



State of Oklahoma
Office of Management and Enterprise Services

**ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH SHI INTERNATIONAL
CORPORATION
RESULTING FROM SOLICITATION NO. 0900000258**

This Addendum 1 (“Addendum”) is an Amendment to the Contract awarded to SHI International Corp. (“SHI”) in connection with Solicitation 0900000258 (“Solicitation”) and is effective February 1, 2018.

Recitals

Whereas, the State of Oklahoma by and through the Office of Management and Enterprise Services (“State”) issued a Solicitation for proposals for a reseller of Microsoft products and services for Oklahoma State Entities and Affiliates, as more particularly described in the Solicitation;

Whereas, SHI submitted a proposal which contained exceptions to the Solicitation terms and various other Contract Documents; and

Whereas, the State and SHI have negotiated the final terms under which SHI will provide the online course curriculum and related services under the Contract.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. **Addendum Purpose.**

This Addendum memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to SHI as of even date with execution of this Addendum. The parties agree that Supplier has not yet begun performance of work contemplated by the Solicitation.

2. **Negotiated Documents of the Contract.**

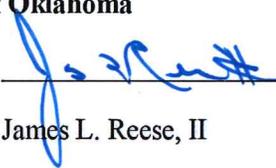
2.1. The parties have negotiated certain terms of the Contract as follows:

- i. certain exceptions to the Solicitation as contained in Attachment A to this Addendum titled “Negotiated Exceptions and Additional Terms to the Solicitation”

Contract Documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.

- 2.2. Accordingly, any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions. For avoidance of doubt, the document titled "Exceptions to Solicitation Terms and Conditions" submitted with SHI's response is superseded in its entirety by this Addendum.

State of Oklahoma

By: 

Name: James L. Reese, II

Title: Chief Information Officer

Date: 2-14-18

SHI International Corp.

By: Natalie Castagno

Name: Natalie Castagno

Title: Director of Response Team

Date: 1/31/18

**Attachment A to
Addendum 1 to
State of Oklahoma Contract with SHI INTERNATIONAL CORP.
Resulting from Solicitation Number 0900000258**

Negotiated Exceptions and Additional Terms to the Solicitation

The Solicitation is hereby amended as set forth below and supersedes all prior Exceptions and additional terms submitted by SHI International Corp. or discussed by the parties.

Solicitation, Section A General Provisions, Subsection A.15.1. is hereby deleted in its entirety and replaced with the following:

As used in this clause, "records" includes books, documents, and other financial data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any contract with the State, the Supplier agrees any pertinent state or federal agency shall have the right to examine and audit all records relevant to execution and performance of this Contract. Audits conducted pursuant to this provision by Authorized Users who procure goods and/or services pursuant to this Contract are entitled to one audit per twelve (12) months.

Solicitation, Section A General Provisions, Subsection A.31. is hereby deleted in its entirety and replaced with the following:

- A.31.1. Without exception, the products prices shall include all royalties or costs owed by the SHI to any third party arising from the use of a patent or copyright.
- A.31.2. If a third party claims that any portion of the custom deliverables developed by SHI under the terms of this Contract infringes that party's patent or copyright, SHI shall defend the State against the claim at SHI's expense and pay all related costs, damages, and attorneys' fees incurred by, or assessed to, the State, provided the State (i) promptly notifies SHI in writing of the claim and (ii) to the extent authorized by the Attorney General of the State, allows SHI to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to SHI, SHI shall be granted authorization to equally participate in any proceeding related to this section but SHI shall remain responsible to indemnify the State for all associated costs, damages and fees incurred by or assessed to the State. For all products developed by Microsoft and resold by SHI, all indemnity obligations set forth in this provision shall be governed by the agreements between Microsoft and the State more specifically referenced in Solicitation, Section B Special Provisions, Subsection B.13.
- A.31.3. If such a claim is made or appears likely to be made, SHI shall enable the State to legally continue to use, or modify for use, the portion of the custom deliverables at issue or replace such potential infringing deliverables with at least a functional non-infringing equivalent. If SHI determines that none of these alternatives is reasonably available, the State shall return such portion of the deliverables at issue to SHI, upon written request, in exchange for a refund of the price paid for such returned. For all products developed by Microsoft and resold by SHI, SHI shall act as a liaison between Microsoft and State to enable the State to legally continue to use, or modify for use, the portion of products at issue or replace such potential infringing products with at least a functional non-infringing equivalent. If

Microsoft determines that none of these alternatives is reasonably available and authorizes a return and issues a refund to SHI for the products at issue, the State shall return such portion of the products at issue to SHI, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund, if applicable, of other products which are rendered materially unusable as intended due to removal of the portion of products at issue.

- A.31.4. SHI has no obligation regarding a claim based on any of the following: (i) modification of a deliverable by any party other than SHI, its employee, agent, representative, permitted subcontractor, or any State employee acting in conjunction with the SHI; (ii) a program's use in other than its specified operating environment; (iii) the combination, operation, or use of a deliverables with other products not provided by SHI as a system or (iv) infringement solely by a non-Microsoft product that has not been provided to the State by, through or on behalf of the SHI as opposed to its combination with deliverables SHI develops for the State as a system.

Solicitation, Section A General Provisions, Subsection A.37. is hereby deleted in its entirety and replaced with the following:

To the extent any limitation of liability in any Contract Document is construed by a court of competent jurisdiction to be a limitation of liability in violation of applicable law, such limitation of liability shall be void.

Except for amounts payable with respect to the indemnification obligations and the confidentiality, data obligations set forth in the Contract, in no event shall either party have liability with respect to its obligations under the Contract for special, consequential, exemplary, incidental or indirect damages for or loss of business profits. SHI's sole liability, including liability arising out of contract, negligence, and strict liability in tort, shall not exceed the total amount of fees paid or payable by an Authorized User to SHI under the Contract for the year previous to the incident which gave cause for such liability.

With respect to the indemnification obligations and confidentiality obligations set forth in in the Contract, neither party shall be liable to the other for lost profits or for any special, punitive or exemplary damages in connection with the Contract.

Notwithstanding anything to the contrary in the Contract, the foregoing provisions of this Section shall not apply to or limit damages, expenses, costs, actions, claims and liabilities arising from or related to property damage, bodily injury or death caused by SHI; the bad faith, gross negligence or intentional misconduct or SHI or its employees agents and subcontractors; or other acts for which applicable law does not allow exemption from liability.

Solicitation, Section B Special Provisions, Subsection B.3 is hereby deleted in its entirety and replaced with the following:

SHI warrants and represents that products or deliverables, including custom deliverables, specified and furnished by or through the SHI shall individually, and where specified by SHI or manufacturer to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of a minimum of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. Defects in the products and deliverables, including custom

deliverables, specified and furnished by or through the SHI shall be repaired or replaced by SHI at no cost or expense to the State if such defect occurs during the warranty period.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE CONTRACT, SUPPLIER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, RELATED TO THE PRODUCTS OR CUSTOM DELIVERABLES TO BE PROVIDED BY SUPPLIER HEREUNDER, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Solicitation, Section B Special Provisions, Subsection B.13 is hereby added:

SHI and State acknowledge and agree that Microsoft is providing the products and services purchased by an Authorized User pursuant to the contract resulting from Solicitation No. 0900000258 ("Statewide Contract No. 1010") entered into between SHI International Corp. ("SHI") and the State of Oklahoma by and through the Office of Management and Enterprise Services. SHI and State acknowledge that State and Microsoft have entered into separate agreements that govern all acquisitions of Microsoft products and services. Such separate agreements shall govern in regards to any obligations of Microsoft. SHI and State further acknowledges that any bidder agreements provided by SHI in its response to Solicitation No. 0900000258 ("Statewide Contract No. 1010") do not become part of the Contract.