

CONTRACT

SOFTWARE MAINTENANCE AGREEMENT

by and between

CUYAHOGA COUNTY, OHIO

and

SHI International Corp.

THIS AGREEMENT (the "Contract") is made and entered into this _____ day of _____, 2013 by and between Cuyahoga County, Ohio ("the County"), on behalf of The Department of Children and Family Services 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 Maintenance of TOAD for Oracle and Quest DBA Module for TOAD Software, at the Cuyahoga County Department of Children and Family Services, and

WHEREAS, SHI as a reseller of TOAD and Quest Software Support and can provide maintenance as the as the lowest price of three bidders; and

WHEREAS, the County desires to avail itself of such services located at the Cuyahoga County and SHI is willing to provide such service to the County all upon the terms and conditions set forth herein and further supplemented 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 as a reseller shall provide the County with support of TOAD and Quest Software as listed on the attached Quote #6716671 - Schedule A, incorporated by reference herein.

1.2 Term. The term of this Contract shall commence as of June 30, 2013 and unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of one year (6/30/13 – 6/29/14). The cost of this Contract shall not exceed **Seven Hundred Ninety Seven Dollars and Zero Cents (\$797.00).**

ARTICLE II – SCOPE OF WORK

Rendering of Services. SHI hereby agrees to sell software maintenance of Toads for Oracle Xpert Edition per seat and Quest DBA Module for Toad per seat, at a total price of **Seven Hundred Ninety Seven Dollars and Zero Cents (\$797.00).**

ARTICLE III – PAYMENT AND INVOICING

3.1 Payment. During the term of this contract, the County shall pay SHI, support of Quest and TOAD Support Services as outlined in Schedule A attached hereto and incorporated by reference herein, upon the approval of the County Executive.

3.2 Invoicing. SHI shall invoice the County for Maintenance Service. SHI shall submit original invoice(s) to the following address:

Cuyahoga County Department of Information Technology
Business Department
1255 Euclid Avenue, 4th floor
Cleveland, Ohio 44115

ARTICLE IV - DISPUTE RESOLUTION AND TERMINATION

4.1 Dispute Resolution.

- a) In the event of any dispute or disagreement between SHI and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by SHI or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.
- (b) The rights and obligations of the parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.

4.2 Termination for Default. Either party may terminate this Contract, in whole or in part, whenever such party determines that the other has failed satisfactorily to fulfill its obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days or such longer period of time as may be specified in writing by the terminating party, taking into consideration the gravity and nature of the default. Such termination shall be referred to as "Termination for Default". Upon determination by either party hereto that the other has failed to satisfactorily perform its obligations and responsibilities hereunder, the party seeking termination shall notify the defaulting party in writing of the failure and of the time period that has been established to cure such failure, which time period shall be not less than ten (10) days. If the defaulting party is unable to cure the failure within the specified time period, the party seeking to terminate may, by giving written notice thereof to the defaulting party, terminate this Contract, in full or in part, as of the date specified in the notice of termination. SHI, however, shall be paid for all services and/or materials provided on or prior to the date of termination. Termination under this section will not terminate the services provided by the applicable service provider, which may only be terminated under the service provider's terms and conditions.

ARTICLE V – INDEMNITIES

5.1 Indemnification. SHI shall agree to release, indemnify and to hold harmless Cuyahoga County and any and all officers, agents, servants or employees thereof, from any and all responsibility or liability for SHI's gross negligence or willful misconduct under this contract.

ARTICLE VI – CHANGE ORDERS AND APPROVAL PROCESS

6.1 Change Order. Any change order or amendment requiring or permitting an increase beyond the not to exceed price limit in Section 2.1 of this contract, shall require an additional appropriation of funds approval of the County Executive.

ARTICLE VII – MISCELLANEOUS

7.1 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 Department of Information Technology
ATTN: Jeff Mowry, CIO
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

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.

7.2 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.

7.3 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.

7.4 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.

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

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

7.7 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 the 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.

7.8 Assignment. SHI shall not 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 Cuyahoga County.

7.9 Contract Processing. SHI shall submit one (1) original contractual agreement with original signatures to the following:

Cuyahoga County Department of Information Technology
Business Department
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

7.10 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the 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 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 County Executive. Upon approval by the Cuyahoga County 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.

7.11 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.

7.12 Insurance. SHI shall procure, maintain and pay premiums for the insurance coverage and limits of liability indicated below with respect to products, services, work and/or operations performed in connection with this Contract.

1. **Mandatory Insurance Requirements**

The following three items (Worker's Compensation Insurance, Commercial General Liability Insurance, and Business Automobile Liability Insurance) are all mandatory requirements unless otherwise specified.

(a) **Worker's Compensation Insurance** as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

For contractors with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;
\$1,000,000 each employee for bodily injury by disease;
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

(b) Commercial General Liability Insurance with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;
\$1,000,000 personal & advertising injury;
\$2,000,000 general aggregate;
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

(c) Business Automobile Liability Insurance covering all owned non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

Note: If the services required under this Contract include the repairing, servicing, parking or storing of vehicles, then the following insurance coverage shall also be required:

Garage keepers Legal Liability Insurance with a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident.

2. Additional Insurance Coverage

Each of the following eight items may be required "in addition to" the mandatory County insurance requirements set forth above. Although this coverage's may not be listed as mandatory County insurance requirements, it is at the County's discretion to mandate this coverage's where deemed necessary based on the nature of the contracted services/products.

(a) Umbrella/Excess Liability Insurance with limits of liability not less than:

\$5,000,000 each occurrence
\$5,000,000 general aggregate
\$5,000,000 products/completed operations aggregate

Such insurance shall be written on an occurrence basis and shall sit in excess of the limits and terms set forth in the preceding items (a)-(c).

- (b) **Professional Liability Insurance/Errors & Omissions Liability Insurance** providing coverage for claims arising out of the provision of design, architectural, engineering and/or other professional services with a limit of liability not less than:

\$5,000,000 per claim;
\$5,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any design, architectural, engineering or other professional activity related to this Contract.

Insurance Coverage Terms and Conditions

1. The insurance policies of SHI required for this contract, with the exception of the All Risk Equipment Insurance and Errors & Omissions Insurance, shall each name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain the following provisions:

- (i) Thirty (30) days prior notice of cancellation or material change;
- (ii) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.

2. The insurance required for this contract shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.

3. These insurance provisions shall not affect or limit the liability of the Contractor stated elsewhere in this Contract or as provided by law.

4. SHI shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverage's and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.

5. The County reserves the right to require insurance coverage's in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the County.

6. If the Bid/Proposal/RFQ specifies the need for higher limits of liability for any applicable insurance provision, the Bid/Proposal/RFQ specifications shall govern.

7. SHI shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverage's required herein is in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Contract.

ARTICLE VIII – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

8.1. By entering into this Contract, SHI, its officers, employees, subcontractors, sub-Grantees, agents or assigns, to conduct this transaction by electronic means 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 document.

8.2 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.

8.3 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. 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.

THIS AGREEMENT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness.

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.

Cuyahoga County, Ohio

BY: Natalie Slowik
Natalie Slowik, Contract Specialist

Edward FitzGerald, County Executive
BY: Ed FitzGerald
2013-09-20 16:51:09
Edward FitzGerald, County Executive

From: <Steve_Burnside@shi.com>
To: <dsievers@cuyahogacounty.us>
Date: 6/5/2013 6:18 PM
Subject: SHI Quote: 6716671 - Toad
Attachments: SHI Quote-6716671.pdf

Schedule A

<http://www.content.shi.com/Quote/Images/SHI_Logo.jpg> Pricing
Proposal
Quotation #: 6716671
Description: Toad
Created On: Jun-05-2013
Valid Until: Jun-28-2013

CUYAHOGA COUNTY INFORMATION

Dottie Sievers

Phone:
Fax:
Email: dsievers@cuyahogacounty.us

All Prices are in US Dollar(USD)

	Product	Qty	Your Price	Total
1	TOAD FOR ORACLE XPRT EDITION PER SEAT MAINTENANCE			
	Dlt Solutions - Part#: 9923-11640	1	\$616.00	\$616.00
2	QUEST DBA MODULE FOR TOAD PER SEAT MAINTENANCE			
	Dlt Solutions - Part#: 9923-11632	1	\$181.00	\$181.00

Total: \$797.00

Additional Comments

6/30/2013 through 6/30/2014

Retrieve your quote:
<https://www.shi.com/Quotes/Quoteinfo.aspx>

The Products offered under this proposal are subject to the SHI Return Policy, unless there is an existing agreement between SHI and the Customer.