

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

PURCHASE OF GOODS CONTRACT

THIS CONTRACT, made and entered into this 1st day of April, 2020, for the purchase of Microsoft Volume Licensing, by and between the **COUNTY OF DURHAM**, North Carolina, a political subdivision of the State of North Carolina, hereinafter referred to as "**PURCHASER**", and **SHI INTERNATIONAL CORP.**, hereinafter referred to as "**SELLER**".

1. TERMS.

A. The Seller, in consideration of the sum of Four Hundred Two Thousand One Hundred Seven Dollars and Twenty Seven Cents (\$402,107.27), hereby sells to Purchaser the goods and services at the times, in the manner, at the prices, and at the place(s), pursuant to the provisions and specifications as set forth herein. **No charges of any kind not appearing in this contract will be accepted or paid by Purchaser.** It is Purchaser's discretion to accept items shipped in excess of the quantity ordered and any over shipment may be returned at Seller's expense.

B. The effective date of this Contract shall be the date first set forth above in the preamble to this Contract, irrespective of the date of execution by the parties. The first date written above is **April 1, 2020**. All renewal or non-renewal periods or deadlines stated in this Contract, if any, shall be calculated based on the "effective date" indicated above.

The Term of this Purchase of Goods contract is from April 1, 2020 to March 31, 2023, unless sooner terminated as provided herein.

C. Shipments received prior to delivery date without previous approval by Purchaser may be returned or stored at Seller's expense.

D. A Funds Reservation number may be assigned to encumber the funds associated with this contract and must appear on all crates, packages, packing slips, invoices, and correspondence shipped or mailed to Purchaser. All items will be accompanied by assembly instructions and operating and repair manuals, as applicable. Purchaser's count will be accepted as conclusive on all shipments not accompanied by a packing slip.

E. The parts, material, and workmanship of all items are subject to inspection, testing and counting by Purchaser. Purchaser may reject for full credit or require prompt correction or replacement at Seller's expense, including the expense of unpacking, examining, repacking, storing and transporting of any item defective in material or workmanship or otherwise not in conformity with specifications provided by Purchaser in the Order. Goods will be delivered to the Purchaser in new condition and undamaged (unless otherwise specified by Purchaser).

F. This order to Seller is not transferable or assignable without the written permission of Purchaser. Seller is an independent contractor and is not an agent or employee of Purchaser.

G. Seller warrants that it is the sole owner of the described goods and that it has the unrestricted right to convey a clear title to the Purchaser free and clear of all encumbrances.

2. CHANGE: Purchaser reserves the right to change, modify and/or cancel this order upon issuance of a change order. If the Purchaser is not notified to the contrary in writing within 10 days after the issuance of the change order, the changed and/or modification and/or cancellation is considered accepted by the Seller.

3. WARRANTY OF GOODS AND MATERIALS: Seller is a value added reseller ("VAR") of Goods not the Original Equipment Manufacturer ("OEM") or licensor, and therefore disclaims any warranty responsibility regarding

Goods provided under this Contract. Seller shall forward the warranties to Purchaser which are provided to Seller from the OEM of the Goods, and to the extent granted by the OEM, Purchaser shall be the beneficiary of the OEM's warranties with respect to the Goods. Seller is not a party to any such terms between Purchaser and OEM and Purchaser agrees to look solely to the OEM for satisfaction of any and all warranty claims to that OEM's Goods.

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT AND/OR ANY ORDER ISSUED HEREUNDER, SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NON-INFRINGEMENT, OR ANY WARRANTY RELATING TO THIRD PARTY SERVICES OR PRODUCTS. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY WARRANTY PROVIDED BY AN OEM.

4. **INDEMNITY.** To the fullest extent permitted by laws and regulations, the Seller shall indemnify and hold harmless the Purchaser and its officials, agents, and employees from and against all claims, damages, losses, and expenses, direct (including but not limited to fees and charges of attorneys, and other professionals and costs related to court action or arbitration) arising out of or resulting from Seller's willful misconduct in the performance of this Contract or the negligent actions of the Seller or its officials, employees, or subcontractors under this Contract or under the contracts entered into by the Seller in connection with this Contract. This indemnification shall survive the termination of this agreement.
5. **INSURANCE.** Seller shall procure and maintain for the duration of the contract the following insurance coverage from an insurance company(s) possessing a rating of A-VII or higher from the A.M. Best Company and licensed to do business in North Carolina. In the event Seller's Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "waiver of subrogation" this contract shall govern. Seller shall advise the Purchaser of any cancellation, non-renewal, or material change in any policy within ten (10) days of notification of such action and provide updated certificates of insurance evidencing renewals within fifteen (15) days of expiration. Seller's insurance shall be primary and any insurance or self-funded liability programs maintained by the Purchaser shall not contribute with respect to the Seller's insurance. Purchaser shall not be listed as an additional insured on any Insurance Policy or Certificate of Insurance of the Seller. In the event Seller's Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "additional insured" this contract shall govern.

5.1 Commercial General Liability: Insurance Services Office (ISO) Form CG 00 01 on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than **\$1,000,000** per occurrence and **\$2,000,000** aggregate.

5.2 Commercial Automobile Liability: ISO Form CA 00 01 covering any auto with limit not less than **\$1,000,000** per accident for bodily injury and property damage.

5.3 Worker's Compensation and Employers Liability: as required by The State of North Carolina, with statutory limits, and Employers Liability Insurance with a limit of no less than **\$1,000,000** per occurrence.

By requiring insurance herein, the Purchaser does not represent that coverage and limits will necessarily be adequate to protect Seller, and such coverage and limits shall not be deemed as a limitation on Seller's liability under the indemnities granted to the Purchaser in this Contract. Seller shall provide the Purchaser a valid certificate of insurance, in advance of the performance of any work, exhibiting coverage required. Seller shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

The failure of the Purchaser at any time to enforce the insurance provisions, to demand such certificates of insurance, or to identify a deficiency shall not constitute a waiver of those provisions, nor reduce the obligations of the Seller to maintain such insurance or to meet its obligations under the indemnification provisions.

Notwithstanding the foregoing, nothing contained in this section shall be deemed to constitute a waiver of the governmental immunity of the Purchaser, which immunity is hereby reserved to the Purchaser.

The failure of the Purchaser at any time to enforce the insurance provisions, to demand such certificates of insurance, or to identify a deficiency shall not constitute a waiver of those provisions, nor reduce the obligations of the Seller to maintain such insurance or to meet its obligations under the indemnification provisions.

Notwithstanding the foregoing, nothing contained in this section shall be deemed to constitute a waiver of the governmental immunity of the Purchaser, which immunity is hereby reserved to the Purchaser.

6. **TERMINATION.** The Purchaser may, by written notice, terminate this contract in whole or in part, for failure of Seller to perform, including failure to deliver as and when specified.
7. **EXISTENCE.** Seller warrants that it is a corporation or otherwise legal entity duly organized, validly existing, and in good standing under the laws of the State of North Carolina and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this Agreement.
8. **COMPLIANCE WITH LAWS.** Seller shall abide by all statutes, rules, regulations, laws, and executive orders Federal, State and Local as they relate to, but are not limited to, (i) services in general, (ii) payment of employees, subcontractors and agents, (iii) the Occupational Safety and Health Administration, (iv) the Fair Labor Standards Act, and (v) the Wage and Hour Division. In the event Seller is determined by the final order of a court or appropriate agency to be in violation of any Federal, State or Local statute, rule, regulation, law or executive order or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY and Seller may be declared ineligible for further COUNTY contracts.
9. **E-VERIFY.** As a condition of payment for services and/or goods received under this agreement, Seller shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Seller provides the services and/or goods to the County utilizing a subcontractor, Seller shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes as well. Seller shall verify, by affidavit, compliance of the terms of this section upon request by the Purchaser.
10. **EMPLOYMENT ADVERTISING REQUIREMENTS.** RESERVED
11. **SECURITY BACKGROUND CHECKS.** RESERVED
12. **DISPUTE RESOLUTION PROCEDURE.** To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between the Purchaser and the Seller, arising from this Agreement or the services and/or goods being provided by the Seller, shall be sent to the Durham County Manager who shall appoint a qualified mediator to address the issue. Such request shall be submitted to the County Manager in writing within ten (10) days of the claim or dispute. Upon receipt of a timely written claim, the Manager, or his designee, shall notify the Mediator who will conduct a mediation and notify the Seller in writing of the decision within forty five (45) calendar days from the date of the submission of the claim or dispute, unless the Mediator requires additional time to gather information or allow the parties to provide additional information. The Mediator's orders, decisions and decrees shall be non-binding. Mediation, pursuant to this provision, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages including utilization of schedule changes and alternate means of providing the services and/or goods. The costs of the mediation shall be divided equally between the parties to the dispute.

The mediation session shall be private and shall be held in Durham County, North Carolina. Mediation under this provision shall not be the cause for a delay of services and/or goods being provided which is the focus of the dispute.

If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Durham and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this provision, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

- 13. NOTICES.** All notices which may be required by this contract or any rule of law shall be effective when received by certified mail sent to the following addresses:

**SHERIFF OF DURHAM COUNTY
ATTN: CHIEF DEPUTY
510 SOUTH DILLARD ST, 3RD FLOOR
DURHAM, NC 27701**

**SHI INTERNATIONAL CORP
ATTN: DEAN BLACKMON
290 DAVIDSON AVE
SOMERSET, NJ 08873**

- 14. CORPORATE AUTHORITY.** By execution hereof, the person signing for Seller below certifies that he/she has read this contract and that he/she is duly authorized to execute this contract on behalf of the Seller.
- 15. HEADINGS:** The subject headings of the paragraphs are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.
- 16. GOVERNING LAW.** This contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.
- 17. REQUIRED PROVISIONS FOR CONTRACTS/AGREEMENTS/GRANTS UTILIZING FEDERAL FUNDS. NOT APPLICABLE**
- 18. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) PROGRAM.** It is the policy of the County to provide minorities and women-owned businesses equal opportunity to participate in all aspects of the County's contracting programs, including but not limited to, the procurement of construction, goods and services consistent with law. The County has established an ordinance and implements an MWBE Program based on the ordinance, that promotes, increases and works towards eradicating the underutilization of minorities and women-owned businesses in the County's contracting programs. As part of the implementation of the MWBE Program, Contractors shall complete **Attachment 2 – MWBE Utilization Form**, to provide the percentage/dollar value being subcontracted to any minority or women-owned business being utilized on this contract. Attachment 2 is hereby incorporated herein and made a part of this contract.
- 19. ENTIRE CONTRACT.** This contract shall constitute the entire understanding between Purchaser and Seller and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.

IN TESTIMONY WHEREOF, the parties have expressed their agreement to these terms by causing this Purchase of Goods Contract to be executed by their duly authorized officer or agent.

Purchaser: COUNTY OF DURHAM

Seller: SHI INTERNATIONAL CORP.

Print Name and Title: _____

Print Name and Title: _____

Date of Signature: _____

Date of Signature: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Susan Tezai, Durham County Chief Financial Officer