFICER:

Name:	Grace Waring
Address:	125 North Roberts St., Room 165, Helena, MT 59601
Telephone:	406-444-2516
Email:	cooppurchasing@mt.gov

7. Participating Entity Modifications and Additions to the Master Agreement

☒ This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor, **subject to the following limitations, modifications, and additions including Attachment A, State Information Terms and Conditions, Attachment B Federal Terms and Conditions, Attachment C, Executive Branch Agencies:**

Any limitations, modifications, or additions specified herein apply only to the agreement and relationship between Participating Entity and Contractor and shall not amend or affect other participating addendums or the Master Agreement itself.

7.1. PAYMENT TERM: All payment terms are computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors are required to provide banking information at the time of PA execution in order to facilitate State electronic funds transfer payments.

7.2. STATE OF MONTANA ADMINISTRATIVE FEE: The State of Montana assesses an Administrative Fee of one and one-half percent (1.50%) for all net sales (sales less credits and returns) made under this PA. The prices paid to Contractor must include the 1.5% Administrative Fee. The Contractor shall remit this Administrative Fee concurrent with the Required Usage Reporting described below. The Administrative Fee must be submitted by ACH along with email notification to the State of Montana Contracts Officer (CO). This Administrative Fee is effective upon execution of this Participating Addendum.

7.3. REQUIRED REPORTING: Contractor shall submit quarterly reports to the CO assigned by the State to manage this contract. Contractor shall provide CO with an electronic usage report (Excel), which must list the following information at the minimum: purchasing entity; description of items purchased; date of purchase; contract price; and the extended price for each transaction. These reports are due no more than 30 days after the end of the quarter.

First Quarter:	July 1 through September 30
Second Quarter:	October 1 through December 31
Third Quarter:	January 1 through March 31
Fourth Quarter:	April 1 through June 30

7.4. TAXES:

7.4.1. <u>Payment</u>**.** Contractor shall pay all property and sales taxes, if any.

7.4.2. <u>Exemption</u>**.** State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.I. 111- 148, 124 Stat. 119].

7.5. U.S. FUNDS: All prices and payments must be in U.S. dollars.

7.6. REFERENCE TO PA: The PA and purchase order number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the PA contract.

7.7. RECORD ACCESS AND RETENTION:

7.7.1. Access to Records. Contractor shall provide State, the Montana legislative auditor, or their authorized agents access to any records necessary to determine agreement compliance. State may terminate this PA, without incurring liability, for Contractor's refusal to allow access as required by this section. (18-1-118, MCA)

7.7.2. Retention Period. Contractor shall retain all records supporting this PA for 8 years after either the completion date or expiration of this PA.

7.8. PUBLIC INFORMATION

7.8.1. This contract and all related documents may be subject to disclosure pursuant to Montana public information laws.

7.8.2. Under Montana public information laws, this Contract, referenced documents, including pricing documents, are all deemed public information.

7.9. ASSIGNMENT, TRANSFER AND SUBCONTRACTING: Contractor may not assign, transfer or subcontract any portion of the PA without the prior written consent of the Department, which shall not be unreasonably withheld. (Section 18-4-141, MCA.) Contractor is responsible to State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and State under this PA.

7.10. COMPLIANCE WITH LAWS:

7.10.1. Compliance. In performing its duties in this PA, Contractor shall conduct their efforts under this PA with all applicable federal, state, and local laws, rules, ordinances, and executive orders.

7.10.2. Patient Protection and Affordable Care Act. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

7.10.3. Hiring Practices. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016, Contractor agrees that: (a) the hiring of persons to fulfill Contractor's duties in this PA will be made based on merit and qualifications; and (b) there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this PA. Any subcontracting by Contractor obligates subcontractors to the requirements of this section.

7.10.4. Nondiscrimination Against Firearms Entities/Trade Associations. Contractor shall not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and Contractor shall not discriminate during the term of the contract against a firearm entity or firearm trade association. This section shall be construed in accordance with HB 356, Ch. 193, Mont. L. 2023

7.11. CHOICE OF LAW AND VENUE

7.11.1. Choice of Law. Montana law applies to this PA without regard for any choice-of-law rules that might direct the application of the laws of any other jurisdiction.

7.11.2. Venue**.** Any litigation concerning this PA will be brought only in the Montana First Judicial District, Lewis and Clark County. (18-1-401, MCA)

7.11.3. Costs and Attorney Fees**.** Each party shall pay its own costs and attorney fees, except as otherwise stated in this PA.

7.12. DEFENSE/INDEMNIFICATION

7.12.1. Duty to Defend. Contractor, at its sole cost and expense, shall defend the state of Montana and the contracting agency or other instrumentality of the state of Montana, and their employees, officers, officials, agents, and volunteers (collectively, Indemnitees) from and against all claims, allegations, lawsuits, or any other action (Claim or Claims) relating to personal injury, death, damage to property, financial loss or other obligation arising or allegedly arising out of or in connection with Contractor's performance of duties under this PA. The Montana Attorney General may participate in an action involving the

State of Montana.

7.12.2. Schedule 2-C, Section 6.4 (3) of the Master Agreement is amended to strike the phrase "at it's own expense."

7.12.2. Schedule 2-C, Section 14.4.2 (a) of the Master Agreement is amended to strike the phrase "at it's own expense."

7.13. REQUIRED INSURANCE

7.13.1 General Requirements. Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

7.13.2 Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

7.13.3 Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of $1,000,000 per occurrence and $2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

7.13.4 Additional Insureds. State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

7.13.5 Specific Requirements for Automobile Liability. Contractor shall purchase and maintain coverage with split limits of $500,000 per person (personal injury), $1,000,000 per accident occurrence (personal injury), and $100,000 per accident occurrence (property damage), OR combined single limits of $1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors. State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by Contractor.

7.13.6 Specific Requirements for Professional Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of $1,000,000 per occurrence and $2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors. Note: If "occurrence" coverage is unavailable or cost prohibitive, Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of this Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

7.13.7 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by State. At the request of State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

7.13.8 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The certificates must name the State of Montana as certificate holder and Contractor shall provide copies of additional insured endorsements required by Contractor’s commercial general liability and automobile liability policies. Contractor must notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.

7.13.9 Specific Requirements for Cyber/Data Information Security Insurance. The Contractor shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of $5,000,000 per occurrence to cover the unauthorized acquisition of personal information such as social security numbers, credit card numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with §2-6-1501, MCA through §2-6-1503, MCA. If the Contractor maintains higher limits than the minimums shown above, the State requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the State. Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third-party liability settlements or judgements as may be caused by any act, omission, or negligence of the Contractor's officers, agents, representatives, assigns or subcontractors. Note: If occurrence coverage is unavailable or cost-prohibitive, the State will accept 'claims made' coverage provided the following conditions are met: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work; 2) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work; and 3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

7.14. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

7.15. AUTHORITY: The attached bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

7.16. CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the State Procurement Bureau's prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

7.17. DISABILITY ACCOMMODATIONS: The State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to the State. Interested parties should provide as much advance notice as possible.

7.18. REDUCTION OF FUNDING: State must by law terminate this PA if funds are not appropriated or otherwise made available to support State's continuation of performance of this PA in a subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this PA (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this PA as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the PA not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

7.19. REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8- 1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at http://sos.mt.gov.

7.20. OTHER TERMINATION AND REMEDIES AVAILABLE TO THE STATE
The State is entitled to:

- Terminate any purchase order or statement of work or other engagement issued against this PA; and
- All remedies and damages available to the State whether under the PA or law.

7.21. SEVERABILITY: A declaration by any court, or any other binding legal source, that any provision of the PA is illegal, and void shall not affect the legality and enforceability of any other provision of the PA, unless the provisions are mutually dependent.

8. Lease Agreements: Leasing is not authorized under this PA.

9. Subcontractors: All contractors, dealers, and resellers authorized to provide sales and service support in Participating Entity's state, as shown on Contractor's NASPO ValuePoint-specific webpage, may provide sales and service support to users of this Participating Addendum. Participation of Contractor's contractors, dealers, and resellers will be in accordance with the terms and conditions set forth in the Master Agreement.

10. Orders: Any order placed by Participating Entity or a Purchasing Entity for a product or service offered through this Participating Addendum shall be deemed to be a sale under, and subject to the pricing and other terms and conditions of, the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to the order.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

PARTICIPATING ENTITY	**CONTRACTOR**
Signature: DocuSigned by: 5FBAABB9738647B...	Signature: DocuSigned by: Kristina Mann EA418E789F09404...
Name: Cheryl Grey	Name: Kristina Mann
Title: SFSD Administrator	Title: Sr. Manager - Contracts
Date: 11/13/2023	Date: 11/13/2023
Approved as to Legal Counsel: DocuSigned by: Katy Brandis 3C947270DF6E49A...	
Date: 11/13/2023	
Chief Information Officer Approval: DocuSigned by: Kevin Gilbertson 2D9081032F49415...	
Date: 11/13/2023	

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at info@naspovaluepoint.org.

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.

Attachment B
Federal Terms and Conditions
(Non-Construction)

1. Nondiscrimination

Contractor agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor's performance under this contract, on the ground of race, religion, color, national origin, sex or handicap. Accordingly and to the extent applicable, the Contractor agrees to comply with the following national policies prohibiting discrimination:

a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by DoD regulations at 32 CFR part 195.

b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 {3 CFR, 1964-1965 Comp. pg. 339}, as implemented by Department of Labor regulations at 41 CFR part 60.

c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.

d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

2. Lobbying

Contractor agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the State agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

3. Drug-Free Work Place

Contractor agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

4. Environmental Protection

(a) Contractor agrees that its performance under this contract shall comply with:

(1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);

(2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;

(3) The Resources Conservation and Recovery Act (RCRA);

(4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);

(5) The National Environmental Policy Act (NEPA);

(6) The Solid Waste Disposal Act (SWDA);

(7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;

(8) To identify any impact this contract may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

(b) In accordance with the EPA rules, the parties further agree that the Contractor/Vendor shall also identify to the state any impact this contract may have on:

(1) The quality of the human environment and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

(2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

(3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.

(4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.
(5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).
(6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

5. Use of United States Flag Vessels

Contactor agrees that travel under this contract shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

The Contactor/Vendor agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. Chapter 553), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

6. Debarment and Suspension.

Contractor is subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Contractor agrees to comply with the DOD implementation of 2 CFR part 180 (at 2 CFR 1125) by checking the Excluded Parties List System (EPLS) at the current OMB website to verify (sub)contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The Contractor shall not solicit offers from, nor award contracts to contractors listed in EPLS. This verification shall be documented in the Contractors contract files, and shall be subject to audit by Federal and State audit agencies

7. Buy American Act.

Contractor agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10a et seq). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of

Understanding between the United States of America and the European Economic Community (EEC) on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

8. Uniform Relocation Assistance and real Property Acquisition Polices

Contractor agrees that it will comply with CFR 49 part 24, which implements the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

9. Copeland "Anti-Kickback" Act

Contractor agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this contract, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

10. Contract Work Hours and Safety Standards Act

Contractor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 times the basic rate of pay.

11. Rights to Inventions Made Under a Contract or Agreement.

Any discovery or invention that arises during the course of the contract shall be reported to the non-Federal entity. Contractor/Vendor 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.

12. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended

Any Contract or subcontract in excess of $150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the State who in turn will report to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

13. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors that 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.

14. System For Award Management and Data Universal Numbering Requirements

Contractor agrees to comply with the System for Award Management and Data Universal Numbering as indicated below:

> Contractor must provide DUNS number to the state. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun & Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the internet (currently at http://fedgov.dnb.com/webform)

15. Procurement of recovered materials.

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.

16. 2 C.F.R. 200.326, Appendix II, Required Contract Clauses

2 C.F.R. 200.326, Appendix II, Required Contract Clauses are incorporated by reference as if set forth in full text and are made part of this agreement as applicable. Contractor shall comply with all applicable contract clauses and provide the same clauses in any subcontracts or purchase orders issued in support of this agreement with the state.

17. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

The Contractor agrees it will not provide or use covered telecommunications equipment or services in the performance of this contract in compliance with 2 CFR 200.216. Covered telecommunications equipment or services has the meaning provided in Public Law 115-232, section 889.

Attachment C

Executive Branch Agencies

Department of Administration

Department of Agriculture

Board of Public Education

Department of Commerce

Department of Corrections

Deaf and Blind, School for

Department of Environmental Quality

Department of Fish, Wildlife and Parks

Governor's Office

Historical Society

Department of Labor and Industry

Department of Livestock

Department of Military Affairs

Montana Arts Council

Department of Natural Resources and Conservation

Commissioner of Political Practices

Department of Public Health and Human Services

Public Service Commission

Department of Revenue

Secretary of State

State Auditor

State Library

Department of Transportation

MONTANA INFORMATION TECHNOLOGY TERMS AND CONDITIONS

Attachment A
Software Value Added Reseller Agreement
NASPO Contract CTR060028

These State Terms and Conditions are between the

State of Montana

(State)

and

SHI International Corp.

(Contractor)

The services provided by the Contractor involve information technology resources.
(Check the box of the highest classification of public and non-public data owned by the State)

- ☒ Public Data – Level 1 mapped to Federal Information Processing Standards (FIPS) 199 LOW
- ☒ Non-public Data – Level 2 mapped to FIPS 199 MODERATE
- ☐ Non-public Data – Level 3 mapped to FIPS 199 HIGH
- ☐ No Data

These services are for:

- ☒ On premise system
- ☒ Cloud system ☒ SaaS ☐ PaaS ☐ IaaS
- ☐ Other: (describe)

No Data	Public Data	Non Public Data	Heading	IT Terms and Conditions
	X	X	1. IT Oversight	***Chief Information Officer Approval:*** Contractor is notified that, under the provisions of 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard. ***CIO Oversight*** The State of Montana Chief Information Officer (CIO) or designee, may perform PA oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur

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				within the performance of PA obligations. The CIO may require the issuance of a right to assurance or may issue a stop work order as provided below. ***Right to Assurance*** If State, in good faith, has reason to believe that Contractor does not intend to, is unable to, or has refused to perform or continue performing all material obligations under this PA, State may demand in writing that Contractor give a written assurance of its intent to perform. Contractor's failure to provide written assurance within the number of days specified in the demand (in no event less than five business days) State may, at State's option, be the basis for terminating this PA and pursuing the rights and remedies available under this PA or law. ***Stop Work Order*** State may, at any time, by written order to Contractor require Contractor to stop any or all parts of the work required by this Contract for the period of days indicated by State after the order is delivered to Contractor. The order must be specifically identified as a stop work order issued under this clause. Upon receipt of the order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or contract price, or both, and this PA shall be amended in writing accordingly. ***Access to SVAR Services Requires State CIO Approval:*** Unless otherwise stipulated in this Participating Addendum (PA), specific services accessed through the NASPO ValuePoint cooperative Master Agreement for Software Value Added Reseller (SVAR) by State of Montana executive branch agencies are subject to the prior approval of the State of Montana Information Technology Division's (SITSD). Contractor may not accept any orders from State of Montana executive

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				branch agencies without proof of prior approval or be subject to a Stop Work Order. Executive branch agencies are listed in Attachment C.
	X	X	2. Data Classification	The following definitions are used to classify State data. ***Level 1 Data Mapped to FIPS 199 LOW (Public Data)*** "Level 1 Data" means information available to the general public and eligible for public access. Data that is classified as State of Montana Level 1 would reside in information systems that are categorized as Low. ***Level 2 Data Mapped to FIPS 199 MODERATE (Non-Public Data)*** "Level 2 Data" means information that disclosure to third parties or the public is governed by specific laws that determine and protect confidentiality. Data that is classified as State of Montana Level 2 would reside in information systems that are categorized as medium. ***Level 3 Data Mapped to FIPS 199 HIGH (Non-public Data)*** "Level 3 Data" means information that, if divulged, could compromise or endanger citizens, employees, or safety assets of the State. Data that is classified as State of Montana Level 3 would reside in information systems that are categorized as high.
	X	X	3. Data Ownership	***Data Ownership*** The State owns all right, title and interest in its data that is related to the services provided. The State data may also include data from a third-party. ***Data Access*** The Contractor shall not access State of Montana user accounts, or State data, except (i) in response to service or technical issues, (ii) as required by the express terms of services engagement document, or (iii) at the State's written request.

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	X	X	4. Data Usage	***Data Disclosure - Prohibition*** At no time will any information, belonging to or intended for the State of Montana, be copied, disclosed, or retained by Contractor or any party related to Contractor for subsequent use in any transaction. ***Confidential Data - Usage*** The Contractor will take reasonable steps to limit the use of, or disclosure of, and requests for, confidential State data to the minimum degree necessary to accomplish the services. Protection of personally identifiable information privacy, and sensitive data shall be an integral part of the business activities of the Contractor to ensure that there is no inappropriate or unauthorized use of State information at any time. ***Limitation on Usage to Purpose of Services*** Contractor may not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service. ***Data Safeguards*** The Contractor shall safeguard the confidentiality, integrity, and availability of State information. ***Authorized Personnel*** Only duly authorized personnel will have access to State data and may be required to obtain security clearance from the State. ***Subsequent Use*** The Contractor shall not use any data for subsequent use that has not been expressly authorized by the State.
	X	X	5. Data Location	***Data Location*** The Contractor shall not store, process, or transfer any non-public State of Montana data outside of the United States, including for back-up and disaster recovery purposes.
	X	X	6. Remote Access	***Remote Access*** Montana information technology resources cannot be accessed by contractors or sub-contractors located outside of the legal jurisdictional boundary of

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				the United States (outside of the United States, its territories, embassies, or military installations).
	X	X	7. Breach and Notification	***Notification to State*** The Contractor must notify the State of Montana Chief Information Security Officer within twenty-four (24) hours of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Montana data. ***Notification to Person*** The Contractor shall comply with §2-6-1503, Mont. Code Ann., including if the data is unencrypted, the Contractor shall make reasonable efforts upon discovery or notification of a breach to notify any person whose personal information is reasonably believed to have been acquired by an unauthorized person. This notification may be delayed at the request of law enforcement.
	X	X	8. Termination and Suspension of Service	***Suspension of services*** During any period of suspension, negotiation, or disputes, the Contractor shall not take any action to intentionally alter, erase, or otherwise render inaccessible any State of Montana data. ***Termination of a portion or of the entire services provided*** In the event of termination of any services or Contract in entirety, the Contractor shall not take any action to intentionally alter, erase, or otherwise render inaccessible any State of Montana data for a period of 90 days after the effective date of the termination. Within this 90-day timeframe, Contractor will continue to secure and back up State of Montana data covered under the provided services. After such 90-day period, the Contractor shall have no obligation to maintain or provide any State of Montana data. Thereafter, unless legally prohibited, the Contractor shall dispose securely of all State of Montana data in its systems or otherwise in its possession or control, as specified herein.

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	X	X	9. Data Disposition	The State's data may be disposed at the termination of services using one of the following methods: ***1. State Removal with Contractor's Tools*** the State may remove or destroy the State's data using the Contractor's tools. ***2. Contractor to Return State Data*** Contractor will account for and return all State data in all of its forms. The data shall be returned in a format acceptable to the State. At no time shall any data or processes that either belong to or are intended for the use of State of Montana or its officers, agents, or employees, be copied, disclosed, or retained by the Contractor. ***3. Contractor to Destroy State Data*** When required by the State of Montana, the Contractor shall destroy all requested data in all of its forms Data shall be permanently deleted, and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) SP 800-88 'Media Sanitization Guidelines'. ***Certificate of Destruction*** In all cases, the contractor will certify that all State of Montana processed during the performance of the services will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed, the contract is terminated, or upon written request of the State.
	X	X	10. Subcontractor	The Contractor shall be responsible for ensuring its subcontractors' compliance with these terms and conditions.
	X	X	11. Notification of Legal Requests	***Notification of Requirement to Access State Data*** The Contractor shall contact the State of Montana upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of the State. ***Legal Request for State Data*** Regarding State of Montana data and processes, the Contractor shall not respond to subpoenas, service of process, and other legal requests without

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				first notifying the State unless prohibited by law from providing such notice.
	X	X	12. Data Encryption	***In Transit and At Rest*** The Contractor shall encrypt all data in transit, regardless of transit mechanism, and at rest. ***Encryption Standards*** The Contractor's encryption shall meet validated cryptography standards as specified by the National Institute of Standards and Technology in FIPS 140-2 and subsequent security requirements guidelines. If applicable, the Contractor and State of Montana will negotiate mutually acceptable key location and key management details.
	X	X	13. System Security	***Contractor Responsibility*** Contractor shall ensure its systems are adequately secure. Adequate security is defined to require compliance with federal and State of Montana security requirements and to ensure freedom from those conditions that may impair the State's use of its data and information technology or permit unauthorized access to the State's data or information technology. ***State Security Policy, Framework, Standards, and Controls*** The State of Montana has established security policy, framework, standards, and controls that align with the NIST Cybersecurity Framework. The latest revision of NIST SP 800-53 is used for control adherence evaluation established after developing a security categorization utilizing FIPS PUB 199. ***Managerial, Operational, and Technical Controls*** All computer systems receiving, processing, storing, or transmitting State of Montana data must meet the control requirements for the associated security categorization within NIST SP 800-53 (latest revision). To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to State of Montana data.

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				Independent Security Audits Contractor shall provide reasonable proof, through independent audit reports, that the system specified in delivering the services meets or exceeds federal and State of Montana security requirements to ensure adequate security and privacy, confidentiality, integrity, and availability of the State's data and information technology. ***Annual Assurance*** Annual assurance statements shall be delivered to the Contract Manager. Annual assurance statements must contain a detailed accounting of the security controls implemented.
	X	X	14. Security Standard Compliance Certificate	***Security Certification*** The Contractor shall meet, and provide proof of, one or more of the following Security Certifications. • StateRAMP – Authorized Product Certification • FedRAMP - Federal Risk and Authorization Management Program • ISO 27001:2013 • Or other industry recognized certification, as approved by the State, only if the Contractor cannot provide one of the above certifications.
	X	X	15. Background Check	***State-Approved Criminal Background Checks*** The Contractor warrants that they will only assign employees and subcontractors who have passed a state-approved criminal background check.
	X	X	16. Security Awareness	The Contractor shall demonstrate that the Contractor's officers, employees, agents, subcontractors, and affiliated users, have completed security awareness training within the past 12 months before gaining access to state information technology resources or may complete state-approved annual security awareness training.
	X	X	17. Prohibited Activities and Spoofing	***Prohibited Activities*** Contractor and its officers, employees, agents, subcontractors, and affiliated users shall not violate or attempt to violate the security of the State's network or interfere or attempt to interfere with the State's systems, networks, authentication measures, servers, or equipment, or with the use of or access to the State's network by any other user.

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				Such prohibited activity includes: (i) accessing or logging into a server where access is not authorized; (ii) unauthorized probing, scanning, or testing the security or vulnerability of the State's network or other systems; and (iii) attempting to portray itself as the State or an affiliate of the State or otherwise attempting to gain access, without authorization, via the State's network or systems to any account or information technology resource not belonging to Contractor or its officers, employees, agents, subcontractors, and affiliated users ("Spoofing"). Contractor shall not perform unauthorized Spoofing or scanning of any kind, including user account identity. Systems shall not Spoof the mt.gov domain or engage in Email Spoofing. Email Spoofing is the creation of email messages with a forged sender address. For example, Email Spoofing includes creating or sending emails using the State's domain.
	X	X	18. Blind or Visually Impaired	No state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (18-5-603, MCA) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.
	X	X	19. Sanction	***Violation of Terms and Conditions*** The violation of these terms and conditions may also be a violation of state and federal law and include both civil and criminal penalties. Depending on the offense, if the offender is an employee of the state, the offender may be dismissed from employment and may not be allowed to hold a public office or public employment in the state for a period of one year from the date of dismissal.

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	X	X	**20. Linked Terms and Conditions**	Unless mutually agreed upon by the parties by written amendment, the parties specifically agree that any language or provisions contained on either party's website or product schedule, or contained in any "shrinkwrap" or "clickwrap" agreement, shall be of no force and effect and shall not in any way supersede, modify or amend these Terms and Conditions.
	X	X	**21. Indemnification**	***Indemnification*** The State shall not indemnify the contractor or sub-contractors under any circumstance.