WSCA Software Value Added Reseller

PARTICIPATING ADDENDUM

Between

SHI International Corp. and
The State of Arizona

State of Arizona MPA Number: ADSPO11-00000358
State of Arizona PA Number: ADSPO11-007500

1. Scope

This Addendum covers the Western States Contracting Alliance (WSCA) Software Value-Added Reseller (SVAR) Contracts, led by the State of Arizona, for use by state agencies and other entities located in the Participating State as authorized by that state's statutes to utilize state contracts. This Participating Addendum (PA) to the WSCA SVAR Contract is for the use of the State of Arizona, its departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion.

2. Special Terms and Conditions

2.1. Definitions

2.1.1 "Authorized Purchaser" means an individual authorized by the State to place orders against this Contract.

2.1.2 "Contracts" means a Master Price Agreement (MPA) executed between the Offeror and the State of Arizona on behalf of WSCA as a result of this solicitation, and a Participating Addendum (PA) executed between an MPA contractor and an individual participating State. For example, under this contract, a contractor with the State of Arizona would have an executed MPA and an executed PA with Arizona.

2.1.3 "Commercial Off the Shelf or COTS" means software products that are ready-made and available for sale to the general public. COTS products are designed to be implemented easily into existing systems without the need for customization, also referred to as 'distributed software'.

2.1.4 "End-User License Agreement" or "License Agreement" is a legal contract between the manufacturer (publisher) and the end user of an application that details how the software can and cannot be used.

2.1.5 "Non-perpetual licenses", or subscription licenses, are temporary and provide the right to use a particular licensed product until the end of the license-agreement term.

2.1.6 "Perpetual licenses" are everlasting and valid if the software is being used in accordance with the license-agreement requirements.

2.1.7 "Publisher" means a software manufacturer (e.g., Microsoft).

2.1.8 "Reseller" or "Contractor" means a Software Value-Added Reseller who is awarded under this solicitation, and who has a fully-executed (MPA and PA) contract.

2.1.9 "Reseller Cost" means the price that the Reseller pays the Publisher or Distributor to purchase software on behalf of the Participating Entity. Reseller Cost should not include any administrative or other mark-up costs.

2.1.10 "Software" means the computer program, including media and associated documentation.

2.1.11 "Software Licensing" means allowing an individual or group to use a piece of software.

2.1.12 "Software Maintenance and Support" means any software upgrades, annual updates, patches and fixes needed to improve functionality and keep the software in working order.

2.1.13 "Volume License Agreements (VLAs)" means an agreement with a Software Publisher wherein the Participating Entity's total expected purchasing over a period of time is considered in establishing the discount level.

2.2 Other Definitions

2.2.1 Online Catalog and Electronic Ordering System (Punch Out) An online e-catalogue mechanism, resulting in the deployment of an e-commerce tool, whereby the Contractor shall provide for "shopping capabilities" for products and or services, that interfaces with the State's current E-Procurement System (ProcureAZ) and the Arizona Financial Information System (AFIS) to issue Contract Release Orders.

2.3 Contract Administration

2.3.1 Contract Order of Precedence:

2.3.1.1 State of Arizona Participation Addendum, including any Exhibits and or Attachments;

2.3.1.2 WSCA Master Price Agreement;

2.3.1.3 Exhibits and Amendments to the WSCA Master Price Agreement;

2.3.1.4 The list of products and services contained in the purchase order and or contract release order; and

2.3.1.5 Contractor's proposal, including any written clarifications and or final proposal revisions.

2.3.2 Participation

Use of a specific WSCA cooperative Contract by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State's Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official. In Arizona, Using Agencies shall include the following:

2.3.2.1 Mandatory Customers

The Contract shall be for the mandatory use of the State of Arizona Departments, Commissions and Boards, subject to the authority of the Arizona Procurement Code and the State Procurement Office (non exempt State Agencies). Non exempt State Agencies that have a requirement for the products and or services with the scope of the Contract must source their requirements under the Contract. Non exempt State Agencies that have a requirement for the products and or services within the scope of the Contract but seek to source their requirement outside of the Contract, must obtain prior written authorization.

2.3.2.2 Permissive Customers

The Contract shall be for the permissive use of State of Arizona Departments, Commissions and Boards, that are not subject to the authority of the Arizona Procurement Code or the State Procurement Office (Exempt State Agencies) as well as members of the State Purchasing Cooperative (Cooperative Members). Exempt State Agencies and Cooperative Members that have a requirement for the products and or services with the scope of the Contract may source their requirement under the Contract at their sole discretion.

2.3.3 Contract Term

Pursuant to Arizona law, the term of the Master Agreement shall be effective upon the date of final execution by the State of Arizona, and shall continue for a period of two (2) years from the date of the executed Master Agreement unless terminated, cancelled or extended as otherwise provided herein. The term of the individual Participating Addendum (PA) shall be effective upon

the date of execution by the individual state, unless the individual State establishes a different effective date. Termination dates of an individual PA shall be the same as that of the Master Agreement unless terminated, cancelled or otherwise provided in the PA.

2.3.4 Contract Extensions

Any and all Contract extensions shall be by virtue of an authorized Contract Amendment, and shall not exceed the referenced termination date of the Master Price Agreement unless provided for or allowed by Arizona State Law. Therefore, by mutual written contract amendment, the PA may be extended for three (3) one-year periods or a portion thereof for a total contract term not to exceed five (5) years.

2.3.5 Scrutinized Business Operations

In accordance with A.R.S. 350391 and A.R.S. 35-393, Contractor certifies that the Contractor does not have scrutinized business operations in the Sudan or Iran.

2.3.6 E-Verify Requirements

In accordance with A.R.S. 41-4401, the Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. 23-214, Subsection A.

2.3.7 Pandemic Contractual Performance

The State shall require a written plan that illustrates how the contractor shall perform up to contractual standards in the event of a pandemic. The state may require a copy of the plan at anytime prior or post award of a contract. At a minimum, the pandemic performance plan shall include:

2.3.7.1 Key succession and performance planning if there is a sudden significant decrease in Contractor's workforce;

2.3.7.2 Alternative methods to ensure there are products in the supply chain; and

2.3.7.3 An up to date list of company contacts and organizational chart.

In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government or the World Health Organization, which makes performance of any term under this Contract impossible or impracticable, the State shall have the following rights;

2.3.7.4 After the official declaration of a pandemic, the State may temporarily void the Contract(s) in whole or specific sections if the Contractor cannot perform to the standards agreed upon in the initial terms,

2.3.7.5 The State shall not incur any liability if a pandemic is declared and emergency procurements are authorized by the director as per § 41-2537 of the Arizona Procurement Code, and

2.3.7.6 Once the pandemic is officially declared over and/or the contractor can demonstrate the ability to perform, the State, at its sole discretion may reinstate the temporarily voided Contract(s).

The State, at any time, may request to see a copy of the written plan from the Contractor. The Contractor shall produce the written plan within seventy-two (72) hours of the request.

2.3.8 Offshore Work Prohibited

Due to security and identity concerns, direct services under this Contract shall be preformed

with the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the Contract. This provision applies to work performed by subcontractors at all tiers.

2.4 Contract Operation

2.4.1 Contract Release Orders

Any products or services to be furnished under this Contract shall be ordered through the issuance of contract release orders. Such orders may be issued from the effective date of contract award. All orders are subject to the terms and conditions of this Contract. All orders shall cite the contact number(s), specifically, the MPA Number and the PA Number.

2.4.2 Ordering Process

Any products or services to be furnished under this Contract shall be ordered by issuance of contract release orders, following receipt of a firm quote from the Contractor as required in the MPA Scope of Work. Contract releases or purchase orders are those that are issued by an Authorized Purchaser as defined in 2.1.1. Depending on the Authorized Purchaser, contract release or purchase orders may be received in one (1) of the following formats:

Hard copy, one time only or blanket (term type);

Electronically transmitted through facsimile equipment; or

Electronically transmitted as an e-mail attachment through the State's E-Procurement System known as ProcureAZ.

2.4.3 Order Acknowledgement

Contractor shall acknowledge receipt of all Orders. Contractor shall notify the Authorized Purchaser, in writing or electronically, within two (2) days of Order receipt.

2.4.4 Billing

Contractor shall include the MPA number, the appropriate PA number and individual contract release order number on all invoices.

2.4.5 Travel

When requested, in writing, to perform work that requires overnight accommodations, the Contractor will be reimbursed in accordance with the current rates specified. The Contractor shall itemize all per diem and lodging charges. Travel policies that apply to Contractors for the State of Arizona are those which are applicable to State employee travel. The State travel policy may be located at www.gao.state.az.us.

2.4.3 Notifications

Arizona Department of Administration
State Procurement Office
100 North 15th Avenue, Suite 201
Phoenix, AZ 85007
Terri Johnson, Procurement Officer
Email: terri.johnson@azdoa.gov
Phone: 602-542-9125
Fax: 602-542-5508

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Contractor
SHI International Corp.
51 West Third Street, Suite E-230
Tempe, AZ 85281
Katie O'Kane
Email: katie_okane@shi.com
Phone:732-868-5904
Fax:732-868-5905

2.5 Administrative Fees

2.5.1 WSCA Administrative Fee

Contractor will remit to WSCA a Contract Administration fee in the amount of one-half of one percent (.5%) of the total sales from this Contract. The pricing listed on the proposal shall include the WSCA administrative fee. Administrative fees shall not be added as a line item on any invoice. A statement verifying the total sales amount for all Participating States must accompany the remittance. This remittance is due to WSCA no later than forty-five (45) days after the last day of each calendar quarter.

2.5.2 Arizona Administrative Fee

The Contractor shall assess an administrative fee in the amount of one percent (1%) against all contract sales to members of the State Purchasing Cooperative, including Cities, Counties, School Districts and other qualified members. The administrative fee is calculated against all sales under this under this Contract minus any taxes or regulatory fees, minus any returns or credits, and minus any shipping charges not already included in the unite prices. An updated list of State Purchasing Cooperative members may be found at http://spo.az.gov/Cooperative Procurement/SPCdefault.asp. At its option, the State may expand the applicability of this fee. The State shall provide thirty (30) days written notice prior to exercising or changing this option.

Contractors shall submit a Quarterly Usage Report documenting all contract sales. For more information on the Quarterly Usage Report or the Administrative Fee, its calculation, submission or use, and the proper Usage Report Forms, see the State Procurement Office's website at http://spo.az.gov/Contractor Resources/Admin Fee/default.asp. Any alternate Quarterly Usage Report format shall be approved by the Procurement Officer. Any usage report that is submitted to the State for the purpose of satisfying this requirement shall be deemed public record and all information contained in such report shall not be considered confidential, including any supplemental information contained in the submitted report beyond that which is requested in the Sample Forms located at the State Procurement Office website.

The Administrative Fee shall be submitted, along with a Quarterly Usage Report to the State Procurement Office within thirty (30) days following the end of each calendar quarter. Administrative Fees shall be submitted to the following address:

Arizona Department of Administration
State Procurement Office
100 N. 15th Avenue, Suite 201
Phoenix, AZ 85007
Attention: "Statewide Contract Administrative Fee"

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2.6 Risk and Liability

2.6.1 Indemnification

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as 'Indemnitee') from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as 'Claims') for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

2.6.2 INSURANCE REQUIREMENTS

Vendor shall procure and maintain, until all of their obligations, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the purchase and or use of the commodity.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Vendor from liabilities that might arise out of the purchase and use of the commodities sold under this Contract by the Vendor, his agents, representatives, employees or subcontractors and Vendor is free to purchase such additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage at least as broad and with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

• General Aggregate	$2,000,000
• Products – Completed Operations Aggregate	$1,000,000
• Personal and Advertising Injury	$1,000,000
• Fire Legal Liability	$ 50,000
• Blanket Contractual Liability – Written and Oral	$1,000,000
• Each Occurrence	$1,000,000

2. **Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	$1,000,000

a. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor."***

b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	$ 500,000
Disease – Each Employee	$ 500,000
Disease – Policy Limit	$1,000,000

a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. For the State of Arizona, this requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies are to contain, or be endorsed to contain, the following provisions:

1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. **NOTICE OF CANCELLATION**: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the Lead State (the State of Arizona) and the Participating State. Such notice shall be sent directly to the Procurement Officer for this Master Agreement and to the Procurement Officer of the Participating Addendum and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an "A.M. Best" rating of not less that A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Vendor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the **Participating State**) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received by the Participating State before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Procurement Officer of the Lead State and to the Procurement Officer of the Participating State. Both the Master Agreement number and the Participating Addendum number and contract description are to be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT DIVISION.**

F. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract must have prior approval from the State of Arizona Department of Administration, Risk Management Division, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

G. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university then none of the above shall apply.

3. State of Arizona Uniform Terms and Conditions

Are incorporated into this PA as Exhibit One (1)

4. Statement of Work (SOW)

4.1 Deletions

Lease purchases or term leases shall not be available under this PA.

4.2. Requirements – Products

Software Value-Added Reseller("Contractor") shall be a large account reseller authorized to sell products direct from key software publishers. The Contractor is to be responsible for providing Commercial Off-the-Shelf-Software (COTS) and COTS software maintenance packages. The Contractor will honor an existing individual Participating Entity's volume or enterprise license agreements, and provide maintenance and support packages on licenses already owned by the Participating Entity. The Contractor will provide services directly related to these products such as: communicating channel partner status with publishers, retaining or enhancing reseller certifications with software publishers, negotiating for reduced Reseller Costs, and assisting with basic software installation. As may be required the Contractor will work with WSCA/NASPO computing equipment Contractors, or comparable computer hardware Contractor, to make their best reasonable effort that any software acquired under those Contracts can be tracked through this Contract.

4.3 Specific Requirements – Products

Most Current Version. Purchase orders shall be deemed to reference a manufacturer's most recent release model or version of the product at the time of the order, unless the Purchasing Entity specifically requests in writing an earlier model or version and the Contractor is willing to provide such model or version.

Product Offerings. The Contractor shall provide COTS software, and software maintenance of new or existing licensed software, under this Contract. Information on approved products, customized by participating state, will be available through an online catalog and through the Contractor's representatives either through email or telephone inquiry during the standard working hours of the

State. The online catalog shall provide an expansive list of products allowed per the Contract, particularly those products of itemized publishers.

4.4 Product Acquisition

Volume License Agreements (VLA)

The Contractor will honor existing VLA's with Publishers and include those licenses as part of the Contractor's license tracking service. The Contractorr will identify itself to the software publishers as Reseller. If so required by the Publisher and the State, the Contractor will execute a change of Channel Partner agreement with the Publisher. The Contractor will sell additional seats consistent with the State's Enterprise or Volume Agreements. Contractor will work with the State and Publishers as needed to establish new VLAs.

Individual Software Licenses

The State can purchase individual COTS licenses, such as perpetual and non-perpetual licenses, through the Contractor.

4.5 Requirements – Services

In addition to the services directly associated with the receipt of product referenced above, the Contractor shall provide services related to the selection, purchase and management of distributed software. These services include, but are not limited to, development and maintenance of State websites, price quotes, license tracking and management, volume license agreements, software installation/ de-installation/ implementation assistance, software advisement, training, and software maintenance and support. The Contractor is expected to support the State's in getting best value from software decisions, providing information and advice regarding software and representing the State's interests in negotiating with software publishers.

Software Maintenance Agreements

The State can purchase maintenance agreements, including upgrade protection, through the Contractor. The Contractor shall sell software maintenance agreements, even if the software was not purchased under this Agreement, such as on-going support for a user's existing perpetual license. As requested, the Contractor shall explain what product support or services are included in a Publisher's Maintenance Agreement.

4.6 Any and all other products and services available and awarded through the MPA shall be provided by the Contractor through this PA.

4.7 Online Catalog and Electronic Ordering System (Punch-Out)

The Contractor shall make available an online catalog to allow Authorized Purchasers to make purchases from this Contract through the State's eProcurement System (ProcureAZ). The Contractor shall have a secured website for placing online orders. The features and functions of the online ordering catalog that is created for use by the State under this Contract shall include, but shall not be limited to the following:

4.71. Access by standard web browsers;

4.7.2 Product information such as unit of measure, item status, price description and photos;

4.7.3 Item status inquiry functionality that provides stock availability;

4.7.4 Order tracking;

4.7.5 Help functionality;

4.7.6 Reflect current catalog and or price list and contract pricing;

4.7.7 Restricted to only those items that may be purchased under this Contract by being identified as core items or are within the general product categories established by this Contract; and

4.7.8 Shall not include any items that are specifically excluded from this Contract.

5. Customer Service and Representation

Obtain Quotes	Address Purchase Orders to:	Remit Payments to:
SHI International Corp. ATTN: Phone: 888-711-2613 BY EMAIL: Contact name Email address teamarizona@shi.com	SHI International Corp. ATTN: Fax: 866-941-6845 BY EMAIL: Contact name Email address teamarizona@shi.com	SHI International Corp. ATTN: PO Box 952121 Dallas, TX 75395-2121 BY PHONE: Local: 888-711-2613

5.1 Reporting

Standard reports. The State may require standard reports, such as report on savings. The Contractor shall provide these reports at the intervals, and in the format, as reasonably requested by the State. The Contractor shall advise of standard reports which they can provide.

Online reports - The Contractor shall be able to provide online, real time, reporting capabilities through the Internet using the established State website. These reports may include Back Order or Current Order Status reports. In addition, the system shall be able to provide the ability to create custom reports. The State shall be able to select specific fields and create a necessary report for their specific needs. Data Fields shall include, but not be limited to, purchasing entity, Purchase Order Number, Order date, Invoice date, Publisher, Publisher Part Number, Software Reseller's Part Number, Description, Quantity Shipped, Unit actual price, Extended Price, Sales Tax and order total. Reports shall be able to be shown online as well as emailed if requested.

Custom reports. The Contractor shall develop and provide custom reports as an optional service at a pre-quoted estimated total amount, at established hourly Contract rates.

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Entire Agreement. This Addendum and the Master Price Agreement together with its Exhibits and Attachments as set forth, are the entire Agreement between the Parties with respect to the subject matter of all previous communications, representations or Agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement, together with its Exhibits and Attachments, shall not be added to or incorporated into this Addendum or the Master Price Agreement and its Exhibits and Attachments, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and its Exhibits and Attachments shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity which has executed this Addendum.

IN WITNESS WHEREOF, the Parties have executed this Addendum as of the date of execution by Contractor below.

SHI International Corp.

Natalie Cs

SIGNATURE

NAME Natalie Castagno

TITLE Contract Specialist

7/8/11

DATE

State of Arizona

Susan Bayer

SIGNATURE

NAME Susan Bayer

TITLE Procurement Manager

7-11-11

DATE

PARTICIPATING ADDENDUM
SHI International Corp.

State of Arizona Uniform Terms and Conditions
Exhibit One (1)

1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1.1. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.

1.2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.

1.3. "*Contract Amendment*" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

1.4. *"Contractor"* means any person who has a Contract with the State.

1.5. *"Days"* means calendar days unless otherwise specified.

1.6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

1.7. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

1.8. "*Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but or leasing space.

1.9. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

1.10. *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

1.11. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

1.12. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

1.13. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

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2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in theorder set forth below:

2.3.1. Special Terms and Conditions;
2.3.2. Uniform Terms and Conditions;
2.3.3. Statement or Scope of Work;
2.3.4. Specifications;
2.3.5. Attachments;
2.3.6. Exhibits;
2.3.7. Documents referenced or included in the Solicitation.

2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and trade secrets created or conceived solely pursuant to or as a result of this Contract any related subcontract ("Intellectual Property"), shall be owner of such Intellectual Property. The Agency, Department, Division, Board or Commission of the State of Arizona requesting the issuance of the Contract shall own (for and on behalf of the State) the entire right, title, and interest to the Intellectual Property throughout the world. Software and other Materials developed or Contract ("Independent Materials") do not constitute Intellectual Property. If the Contractor creates derivative works of Independent Materials, then the elements of such derivative works created pursuant to this Contract shall constitute Intellectual Property owned by the State. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests with the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by the Contractor or its subcontractor(s) to any entity not the State, without the express written authorization of the Agency, Department, Division, Board or Commission of the State of Arizona requesting the issuance of the Contract.

3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.11 Scrutinized Businesses. In accordance with A.R.S. § 35-391 and A.R.S. § 35-393, Contractor certifies that the Contractor does not have scrutinized business operations inSudan or Iran.

3.12 Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3. Applicable Taxes.

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1. Accept a decrease in price offered by the contractor;
4.5.2. Cancel the Contract; or
4.5.3. Cancel the contract and re-solicit the requirements.

5. Contract Changes

5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2. Indemnification

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

6.3. Indemnification - Patent and Copyright. With respect solely to Materials provided or proposed by Contractor or Contractor's Agents, Employees or Subcontractors (each a "Contractor Party") for performance of this Contract. Contractor shall indemnify, defend and hold harmless the State, its Departments, (collectively, the "Indemnitee") against any third party claims for liability, including but not limited to, reasonable costs and expenses, including attorney's fees, for infringement or violation of any patent, trademark, copyright or trade secret by such Materials or the State's use thereof. In addition, with respect to claims arising from computer hardware or software manufactured or developed solely by a third party. Contractor shall pass through to the State such indemnity rights as it receives from such third party (the "Third Party Obligation") and will cooperate in enforcing them; provided, however, that (i) if the third party manufacturer fails to honor the Third Party Obligation, or (ii) the Third Party Obligation is insufficient to fully indemnify the State; Contractor shall indemnify, defend and hold harmless the State against such claims in their entirety or for the balance of any liability not fully covered by the Third Party Obligation.

6.4. Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term *"force majeure"* means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract

Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

6.6 Contractor's Limitation of Liability. Contractor's liability for the first party damages to the State arising from this Contract shall be limited to five (5) time(s) the total value of this contract. The foregoing limitation of liability shall not apply to (i) liability, including indemnification obligations, for third party claims, including but not limited to, infringement of third party intellectual property rights; (ii) claims covered by any specific provision of the Contract calling for liquidated damages or other amounts, including but not limited to performance requirements; or (iii) costs of attorneys' fees that the State is entitled to recover as a prevailing party in any action.

7. Warranties

7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, andshall be fit for all purposes and uses required by the Contract.

7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5. Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6. Survival of Rights and Obligations after Contract Expiration or Termination.

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the 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.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any

other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effect.

9.5. Termination for Default.

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those underthis Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. **Contract Claims**

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted there under.

11. **Arbitration**

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required byA.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. **Comments Welcome**

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.