

CONTRACT
SOFTWARE ENTERPRISE AGREEMENT

by and between

CUYAHOGA COUNTY, OHIO

and

SHI International Corp.

THIS CONTRACT is made and entered into this 26th day of February, 2013 by and between Cuyahoga County, Ohio ("County"), on behalf of the Cuyahoga County Prosecutor's Office, and SHI International Corp., ("SHI"), a New Jersey corporation with offices located at 290 Davidson Avenue, Somerset, NJ 08873.

WHEREAS, the County has a present need for a Microsoft Platform Products, at the Cuyahoga County Prosecutor's Office; and

WHEREAS, SHI as an authorized reseller of Microsoft Enterprise Licenses, provides Microsoft Platform Products under the State of Ohio Microsoft Enterprise Agreement #01E73274;

WHEREAS, the County wishes to incorporate the terms of State of Ohio Microsoft Enterprise Agreement #01E73274 into this Contract in order to obtain professional services from SHI; and

WHEREAS, the County desires to avail itself of Microsoft License Product and SHI agrees to provide Microsoft licenses to the County upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged SHI and the County agree as follows:

ARTICLE I – AGREEMENT AND TERM

1.1 Scope of Agreement. During the term of this Contract, SHI shall provide to the County the products and services listed on Quotation # 6230106, attached and incorporated herein as Exhibit "A," under the terms of the State of Ohio Microsoft Enterprise Agreement Number 01E73274, attached and referenced herein as Exhibit "B."

1.2 Term. The term of this Contract shall commence on February 1st, 2013 and unless earlier terminated in accordance with the provisions of this Contract, shall continue in

effect for three years from the date of commencement, renewable yearly (2/1/13 – 1/31/16).

ARTICLE II – SCOPE OF WORK

2.1 Rendering of Services. SHI hereby agrees to provide the County with products and services under the Microsoft Enterprise License Agreement, as described in Exhibit “A” attached to this Contract and made a part hereof as if fully rewritten herein, according to the terms and conditions of the State of Ohio Microsoft Enterprise Agreement #01E73274.

ARTICLE III – PAYMENT AND INVOICING

3.1 Payment. During the term of this Contract, the County shall pay yearly \$101,455.28 associated with the Microsoft Enterprise License Agreement, for upon receipt of said yearly invoice from SHI and contract approval of the Cuyahoga County Chief Executive. In no event shall payments to SHI under this Contract exceed \$304,365.84 for the full term of the Contract.

3.2 Invoicing. SHI shall invoice the County yearly upon execution of this Contract. SHI shall submit original invoice(s) to the following address:

Cuyahoga County Information Services Center
Business Department
1255 Euclid Avenue, 4th floor
Cleveland, Ohio 44115

3.3 Failure of Appropriation. Any provision of this Contract to the contrary notwithstanding, payment by the County hereunder shall be subject to annual appropriation of sufficient funds by Cuyahoga County Council. The County may terminate this Contract, on 30-days written notice to SHI, in the event of insufficient appropriation, at no additional charge or cost to the County.

ARTICLE IV – TERMINATION

4.1 Termination for Default. Either party may terminate this Contract for if the other party materially breaches its obligations under this agreement and is unable to cure such failure within thirty (30) days. SHI shall be paid for all services and/or materials provided on or prior to the date of termination. Termination for default shall not terminate the State of Ohio Microsoft Enterprise Agreement #01E73274.

4.2 Termination for Financial Instability. In the event that SHI becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against

SHI of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Contract under Section 4.1.

4.3 Termination for Convenience. The County may terminate this Contract for its convenience and without cause upon sixty (60) days written notice. SHI will be entitled to compensation for any materials and services delivered prior to the notice of termination. Termination of this Contract will not terminate the State of Ohio Microsoft Enterprise Agreement #01E73274

ARTICLE V - INDEMNITIES AND LIABILITIES

5.1 Indemnities and Warranties. All provisions relating to indemnities and warranties contained in the Microsoft Enterprise Agreement #01E73274 shall inure to the benefit of the County. Such provisions are between Microsoft and the County and the County agrees to look solely to Microsoft for fulfillment of its indemnifications and warranties.

ARTICLE VI – MISCELLANEOUS

6.1 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County:

Cuyahoga County Prosecutor's Office
ATTN: Pete Szigeti, CIO
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113

In the case of SHI:

Steve Burnside
SHI International Corp.
1408 Newell Court
Columbus, Ohio 43228

Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

6.2 Severability. If, and only to the extent that, any provision of this Contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the

parties that this Contract shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Contract is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

6.3 Waiver. No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

6.4 Survival of Terms. Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

6.5 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

6.6 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.

6.7 Social Security Act. SHI shall be and remain an independent contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by SHI for work performed under the terms of this Contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by and duly authorized State or Federal officials; and said SHI also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

6.8 Assignment. Neither party shall assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract without approval of the other party.

6.9 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this Contract must be executed by the Cuyahoga County Executive before compensation for the services or products set forth in this Contract can be provided. In the event that services are provided by SHI prior to the execution of this agreement by the Cuyahoga County, the same will be provided at SHI's risk, and payment therefore cannot, and will not, be made unless and until this agreement is approved by the Cuyahoga County. Upon signature by the County Executive of this Contract, however, any and all prior performance under this Contract shall be deemed ratified and said performance shall be deemed to be included in this Contract. Payment(s) for said prior performance shall not increase the amount of the Contract limit.

6.10 Entire Agreement and Modification. This Contract, including any Schedules and documents referred to in this Contract or attached hereto, each of which is incorporated herein, constitutes the entire and exclusive statement of the agreement between the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements relating to this Contract which are not fully expressed herein. The parties agree that any other terms or conditions included in any quotes, acknowledgments, bills of lading or other forms utilized or exchanged by the parties shall not be incorporated herein or be binding unless expressly agreed upon in writing by authorized representatives of the parties. No modification, change or amendment hereof shall be valid unless such is in writing and signed by the authorized representative of the party against which such modification, change or amendment is sought to be enforced.

6.11 Public Records. All parties hereto acknowledge that the County is a political subdivision in the State of Ohio and as such is subject the Ohio Revised Code and other law related to the keeping and access to Public Records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the County and any and all documents in any format or media.

6.12 All County contracts, including this Contract, are subject to all applicable County ordinances, including but not limited to, the Cuyahoga County Ethics ordinance and Cuyahoga County Inspector General Ordinance. SHI agrees that the charter provisions and all ordinances, resolutions, rules and regulations of the County now or hereafter applicable shall be included in this Contract for all purposes unless such ordinances are preempted by other state or federal laws and regulations.

6.13 SHI represents and warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24.

6.14 This Contract has been properly authorized pursuant to the legal requirements of the County and SHI. The individuals signing on behalf of the parties to this Contract are authorized to execute this Contract on behalf of County and SHI. SHI recognizes and agrees that no public official or employee of County may be deemed to have apparent authority to bind County to any contractual obligations not properly authorized pursuant to County's Contracting and Purchasing Procedures.

6.15 Limitation of Liability. SHI shall not be liable for any special, punitive, indirect, incidental or consequential damages, including, but not limited to, loss of or damage to data, loss of anticipated revenue or profits, work stoppage or impairment of other assets, whether or not foreseeable and whether or not SHI has been advised of the possibility of such damages, except for SHI's gross negligence, SHI's total cumulative liability to the County in connection with this Contract, whether in contract, tort or other theory, will not exceed the total amount of fees actually paid or payable by the County to SHI under this Contract.

ARTICLE VII – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

- 7.1. Electronic Signature. By entering into this Contract, SHI, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by means electronic by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the original document.
- 7.2 Compliance with O.R.C SHI further agrees to be bound by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to Electronic Transactions and to comply with the electronic signature policy of Cuyahoga County.

IN WITNESS WHEREOF, THE County and SHI have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

SHI International Corp.

BY: Natalie Slowik
Natalie Slowik, Contract Specialist

Cuyahoga County, Ohio

Edward FitzGerald, County Executive

BY: Edward FitzGerald
Edward FitzGerald, County Executive
2013-03-26 15:46:47