RESOLUTION NO. 2019 - _49_

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO PURCHASE AND TO EXECUTE A PURCHASE ORDER FOR OPENGOV BUDGETING AND PLANNING SOFTWARE

## RECITALS

WHEREAS, the County seeks to purchase OpenGov Budgeting and Planning Software; and

WHEREAS, in accordance with section 302.6.5.4 of the St. Johns County Purchasing Manual, entitled "Piggyback or Cooperative Purchasing", the County is authorized make said purchase subject to the terms and conditions of Florida State Alternative contract # 43230000-NASPO-16-ACS ("Contract"); and

WHEREAS, purchase of the software will be funded by Management & Budget; and

WHEREAS, the County has reviewed the terms, provisions, conditions and requirements of the Contract and finds that entering into the Contract for the purchase of the budgeting and planning software serves a public purpose.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as finds of fact.

Section 2. The County Administrator, or designee, is hereby authorized to purchase OpenGov Budgeting and Planning software.

Section 3. In accordance with the terms and conditions of the Contract, the County Administrator, or designee, is further authorized to execute a purchase order in the amount of $100,800.00 for the purchase of OpenGov Budgeting and Planning software from SHI International Corp.

Section 4. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.
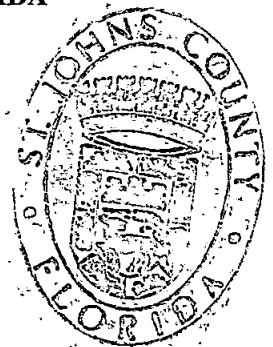
PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 19th day of February, 2019.

ATTEST: Hunter S. Conrad, Clerk

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

By: _Pam Halterman_
. Deputy Clerk

By: _Paul M. Waldron_
Paul M Waldron, Chair

RENDITION DATE _2/21/19_

# ST. JOHN'S COUNTY BOCC

**Inside Account Manager**

**Jesse Dunn**
4455 Avenue A
Suite 103
Accounts Payable
Saint Augustine, FL 32095
United States
Phone: 9048248304
Fax:
Email: jdunn@sjcfl.us

**Kelsi Komoroski**
290 Davidson Ave
Somerset, NJ, 08873
Phone: 800-543-0432
Fax: 732-868-6055
Email: Kelsi_Komoroski@shi.com

## Click here to order this quote

All Prices are in US Dollar (USD)

| | Product | Qty | Your Price | Total |
|---|---|---|---|---|
| 1 | OpenGov Budgeting and Planning Year 1<br>OpenGov - Part#:<br>Contract Name: NASPO ValuePoint - Cloud Solutions<br>Contract #: AR2488<br>Subcontract #: 43230000-NASPO-16-ACS<br>**Note:** Year 1 of 5 | 1 | $72,800.00 | $72,800.00 |
| 2 | OpenGov Budgeting and Planning One-Time Fee<br>OpenGov - Part#:<br>Contract Name: NASPO ValuePoint - Cloud Solutions<br>Contract #: AR2488<br>Subcontract #: 43230000-NASPO-16-ACS<br>**Note:** Pre-Paid Hours | 1 | $27,000.00 | $27,000.00 |
| 3 | SHI Project Management<br>SHI Professional Services - Part#:<br>Contract Name: Open Market<br>Contract #: Open Market | 1 | $1,000.00 | $1,000.00 |

| | Total | $100,800.00 |
|---|---|---|

**Additional Comments**

OpenGov Budgeting and Planning Subsequent Year 2: $72,800.00
OpenGov Budgeting and Planning Subsequent Year 3: $72,800.00
OpenGov Budgeting and Planning Subsequent Year 4: $72,800.00
OpenGov Budgeting and Planning Subsequent Year 5: $72,800.00

# OPENGOV SOFTWARE SERVICES AGREEMENT

This Software Services Agreement (this "**Agreement**") is entered into by OpenGov, Inc., a Delaware corporation with a principal place of business at 955 Charter Street, Redwood City, California 94063 ("**OpenGov**") and the customer listed on the signature block below ("**Customer**"), as of the date of last signature below (the "**Effective Date**"). This Agreement sets forth the terms under which Customer will be permitted to use OpenGov's hosted software services.

## 1. DEFINITIONS

"Customer Data" means data that is provided by Customer to OpenGov pursuant to this Agreement (for example, by email or through Customer's software systems of record). Customer Data shall not include any confidential personally identifiable information.

"Documentation" means the documentation for the Software Services at the Customer Resource Center page found at https://opengov.zendesk.com.

"Feedback" means suggestions, comments, improvements, ideas, or other feedback or materials regarding the Software Services provided by Customer to OpenGov, including feedback provided through online developer community forums.

"Initial Term" means the initial license term specified in number of years on the Order Form, commencing on the Effective Date.

"Intellectual Property Rights" means all intellectual property rights including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature.

"Order Form" means OpenGov's Software Services order form that: (a) specifies the Software Services provided by OpenGov; (b) references this Agreement; and (c) is signed by authorized representatives of both parties.

"Renewal Term" means each additional renewal period, which shall be for a period of equal duration as the Initial Term, for which this Agreement is extended pursuant to Section 7.2.

## 2. SOFTWARE SERVICES, SUPPORT AND PROFESSIONAL SERVICES

2.1 <u>Software Services</u>. Subject to the terms and conditions of this Agreement, OpenGov will use commercially reasonable efforts to perform the software services identified in the applicable Order Form entered into by OpenGov and Customer ("**Software Services**").

2.2 <u>Support</u>. Customer support is available by email to support@opengov.com or by using the chat messaging functionality of the Software Services, both of which are available during OpenGov's standard business hours. Customer may report issues any time. However, OpenGov will address issues during business hours.

2.3 <u>Professional Services</u>.

(a) If OpenGov or its authorized independent contractors provides professional services to Customer, such as implementation services, then these professional services will be described in a statement of work ("**SOW**") agreed to by the parties (the "**Professional Services**"). For Professional Services performed on a time and materials basis, any pre-paid Professional Services Fees must be utilized within one (1) year from the Effective Date. Any unused pre-paid Professional Services Fees shall be forfeited.

(b) Unless the SOW provides otherwise, all reasonable travel expenses, pre-approved by Customer and incurred by OpenGov in performing the professional services will be reimbursed by Customer. Travel expenses include cost of coach airfare travel round trip from the individual's location to Customer's location, reasonable hotel accommodations, ground transportation and meals.

## 3. RESTRICTIONS AND RESPONSIBILITIES

3.1  <u>Restrictions</u>. Customer may not use the Software Services in any manner or for any purpose other than as expressly permitted by the Agreement.  Customer shall not, and shall not permit or enable any third party to: (a) use or access any of the Software Services to build a competitive product or service; (b) modify, disassemble, decompile, reverse engineer or otherwise make any derivative use of the Software Services (except to the extent applicable laws specifically prohibit such restriction); (c) sell, license, rent, lease, assign, distribute, display, host, disclose, outsource or otherwise commercially exploit the copy, rent, lease, distribute, assign, sell, or otherwise commercially exploit the Software Services; (d) perform or disclose any benchmarking or performance testing of the Software Services; (e) remove any proprietary notices included with the Software Services; (f) use the Software Services in violation of applicable law; or (g) transfer any confidential personally identifiable information to OpenGov or the Software Services platform.

3.2  <u>Responsibilities</u>. Customer shall be responsible for obtaining and maintaining computers and third party software systems of record (such as Customer's ERP systems) needed to connect to, access or otherwise use the Software Services. Customer also shall be responsible for: (a) ensuring that such equipment is compatible with the Software Services, (b) maintaining the security of such equipment, user accounts, passwords and files, and (c) all uses of Customer user accounts by any party other than OpenGov.

## 4. INTELLECTUAL PROPERTY RIGHTS; LICENSE GRANTS; ACCESS TO CUSTOMER DATA

4.1  <u>Software Services</u>. OpenGov retains all right, title, and interest in the Software Services and all Intellectual Property Rights in the Software Services. The look and feel of the Software Services, including any custom fonts, graphics and button icons, are the property of OpenGov and Customer may not copy, imitate, or use them, in whole or in part, without OpenGov's prior written consent.  Subject to Customer's obligations under this Agreement, OpenGov hereby grants to Customer a non-exclusive, royalty-free license during the Term to use the Software Services.

4.2  <u>Customer Data</u>. Customer retains all right, title, and interest in the Customer Data and all Intellectual Property Rights therein. Customer hereby grants to OpenGov a non-exclusive, royalty-free license to, and permit its partners to, use, store, edit and reformat the Customer Data, and to use Customer Data for purposes of sales, marketing, business development, product enhancement, customer service, or for analyzing such data and publicly disclosing such analysis ("**Insights**"), provided that in all such uses Customer Data is rendered anonymous such that Customer is no longer identifiable.

4.3  <u>Access to Customer Data</u>. Customer may download the Customer Data from the Software Services at any time during the Term, other than during routine software maintenance periods. OpenGov has no obligation to return Customer Data to Customer.

4.4  <u>Feedback</u>. Customer hereby grants to OpenGov a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license to use and incorporate into the Software Services and Documentation Customer's Feedback. OpenGov will exclusively own any improvements or modifications to the Software Services and Documentation based on or derived from any of Customer's Feedback including all Intellectual Property Rights in and to the improvements and modifications.

## 5. CONFIDENTIALITY

5.1  Each party (the "**Receiving Party**") agrees not to disclose any Confidential Information of the other party (the "**Disclosing Party**") without the Disclosing Party's prior written consent, except as provided below. The Receiving Party further agrees: (a) to use and disclose the Confidential Information only in connection with this Agreement; and (b) to protect such Confidential Information using the measures that Receiving Party employs with respect to its own Confidential Information of a similar nature, but in no event with less than reasonable care. Notwithstanding the above, the Receiving Party may disclose Confidential Information to the extent required by law or court order, provided that prior written notice of such required disclosure and an opportunity to oppose or limit disclosure is given to the Disclosing Party.

5.2 **"Confidential Information"** means all confidential business, technical, and financial information of the disclosing party that is marked as "Confidential" or an equivalent designation or that should reasonably be understood to be confidential given the nature of the information and/or the circumstances surrounding the disclosure (including the terms of the applicable Software Agreement). OpenGov's Confidential Information includes, without limitation, the software underlying the Software Services and all Documentation.

5.3 Notwithstanding the foregoing, "Confidential Information" does not include: (a) **Public Data,"** which is data that the Customer has previously released to the public, would be required to release to the public, upon request, according to applicable federal, state, or local public records laws, or Customer requests OpenGov make available to the public in conjunction with the Software Services. Confidential Information does not include (b) information that has become publicly known through no breach by the receiving party; (c) information that was rightfully received by the Receiving Party from a third party without restriction on use or disclosure; or (d) information independently developed by the Receiving Party without access to the Disclosing Party's Confidential Information.

## 6. PAYMENT OF FEES

6.1 <u>Fees; Invoicing; Payment; Expenses</u>.

(a) <u>Fees</u>. The fees for the Software Services for the Initial Term and any Renewal Term ("**Software Services Fees**") and the fees for Professional Services ("**Professional Services Fees**") are set forth in the applicable Order Form. Software Services Fees and Professional Services Fees shall hereafter be referred to as "**Fees**".

(b) <u>Inflation Adjustment</u>. OpenGov shall increase the Fees payable for the Software Services during any Renewal Term by 4% each year of the Renewal Term.

(c) <u>Invoicing and Payment</u>. OpenGov will invoice the Customer according to the Billing Frequency listed on the Order Form. Customer shall pay all invoices according to the Payment Terms listed on the Order Form.

(d) <u>Travel Expenses</u>. Unless the SOW provides otherwise, OpenGov will invoice Customer for pre-approved travel expenses incurred in connection with each SOW as they are incurred. Customer shall pay all such valid invoices within thirty (30) days of receipt of invoice. Each invoice shall include receipts for the travel expenses listed on the invoice.

6.2 <u>Credit Card Customers</u>. If applicable, Customer will provide OpenGov with valid credit card information and promptly notify OpenGov of any changes necessary to charge the credit card at billing@opengov.com. Please update your credit card information when necessary. The provision of credit card information to OpenGov authorizes OpenGov to charge the credit card for all applicable Fees plus a 3% credit card processing fee. OpenGov processes credit card payments through a secure third party processing partner and does not take receipt of credit card information itself.

6.3 <u>Taxes</u>. All Fees under this Agreement are exclusive of any applicable sales, value-added, use or other taxes ("**Sales Taxes**"). Customer is solely responsible for any and all Sales Taxes, not including taxes based solely on OpenGov's net income. If any Sales Taxes related to the Fees under this Agreement are found at any time to be payable, the amount may be billed by OpenGov to, and shall be paid by, Customer. If Customer fails to pay any Sales Taxes, then Customer will be liable for any related penalties or interest, and will indemnify OpenGov for any liability or expense incurred in connection with such Sales Taxes. In the event Customer or the transactions contemplated by the Agreement are exempt from Sales Taxes, Customer agrees to provide OpenGov, as evidence of such tax exempt status, proper exemption certificates or other documentation acceptable to OpenGov.

## 7. TERM & TERMINATION

7.1 <u>Term</u>. Subject to compliance with all terms and conditions, the term of this Agreement shall commence on the Effective Date and shall continue until the Subscription End Date specified on the Order Form (the "**Initial Term**").

7.2  Renewal. Unless either party terminates this Agreement in writing no less than thirty (30) days before the end of the Initial Term, this Agreement shall renew for another period of the same duration as the Initial Term (the "**Renewal Term**" and together with the Initial Term, the "**Term**").

7.3  Termination. If either party materially breaches any term of this Agreement and fails to cure such breach within thirty (30) days after notice by the non-breaching party (ten (10) days in the case of non-payment), the non-breaching party may terminate this Agreement immediately upon notice.

7.4  Effect of Termination.

(a)  In General. Upon termination or expiration of this Agreement: (a) Customer shall pay in full for all Software Services and Professional Services performed up to and including the effective date of termination, (b) all Software Services provided to Customer hereunder shall immediately terminate; and (c) each party shall return to the other party or, at the other party's option, destroy all Confidential Information of the other party in its possession.

(b)  Deletion of Customer Data. If Customer requests deletion of its Customer Data in writing prior to the date of termination or expiration of this Agreement, then OpenGov will permanently and irrevocably delete Customer Data, excluding any Insights, stored by its cloud hosting provider within ten (10) days of the date of termination or expiration of this Agreement. Such request must be addressed to "OpenGov Vice President, Customer Success" at OpenGov's address for notice described at Section 10.

7.5  Survival. The following sections of this Agreement shall survive termination: Section 5 (Confidentiality), Section 6 (Payment of Fees), Section 7.4(b) (Deletion of Customer Data), Section 8.3 (Warranty Disclaimer), Section 9 (Limitation of Liability) and Section 10 (Miscellaneous).

**8.  REPRESENTATIONS AND WARRANTIES; DISCLAIMER**

8.1  By OpenGov.

(a)  General Warranty. OpenGov represents and warrants that: (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) the Professional Services, if any, will be performed in a professional and workmanlike manner in accordance with the related statement of work and generally prevailing industry standards. For any breach of the Professional Services warranty, Customer's exclusive remedy and OpenGov's entire liability will be the re-performance of the applicable services. If OpenGov is unable to re-perform all such work as warranted, Customer will be entitled to recover all fees paid to OpenGov for the deficient work. Customer must make any claim under the foregoing warranty to OpenGov in writing within ninety (90) days of performance of such work in order to receive such warranty remedies.

(b)  Software Services Warranty. OpenGov further represents and warrants that for a period of ninety (90) days, the Software Services will perform in all material respects in accordance with the Documentation. The foregoing warranty does not apply to any Software Services that have been used in a manner other than as set forth in the Documentation and authorized under this Agreement. OpenGov does not warrant that the Software Services will be uninterrupted or error-free. Any claim submitted under this Section 8.1(b) must be submitted in writing to OpenGov during the Term. OpenGov's entire liability for any breach of the foregoing warranty is to repair or replace any nonconforming Software Services so that the affected portion of the Software Services operates as warranted or, if OpenGov is unable to do so, terminate the license for such Software Services and refund the pre-paid, unused portion of the Fee for such Software Services.

8.2  By Customer. Customer represents and warrants that (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) OpenGov's use of the Customer Data pursuant to this Agreement will not infringe, violate or misappropriate the Intellectual Property Rights of any third party.

8.3  Disclaimer. OPENGOV DOES NOT WARRANT THAT THE SOFTWARE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE SERVICES. EXCEPT AS SET FORTH IN THIS SECTION 8, THE SOFTWARE SERVICES ARE PROVIDED "AS IS" AND OPENGOV DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

## 9. LIMITATION OF LIABILITY

9.1 <u>By Type</u>. NEITHER PARTY, NOR ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS OR EMPLOYEES, SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; OR (C) FOR ANY MATTER BEYOND SUCH PARTY'S REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

9.2 <u>By Amount</u>. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER TO OPENGOV (OR, IN THE CASE OF CUSTOMER, PAYABLE) FOR THE SOFTWARE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

9.3 <u>Limitation of Liability Exclusions</u>. The limitations of liability set forth in Sections 9.1 and 9.2 above do not apply to, and each party accepts liability to the other for: (a) claims based on either party's intentional breach of its obligations set forth in Section 5 (Confidentiality), (b) claim arising out of fraud or willful misconduct by either party and (c) either party's unauthorized use, distribution, or disclosure of the other party's intellectual property.

9.4 <u>No Limitation of Liability by Law</u>. Because some jurisdictions do not allow liability or damages to be limited to the extent set forth above, some of the above limitations may not apply to Customer.

## 10. MISCELLANEOUS

10.1 <u>Logo Use</u>. OpenGov shall have the right to use and display Customer's logos and trade names for marketing and promotional purposes in connection with OpenGov's website and marketing materials, subject to Customer's trademark usage guidelines provided to OpenGov.

10.2 <u>Notice</u>. Ordinary day-to-day operational communications may be conducted by email, live chat or telephone communications. However, for notices required by the Agreement (in Sections where the word "notice" appears) the parties must communicate more formally in a writing given by personal delivery, by pre-paid first-class mail or by overnight courier to the address specified in the most recent Order Form (or such other address as may be specified in writing in accordance with this Section).

10.3 <u>Anti-corruption</u>. OpenGov has not offered or provided any bribe, kickback, illegal or improper payment, gift, or thing of value to any Customer personnel in connection with the Agreement, other than reasonable gifts and entertainment provided Customer in the ordinary course of business. If OpenGov become aware of any violation of the above restriction then OpenGov shall promptly notify Customer.

10.4 <u>Injunctive Relief</u>. The parties acknowledge that any breach of the confidentiality provisions or the unauthorized use of a party's intellectual property may result in serious and irreparable injury to the aggrieved party for which damages may not adequately compensate the aggrieved party. The parties agree, therefore, that, in addition to any other remedy that the aggrieved party may have, it shall be entitled to seek equitable injunctive relief without being required to post a bond or other surety or to prove either actual damages or that damages would be an inadequate remedy.

10.5 <u>Force Majeure</u>. Neither party shall be held responsible or liable for any losses arising out of any delay or failure in performance of any part of this Agreement, other than payment obligations, due to any act of god, act of governmental authority, or due to war, riot, labor difficulty, failure of performance by any third-party service, utilities, or equipment provider, or any other cause beyond the reasonable control of the party delayed or prevented from performing.

10.6 <u>Severability; Waiver</u>. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. There are no third-party beneficiaries to this Agreement.

10.7 <u>Assignment</u>. Except as set forth in this Section, neither party shall assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations to a third party without the other party's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Either party may assign, without such consent but upon written notice, its rights and obligations under this Agreement to: (i) its corporate affiliate; or (ii) any entity that acquires all or substantially all of its capital stock or its assets related to this Agreement, through purchase, merger, consolidation, or otherwise. Any other attempted assignment shall be void. This Agreement shall inure to the benefit of and bind each party's permitted assigns and successors.

10.8 <u>Independent Contractors</u>. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other party in any respect.

10.9 <u>Attorneys' Fees</u>. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

10.10 <u>Governing Law and Jurisdiction</u>. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. Exclusive jurisdiction for litigation of any dispute, controversy or claim arising out of or in connection with this Agreement shall be only in the Federal or State court with competent jurisdiction located in San Mateo County, California, and the parties hereby submit to the personal jurisdiction and venue therein.

10.11 <u>Complete Agreement</u>. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement. No modification of this Agreement will be binding, unless in writing and signed by an authorized representative of each party.

| Signatures |
|---|

Customer: _____

Signature: _____

Name: _____

Title: _____

Date: _____

OPENGOV, INC.

Signature: _____

Name: _____

Title: _____

Date: _____

NASPO ValuePoint
**PARTICIPATING ADDENDUM**

**CLOUD SOLUTIONS**
Administered by the State of Utah (hereinafter "Lead State")

**Alternative Contract Source No: 43230000-NASPO-16-ACS**

**SHI International Corp.**
Master Agreement No: AR2488
(hereinafter "Contractor")

And

**Florida Department of Management Services**
(hereinafter "Department/Participating State/Entity")

The State of Utah, acting by and through the National Association of State Procurement Officials (NASPO) ValuePoint, competitively procured and awarded a Request for Proposal resulting in Master Agreement number AR2488. The Master Agreement was created as a cooperative purchasing agreement for Cloud Solutions. This Participating Addendum is entered into pursuant to Section 287.042, Florida Statutes.

The Department is authorized by subsection 287.042(16), Florida Statutes, "to evaluate contracts let by the Federal Government, another state, or a political subdivision for the provision of commodities and contract services, and, if it is determined in writing to be cost-effective and in the best interest of the state, to enter into a written agreement authorizing an agency to make purchases under such contract." Accordingly, agencies and eligible users (Customer) may make purchases from this Participating Addendum pursuant to the terms and conditions herein.

The Department evaluated the Master Agreement, and hereby acknowledges that use of the Master Agreement as an alternative contract source is cost-effective and in the best interest of the State.

This Participating Addendum and all incorporated Exhibits, set forth the entire understanding of the Parties and supersedes all prior agreements.

Accordingly, the Parties agree as follows:

1. **Term and Effective Date**
   The initial term of this Participating Addendum will become effective on the date the document is signed by all Parties, and shall be effective through September 30, 2020, unless terminated earlier in accordance with the General Contract Conditions.

2. **Renewal**
   Upon agreement of the Parties, the Department and the Contractor may renew this Participating Addendum in accordance with section 287.057(13), Florida Statutes, and Rule 60A-1.048, Florida Administrative Code. Renewals must be in writing and are subject to the same terms, conditions, and modifications set forth in this Participating Addendum. Renewal determinations will be based upon utilization and achieved savings.

3. **Modifications or Additions to Master Agreement**
   The following changes are modifying or supplementing the Master Agreement terms and conditions.

   a. Scope:
      The Contractor's Master Agreement products or services listed on the Contractor's page of the NASPO ValuePoint website are included in this contract only if they are not offered on a State Term Contract.

In accordance to 74-3.004, F.A.C., Agency requests for Infrastructure as a Service (IaaS) must be submitted via a Service Request to the State Data Center.

b. <u>Exhibits</u>: All Exhibits attached and listed below are incorporated in their entirety into, and form part of this Participating Addendum. The Participating Addendum Exhibits shall have priority in the order listed:

    1)     Exhibit A: Contract Conditions, Florida General

    2)     Exhibit B: Contract Conditions, Florida Special

    3)     Exhibit C: NASPO ValuePoint Master Agreement Number AR2488

If a conflict exists among any of the documents, the following shall have priority in the order listed below:

    1)     The Addendum

    2)     Florida Special Contract Conditions, Exhibit B

    3)     Florida General Contract Conditions, Exhibit A

    4)     NASPO ValuePoint Master Agreement Number AR2488, Exhibit C

c. <u>Participation</u>: Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

d. <u>Access to Cloud Solutions Services Requires State CIO Approval</u>: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by state executive branch agencies are subject to the authority and prior approval of the State Chief Information Officer's Office. The State Chief Information Officer means the individual designated by the state Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a state. Any agency requests for Infrastructure as a Service must be submitted via a service request to the state data center. See section 3.a. above.

e. <u>Authorization</u>: Approval of this Participating Addendum by the State Chief Procurement Official and State Chief Information Officer is an authorization for participation in the NASPO cooperative contract process, it is not intended as an approval of any specific purchase or solution. It is the responsibility of the Customer to validate all terms and conditions and to ensure compliance with all applicable statutes and rules.

f. <u>Request for Quotes</u>: Customers purchasing Cloud Solutions from this Participating Addendum shall create a Request for Quote (RFQ), each time they desire to purchase Cloud Solutions. The Customer shall issue a detailed RFQ to the ACS Contractor(s) who offer the applicable cloud solutions(s). The specific format of the RFQ is left to the discretion of the Customer, but must contain the following:

    1) Applicable service and deployment model(s);

    2) Data security classification;

    3) Service level agreement requirements; and

    4) Exit strategy considerations.

g. Enterprise Agreements: The Contractor shall honor any Volume or Enterprise Agreement(s) established between a State of Florida agency and the manufacturer of products or services offered under their Master Agreement.

h. Purchase Orders: Customers shall issue purchase orders under this Participating Addendum to their awarded RFQ Contractor using this State of Florida ACS number 43230000-NASPO-16-ACS. The purchase order period survives the expiration of the Contract. The duration of purchase orders must not exceed the expiration of the Contract by more than 12 months.

I. Contractor Selection Justification Form: Customers purchasing Cloud Solutions from this Participating Addendum shall attach to the purchase order a completed Contractor Selection Justification Form (Attachment A).

4. **Warranty of Authority**
Each person signing this document warrants that he or she is duly authorized to do so and to bind the respective party.

5. **Entire Agreement of the Parties**
This document and the attached exhibits constitute the Participating Addendum and the entire understanding of the parties.
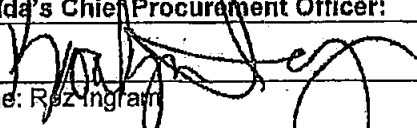
6. **Amendments**
All modifications to this Participating Addendum must be in writing and signed by all Parties. No oral modifications to this Participating Addendum are permitted.

Notwithstanding the order listed in section 3b, amendments executed after the Participating Addendum is executed may expressly change the provisions of the Participating Addendum. If they do so expressly, then the most recent amendment will take precedence over anything else that is part of the Participating Addendum.

**IN WITNESS THEREOF,** the Parties hereto have caused this agreement, which includes the attached and Incorporated Exhibits, to be executed by their undersigned officials as duly authorized. This agreement is not valid and binding until signed and dated by the Parties.

| Participating State: Florida | Contractor: SHI International Corp. |
|---|---|
| By: | By: *Natalie Castagno* |
| Name: Dave Zeckman | Name: Natalie Castagno |
| Title: Chief of Staff | Title: Director of Response Team |
| Date: 9/25/2017 | Date: 8/10/17 |

| Florida's Chief Procurement Officer: | Florida's Chief Information Officer |
|---|---|
| By: | By: |
| Name: Roz Ingram | Name: Eric Larson |
| Title: Director of State Purchasing and Chief Procurement Officer | Title: Executive Director of the Florida Agency for State Technology and Chief Information Officer |
| Date: 9/20/17 | Date: 8/24/17 |

## Exhibit A
## GENERAL CONTRACT CONDITIONS

**These General Contract Conditions supersede and replace in their entirety all General Contract Conditions, Form PUR 1000, which is incorporated by reference in Rule 60A-1.002, Florida Administrative Code (F.A.C.)**

**SECTION 1. DEFINITIONS.**

The following definition applies in addition to the definitions in Chapter 287, Florida Statutes, (F.S.) and Rule Chapter 60A-1, F.A.C.:

**1.1 Customer.**
The agency or eligible user that purchases commodities or contractual services pursuant to the Contract.

**SECTION 2. TERMINATION.**

**2.1 Termination for Convenience.**
The Contract may be terminated by the Department in whole or in part at any time, in the best interest of the State of Florida. If the Contract is terminated before performance is completed, the Contractor will be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the Contract price as the amount of work satisfactorily performed. All work in

progress will become the property of the Customer and will be turned over promptly by the Contractor.

**2.2 Termination for Cause.**
If the Department determines that the performance of the Contractor is not satisfactory, the Department may, at its sole discretion, (a) immediately terminate the Contract, (b) notify the Contractor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Contract will terminate at the end of such time, or (c) take other action deemed appropriate by the Department.

## SECTION 3. PAYMENT AND FEES

**3.1 Payment Invoicing.**
The Contractor will be paid upon submission of properly certified invoices to the Customer after delivery and acceptance of commodities or contractual services is confirmed by the Customer. Invoices must contain detail sufficient for an audit and contain the Contract Number and the Contractor's Federal Employer Identification Number.

**3.2 Travel.**
Travel expenses are not reimbursable unless specifically authorized by the Customer in writing, and may be reimbursed only in accordance with section 112.061, F.S.

**3.3 Annual Appropriation.**
Pursuant to section 287.0582, F.S., if the Contract binds the State of Florida or an agency for the purchase of services or tangible personal property for a period in excess of one fiscal year, the State of Florida's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature.

**3.4 Transaction Fees.**
The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(22), Florida Statutes. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, Florida Administrative Code, or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees, when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.

**3.5 Taxes.**
The State of Florida is not required to pay any taxes, including customs and tariffs, on commodities or contractual services purchased under the Contract.

**3.6 Return of Funds.**
Contractor will return any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor by the Department or Customer. The Contractor must return any overpayment within 40 calendar days after either discovery by the Contractor, its independent auditor, or notification by the Department or Customer of the overpayment.

## SECTION 4. CONTRACT MANAGEMENT.

### 4.1 Composition and Priority.
The Contractor agrees to provide commodities or contractual services to the Customer within the manner and at the location specified in the Purchase Order and any attachments to the Purchase Order.

### 4.2 Notices.
All notices required under the Contract must be delivered to the designated Contract Manager by certified mail, return receipt requested, by reputable air courier service, email, or by personal delivery, or as otherwise identified by the Department.

### 4.3 Department's Contract Manager.
The Department's Contract Manager, is primarily responsible for the Department's oversight of the Contract. In the event that the Department changes the Contract Manager, the Department will notify the Contractor. Such a change does not require an amendment to the Contract.

### 4.4 Contractor's Contract Manager.
The Contractor's Contract Manager is primarily responsible for the Contractor's oversight of the Contract performance. In the event that the Contractor changes its Contract Manager, the Contractor will notify the Department. Such a change does not require an amendment to the Contract.

### 4.5 Diversity Reporting.
The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small business enterprises to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises, and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity (OSD) at osdinfo@dms.myflorida.com.

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each Customer purchasing under the Contract.

### 4.6 RESPECT.
Subject to the agency determination provided for in Section 413.036, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INSOFAR AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.

Additional information about the designated nonprofit agency and the commodities or contractual services it offers is available at http://www.respectofflorida.org.

**4.7    PRIDE.**
Subject to the agency determination provided for in Sections 946.515 and 287.042(1), F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INSOFAR AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

Additional information about PRIDE and the commodities or contractual services it offers is available at http://www.pride-enterprises.org.

## SECTION 5.  COMPLIANCE WITH LAWS.

**5.1    Department of State Registration.**
The Contractor and any subcontractors that assert corporate status must provide the Department with conclusive evidence, per section 607.0127, F.S., of a certificate of status, not subject to qualification, if a Florida business entity, or of a certificate of authorization if a foreign business entity and maintain such status or authorization through the life of the Contract and any resulting contract or purchase order.

**5.2    Convicted and Discriminatory Vendor Lists.**
In accordance with sections 287.133 and 287.134, F.S., an entity or affiliate who is on the Convicted Vendor List or the Discriminatory Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract.  The Contractor must notify the Department if it or any of its suppliers, subcontractors or consultants have been placed on the Convicted Vendor List or the Discriminatory Vendor List during the term of the Contract.

**5.3    Contractor Certification.**
If the Contract exceeds $1,000,000.00 in total, not including renewal years, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List created pursuant to sections 215.473, F.S. and 215.4725 F.S, respectively.  Pursuant to section 287.135(5), F.S., and 287.135(3), F.S., Contractor agrees the Department may immediately terminate the Contract for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel during the term of the Contract.

**5.4    Cooperation with Inspector General.**
Pursuant to subsection 20.055(5), F.S., Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing.  Upon request of the Inspector General or

any other authorized State official, the Contractor must provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor will retain such records for five years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State (available at http://dos.myflorida.com/library-archives/records-management/general-records-schedules/), whichever is longer. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include, but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

## SECTION 6. MISCELLANEOUS.

### 6.1 Notice of Legal Actions.

The Contractor must notify the Department of any legal actions filed against it for a violation of any laws, rules, codes, ordinances or licensing requirements within 30 days of the action being filed. The Contractor must notify the Department of any legal actions filed against it for a breach of a contract of similar size and scope to this Contract within 30 days of the action being filed. Failure to notify the Department of a legal action within 30 days of the action will be grounds for termination for cause of the Contract.

### 6.2 Subcontractors.

All contactors, dealers, and resellers authorized by the Department, as shown on the dedicated Contractor NASPO ValuePoint website, are approved to provide sales and service support to participants in the Master Agreement. The Contractor's dealer participation will be in accordance with the terms and conditions set forth in the Master Agreement. The Contractor is fully responsible for satisfactory completion of all subcontracted work. The Department supports diversity in its procurements and contracts, and requests that Contractor offer subcontracting opportunities to certified woman-, veteran-, and minority-owned small businesses. The Contractor may contact the OSD at osdhelp@dms.myflorida.com for information on certified small business enterprises available for subcontracting opportunities.

### 6.3 Assignment.

The Contractor will not sell, assign or transfer any of its rights, duties or obligations under the Contract without the prior written consent of the Department. In the event of any assignment, the Contractor remains secondarily liable for performance of the Contract. The Department may assign the Contract to another state agency.

### 6.4 Independent Contractor.

The Contractor and its employees, agents, representatives, and subcontractors are not employees or agents of the Department and are not entitled to the benefits of State of Florida employees. The Department will not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in all of its subcontracts under the Contract.

### 6.5 Ombudsman.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, F.S., which include disseminating information relative to prompt payment and assisting contractors in receiving their payments in

a timely manner from a Customer. The Vendor Ombudsman may be contacted at (850) 413-5516.

### 6.6 Information Technology Standards

Pursuant to sections 282.0051 and 282.318, F.S., the Agency for State Technology (AST) is to establish standards for the implementation and management of information technology resources. Vendors agree to cooperate with the state agency in furtherance of the state agency's efforts to comply with AST standards, established in Rule Chapter 74, F.A.C, as applicable.

## SECTION 7. WORKERS' COMPENSATION AND GENERAL LIABILITY INSURANCE, AND INDEMNIFICATION

### 7.1 Workers' Compensation Insurance.

To the extent required by law, the Contractor must be self-insured against, or must secure and maintain during the life of the contract, Worker's Compensation Insurance for all its employees connected with the work of this project, and in case any work is subcontracted, the Contractor must require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees engaged in work under the resulting contract are covered by the Contractor's insurance program. Self-insurance or insurance coverage must comply with the Florida Worker's Compensation law. In the event hazardous work is being performed by the Contractor under the resulting contract or purchase order and any class of employees performing the hazardous work is not protected under Worker's Compensation statutes, the Contractor must provide, and cause each subcontractor to provide adequate insurance satisfactory to the Department for the protection of employees not otherwise protected.

### 7.2 General Liability Insurance.

The Contractor must secure and maintain Commercial General Liability Insurance including bodily injury, property damage, product-liability, personal & advertising injury and completed operations. This insurance must provide coverage for all claims that may arise from the services, and operations completed under the Contract and any resulting contract or purchase order, whether such services or operations are by the Contractor or anyone directly or indirectly employed by them. Such insurance must include a Hold Harmless Agreement in favor of the State of Florida and also include the State of Florida as an Additional Named Insured for the entire length of the Contract and any resulting contract or purchase order. The Contractor is responsible for determining the minimum limits of liability necessary to provide reasonable financial protections to the Contractor and the State of Florida under the Contract and any resulting contract or purchase order.

All insurance policies must be with insurers licensed or eligible to transact business in the State of Florida. The Contractor's current certificate of insurance must contain a provision that the insurance must not be canceled for any reason except after thirty (30) days written notice to the Department's Contract Manager.

The Contractors must submit insurance certificates evidencing such insurance coverage prior to execution of a contract with the Department.

The Contractor must require its insurance carrier to add the Department to the insurance policies as an additional insured, as provided below:

Florida Department of Management Services

c/o Division of State Purchasing
4050 Esplanade Way, Suite 36060
Tallahassee, Florida 32399-0950

## SECTION 8. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT AND INTELLECTUAL PROPERTY.

### 8.1 Public Records.

The Department may unilaterally cancel this Contract for refusal by the Contractor to comply with this section by not allowing public access to all documents, papers, letters or other material made or received by the Contractor in conjunction with the Contract, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1), F.S.

Solely for the purposes of this section the contract manager is the agency custodian of public records, unless another is designated per (e), below.

If, under a resulting contract or purchase order, the Contractor is providing services and is acting on behalf of a public agency, as provided by section 119.0701, Florida Statutes. The Contractor shall:

(a) Keep and maintain public records required by the public agency to perform the service;

(b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within reasonable time and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the contract term and following the completion of the contract if the contractor does not transfer the records to the public agency;

(d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency; and

(e) IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED IN THE RESULTING CONTRACT OR PURCHASE ORDER.

### 8.2 Protection of Trade Secrets or Confidential Information.

If the Contractor considers any portion of materials made or received in the course of performing the Contract ("contract-related materials") to be trade secret under section 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must

clearly designate that portion of the materials as "confidential" when submitted to the Department.

If the Department receives a public records request for contract-related materials designated by the Contractor as "confidential," the Department will provide only the portions of the contract-related materials not designated as "confidential." If the requester asserts a right to examine contract-related materials designated as "confidential," the Department will notify the Contractor. The Contractor will be responsible for responding to and resolving all claims for access to contract-related materials it has designated "confidential."

If the Department is served with a request for discovery of contract-related materials designated "confidential," the Department will promptly notify the Contractor about the request. The Contractor will be responsible for filing the appropriate motion or objection in response to the request for discovery. The Department will provide materials designated "confidential" only if the Contractor fails to take appropriate action, within timeframes established by statute and court rule, to protect the materials designated as "confidential" from disclosure.

The Contractor will protect, defend, and indemnify the Department for claims, costs, fines, and attorney's fees arising from or relating to its designation of contract-related materials as "confidential."

**8.3 Document Management.**
The Contractor must retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers and documents that were made in relation to this Contract. Contractor must retain all documents related to the Contract for five years after expiration of the Contract, or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State available at http://dos.myflorida.com/library-archives/records-management/general-records-schedules/.

## SECTION 9. DATA SECURITY AND SERVICES.

**9.1 Warranty of Security.**
Unless otherwise agreed in writing, the Contractor and its subcontractors will not perform any of the services from outside of the United States, and the Contractor will not allow any State of Florida Data to be sent by any medium, transmitted or accessed outside of the United States.

Notwithstanding any provision of this Contract to the contrary, the Contractor must notify the Department as soon as possible, in accordance with the requirements of section 501.171, F.S., and in all events within one (1) business day in the event Contractor discovers any Data is breached, any unauthorized access of Data occurs (even by persons or companies with authorized access for other purposes), any unauthorized transmission of Data or any credible allegation or suspicion of a material violation of the above. This notification is required whether the event affects one agency/customer or the entire population. The notification must be clear and conspicuous and include a description of the following:

(a) The incident in general terms.
(b) The type of information that was subject to the unauthorized access and acquisition.
(c) The type and number of entities who were, or potentially have been affected by the breach.
(d) The actions taken by the Contractor to protect the Data from further unauthorized access. However, the description of those actions in the written notice may be general so as not to further increase the risk or severity of the breach.

**9.2 Remedial Measures.**

Upon becoming aware of an alleged security breach, Contractor's Contract Manager must set up a conference call with the Department's Contract Manager. The conference call invitation must contain a brief description of the nature of the event. When possible, a 30 minute notice will be given to allow Department personnel to be available for the call. If the designated time is not practical for the Department, an alternate time for the call will be scheduled. All available information must be shared on the call. The Contractor must answer all questions based on the information known at that time and answer additional questions as additional information becomes known. The Contractor must provide the Department with final documentation of the incident including all actions that took place. If the Contractor becomes aware of a security breach or security incident outside of normal business hours, the Contractor must notify the Department's Contract Manager and in all events, within one business day.

**9.3  Indemnification (Breach of Warranty of Security).**
The Contractor agrees to defend, indemnify and hold harmless the Department, Customer, the State of Florida, its officers, directors and employees for any claims, suits or proceedings related to a breach of the Warranty of Security. The Contractor will include credit monitoring services at its own cost for those individuals affected or potentially affected by a breach of this warranty for a two year period of time following the breach.

**9.4  Annual Certification.**
The Contractor is required to submit an annual certification demonstrating compliance with the Warranty of Security to the Department by December 31 of each Contract year.

## SECTION 10.  GRATUITIES AND LOBBYING.

**10.1  Gratuities.**
The Contractor will not, in connection with this Contract, directly or indirectly (1) offer, give, or agree to give anything of value to anyone as consideration for any State of Florida officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone anything of value for the benefit of, or at the direction or request of, any State of Florida officer or employee.

**10.2  Lobbying.**
In accordance with sections 11.062 and 216.347, F.S., Contract funds are not for the purpose of lobbying the Legislature, the judicial branch, or the Department. Pursuant to subsection 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract, after the Contract execution and during the Contract's term.

## SECTION 11.  CONTRACT MONITORING.

**11.1  Financial Consequences of Non-Performance.**
If the corrective action plan is unacceptable to the Department or Customer, or fails to remedy the performance deficiencies, the Contractor will be assessed a non-performance retainage equivalent to 10% of the total invoice amount or as specified in the Contract. The retainage will be applied to the invoice for the then-current billing period. The retainage will be withheld until the Contractor resolves the deficiency. If the deficiency is subsequently resolved, the Contractor may invoice the Customer for the retained amount during the next billing period. If the Contractor is unable to resolve the deficiency, the funds retained will be forfeited.

## SECTION 12.  CONTRACT AUDITS.

**12.1  Payment Audit.**

Records of costs incurred under terms of the Contract will be maintained. Records of costs incurred will include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Department, State of Florida's Chief Financial Officer or the Office of the Auditor General for audit.

## SECTION 13. BACKGROUND SCREENING AND SECURITY.

### 13.1 E-Verify.

In accordance with Executive Order 11-116, the Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the Contract for the services specified in the Contract. The Contractor must also include a requirement in subcontracts that the subcontractor must utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term. In order to implement this provision, the Contractor must provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five days of Contract execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five days of notice of Contract award, and provide the Contract Manager a copy of its MOU within five days of Contract execution. The link to E-Verify is provided below. http://www.uscis.gov/e-verify. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five days to the Contract Manager identifying the new hire with its E-Verify case number.

### 13.2 Disqualifying Offenses.

If at any time it is determined that a person has a criminal misdemeanor or felony record regardless of adjudication (e.g., adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict) within the last six years from the date of the court's determination for the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that person from any position with access to State of Florida Data or directly performing services under the Contract. The disqualifying offenses are as follows:

(a) Computer related or information technology crimes
(b) Fraudulent practices, false pretenses and frauds, and credit card crimes
(c) Forgery and counterfeiting
(d) Violations involving checks and drafts
(e) Misuse of medical or personnel records
(f) Felony theft

### 13.3 Communications and Confidentiality.

The Contractor agrees that it will make no statements, press releases, or publicity releases concerning the Contract or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with the Contract, or any particulars thereof, during the period of the Contract, without first notifying the Department's Contract Manager or the Department designated contact person and securing prior written consent. The Contractor must maintain confidentiality of all confidential data, files, and records related to the services and commodities provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures must be consistent with the most recent version of the Department security policies, protocols, and procedures. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.

Alternate Contract Source
No. 43230000-NASPO-16-ACS

EXHIBIT B
FLORIDA SPECIAL CONTRACT CONDITIONS

This Exhibit contains the Special Contract Conditions. If a conflict exists between the Special Contract Conditions and the General Contract Conditions, the Special Contract Conditions shall take precedence over the General Contract Conditions unless the conflicting term in the General Contract Conditions is required by Florida law, in which case the General Contract Conditions term will take precedence.

Special Contract Conditions are as follows:

**Section 1    Delays and Complaints**
Delivery delays and service complaints will be monitored on a continual basis. Documented inability to perform under the conditions of the contract, via the established Complaint to Vendor process (PUR 7017 form), may result in default proceedings and cancellation.

**Section 2    Monthly Transaction Fee Report**
The Contractor is required to submit monthly Transaction Fee Reports electronically through MFMP VIP. All such reports and payments shall be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions shall constitute grounds for declaring the Contractor in default and subject the Contractor to exclusion from business with the State of Florida.

For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and Vendor training presentations available online through MFMP U on the MyFloridaMarketPlace website (located at http://dms.myflorida.com/mfmp). Assistance is also available from the MyFloridaMarketPlace Customer Service Desk at feeprocessing@myfloridamarketplace.com or 866-FLA-EPRO (866-352-3776) between the hours of 8:00 AM to 6:00 PM, Eastern Time.

**Section 3    Quarterly Sales Reports**
Each Contractor shall submit a sales report to the Department on a Quarterly basis.

Contract Sales Reports must include the Contractor's name, the dates of Quarter covered, each Customer's name, services provided (to include identification of the cloud solution and service model), and the amount paid by the Customer.

Initiation and submission of the Contract Sales Reports are to be the responsibility of the Contractor. The Contractor will submit the completed Sales Report forms by email to the Department Contract Manager no later than the due date indicated in Section 10. Submission of these reports is considered a material requirement of this Contract and the Contractor.

Failure to provide quarterly sales reports, including those indicating no sales, within thirty (30) calendar days following the end of each quarter (January, April, July and October) is considered as Non-Performance by the Contractor. Exceptions may be made if a delay in submitting reports is attributable to circumstances that are clearly beyond the control of the Contractor. The burden of proof of unavoidable delay shall rest with the Contractor and shall be supplied in a written form and submitted to the Department.

The Department reserves the right to request additional sales information as needed.

## Section 4    Quarterly Reporting Timeframes

Quarterly reporting timeframes coincide with the State Fiscal Year as follows:

    Quarter 1 - (July-September) – Due by October 10
    Quarter 2 - (October-December) – Due by January 10
    Quarter 3 - (January-March) – Due by April 10
    Quarter 4 - (April-June) – Due by July 10

## Section 5    Business Review Meetings

The Department reserves the right to schedule business review meetings as frequently as necessary. The Department will provide the format for the Contractor's agenda. Prior to the meeting, the Contractor shall submit the completed agenda to the Department for review and acceptance. The Contractor shall address the agenda items and any of the Department's additional concerns at the meeting. Failure to comply with this section may result in the Contractor being found in default and contract termination.

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# Department of Management Services

## << Return

## Cloud Solutions43230000-NASPO-16-ACS

### Contract Details

| | |
|---|---|
| **Effective Period** | 08/01/2017 through 09/30/2020 |
| **Contract Type** | Alternate Contract Source |
| **Contract Information** | • Contractors<br>How to Use this Contract<br>Pricing |
| **Contract Documents** | Participating Addenda<br>Master Agreements |
| **Contract Administration** | • Rachel Hardwick<br>850-922-1214<br>• rachel.hardwick@dms.myflorida.com |
| **Commodity Codes** | UNSPSC-43230000 |

**Description**

Description:

This is an Alternate Contract Source (ACS) for Cloud Solutions. This contract offers the following categories: Software as a Service (SaaS), Infrastructure as a Service (IaaS), and Platform as a Service (PaaS).

- This ACS offers customers the best value with multiple vendors to choose from.
- This ACS provides customers with access to technical capabilities that run in cloud environments and meet the NIST Essential Characteristics.
- Offerings are available from direct OEM providers, aggregators, business partners and resellers to provide a full range of cloud based solutions and services.
- Each awarded vendor meets the security requirements for CSA STAR, ISO/IEC 27017, and NIST SP 800-53

**Please Note:**

Any state agency needing to purchase any of the following services should contact the Division of Telecommunications (DivTel) at DMS: Centrex; Voice over Internet Protocol (VoIP); SUNCOM services; Session Initiation Protocol (SIP) Trunking; Audio Conferencing; Web conferencing; Video Conferencing; Long Distance; Toll-free; and Contact Center. Please contact DivTel for more information: John Starling at 850-410-0004, John.Starling@dms.myflorida.com or Mohammad Amirzadeh, at 850-922-7476, Mohammad.Amirzadeh@dms.myflorida.com.

**Please Note:**

Azure purchases MUST be made from the Licensing Solutions Providers (LSP) of Microsoft Software and Services Contract (43230000-15-02).

# Department of Management Services

## Pricing

Carahsoft

CherryRoad Technologies

Callab9, LLC

Deloitte Consulting, LLP

Knowledge Services

SHI
International Corp.

Teradata Government Systems LLC

Unisys

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# SHI International Corp.

## Contact Information

Name: Nick Grappone
Phone: 732-564-8189
Email:
nick_grappone@shi.com
Website: www.shi.com

## Expiration
09/15/2026

## Inception
09/30/2016

Download Model PA

## Description

SHI awarded categories = PaaS, IaaS, and SaaS.

Founded in 1989, SHI is a $7.5 billion global provider of information technology products and services to Corporate, Enterprise, Public Sector and Academic customers of all sizes. From software and hardware procurement to IT asset management and cloud computing, SHI delivers custom IT solutions for every aspect of your environment.

## State Participating Addenda

State of Alaska
State of Arizona
State of Arkansas
State of Connecticut
State of Florida
State of Hawaii
State of Kansas
State of Kentucky
State of Louisiana
State of Missouri
State of Montana
State of Nebraska
State of Nevada
State of Utah
State of Virginia
State of Washington

# OPENGOV

# The OpenGov Cloud™

The only easy-to-use, cloud-based solution for public sector budgeting, operational performance, and citizen engagement.
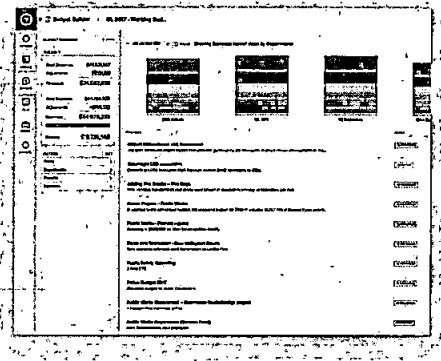
## Budgeting and Planning

Streamline your process from budget creation to budget book publication. Free up time to focus on strategy and analysis.

- **Collaborate** across departments to make better budget decisions and recommendations.
- **Create multiple budget scenarios** with easy-to-use, flexible reports and analytics to create stronger fiscal plans.
- **Automate budget book publication** to replace manual and error prone processes.
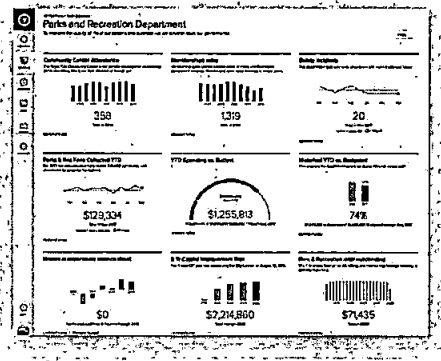
## Operational Performance

Improve decision-making, collaboration, alignment, and outcomes.

- **Consolidate data** from all your systems by connecting them to the OpenGov Cloud™
- **Find answers faster** with easy-to-use visual reporting that transforms complex financial and operational data. Empower everyone in your organization to use data more effectively and make better decisions
- **Improve accountability and performance** with easy-to-build dashboards, KPIs and reports to track progress, keep teams aligned, and build stakeholders trust.
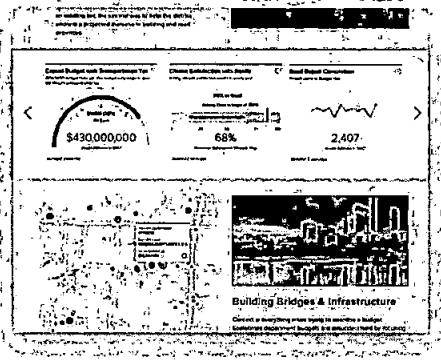
## Citizen Engagement

Inform and involve citizens with an easy-to-use solution for sharing information and gathering public feedback.

- **Communicate more clearly** by combining your data with images and narrative context, making it easy to understand.
- **Improve public participation and feedback** by supplementing public hearings with online surverys, virtual town halls, and mobile kiosks.
- **Leverage next-generation open data** built on open-source CKAN to make your data a strategic asset and collaborate with a growing ecosystem of civic innovators.

# The OpenGov Cloud™
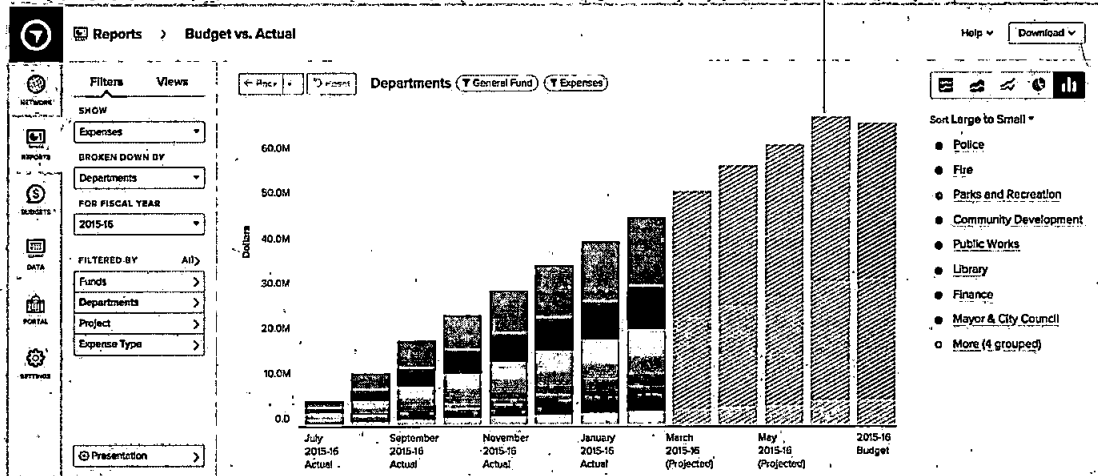


## Budgeting and Planning

*"Before OpenGov, we spent many, many nights of trying to crunch and verify numbers. OpenGov has given us back our nights and weekends."*

**Brian Kidney**
Director of Finance
City of Lawrence, KS

## Operational Performance

*"This ease of use enabled OpenGov to become Allegheny County's base of reporting and its official record. It's our one-stop shop for an honest measure of the truth."*

**Tony Cholewinski**
Assistant to the Deputy Controller of Management Systems
County of Allegheny, PA

## Citizen Engagement

*"We saved over 90% of our time generating reports, and with OpenGov we can show citizens how we are being fiscally responsible with their tax dollars."*

**Kimberly Ruesch**
Administrative Services Manager
Washington City, UT

## The Power of the Network

With over 1,800 governments in the OpenGov Network, easily compare spending, share best practices, and see how other governments address similar challenges.



**City of San Rafael, CA**



**City of Fort Lauderdale, FL**



**County of Allegheny, PA**



**County of Harford, MD**



**County of Wright, MN**



**City of McKinney, TX**



**County of Bernalillo, NM**



**District of Columbia, DC**

## REQUEST A DEMO

opengov.com    (650) 336-7167    contact@opengov.com

# OPENGOV

# Budgeting and Planning

Streamline and transform your budget process from strategic planning through final publication.

## 50%
Less time to create the budget

## 1%
Typical re-allocation of total budget to higher priorities

## 90%
Less time spent on budget reporting

## Build your budget in less time

Easily seed the budget by importing last years actuals. Enable finance staff and budget owners to adjust or add proposal line items on their own with a simple and intuitive user interface.

## Simplify workforce planning

Add new positions and their associated costs with preconfigured templates. Easily review and adjust as needed, with no Excel formula wizardry required. Enter changes once, then apply to all relevant employees.

## Collaborate more effectively

Save time and build a better budget by collaborating across departments with a single cloud-based solution. Comment on proposals and engage with colleagues in logged online conversations that won't get lost in your inbox.

## Automate budget book publication

Establish a framework for building your budget book faster and more accurately, making the process repeatable and scalable for future cycles.

OPENGOV

# Transform Your Budget Process

Budgeting is streamlined with OpenGov's end-to-end budgeting and planning solution. From workforce and multi-year planning, to managing department requests, to creating the official budget document, OpenGov empowers government leaders to make more informed and impactful budgeting decisions.

### Improve decision-making

Identify trends, perform "what-if" analysis, and design multiple budget scenarios with less effort. Better understand the impact of proposed budget changes, providing needed context for budget decisions.

Reduce confusion from spreadsheets and email with online commenting, automated notifications, status reminders, and attached supporting documentation.

### Track budget progress

All changes to your budget are instantly reflected in integrated reports. Live budget summaries, proposal status details, and an activity log provide visibility and insight to keep the process on track.

### Reduce errors

Use a purpose-built budgeting solution to reduce errors from spreadsheets and manual processes. Consolidate all your budgeting activities to avoid the confusion of long email threads and conflicting versions.



"OpenGov has changed this entire process, giving me back my life and opening up enough time for me to focus on other priorities for the city. Gone are the days of digging around in spreadsheets and enduring lengthy proposal submission cycles"

*Connie Maxwell*
*Budget Director*
*City of Burnet, TX*

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**County of Bernalillo, NM**


**District of Columbia, DC**

# Security Overview

**OPENGOV SECURITY STATEMENT**

OpenGov is committed to securing customer data in our platform with robust access controls, encryption, and business processes. We follow industry best practices for securing cloud-based, Software-as-a-Service (SaaS) products and host our software on industry-standard public cloud infrastructure which is broadly accepted by mainstream public and private sector organizations.

Commonly asked security questions follow. Contact OpenGov for more information.

**BUSINESS PROCESS AND DATA EXCHANGE**

**Where is customer data stored?**

OpenGov uses Amazon Web Services (AWS) to rent virtual infrastructure which we control and manage over secure connections. These services reside in the United States. AWS has strict controls in place to ensure only OpenGov can access our data. The specific services we use from AWS include EC2, DynamoDB, ElastiCache, RDS, Redshift, and S3. For more information on AWS security, visit https://aws.amazon.com/security/

**How is data communicated between the user and the OpenGov platform?**

OpenGov uses HTTPS (TLS 1.2) for all communication between the user and the OpenGov platform. HTTPS prevents man-in-the-middle attacks and tampering with the data. TLS 1.2 is the latest security standard for secure computer communication.

**How does OpenGov authenticate users?**

OpenGov encrypts all passwords with Bcrypt, the industry leading password storage solution. This solution not only encrypts data but also employs methods to defeat brute force attacks. All passwords must be at least 8 characters.

**Does OpenGov encrypt data?**

OpenGov's databases encrypt at rest with AES 256-bit encryption.

**What security compliances does OpenGov adhere to?**

We run our platform and manage development through Amazon Web Services (AWS). Once provisioned, AWS no longer has access to our virtual servers. Since our servers are hosted and maintained by AWS, they conform to a variety of leading compliance standards: http://aws.amazon.com/compliance/. OpenGov limits access to AWS to engineers with two-factor authentication.

### Who has access to my data?

OpenGov limits data access to within a user's platform. In order to create, update or delete data, users must have an administrative account. Besides administrators, only the OpenGov deployment, support, and engineering team has access to user data.

### What type of user access control does OpenGov support?

The OpenGov platform relies on role based accessed control and data sharing by authorized users. We offer three roles for individuals accessing resources on OpenGov: administrator, user, citizen. Certain OpenGov applications allow users to invite others to view, edit and change resources such as individual reports.
1. **Administrators** can provision users, add data, reports and dashboards as well as manage budgets and public portals.
2. **Users** can receive ad-hoc access to manage and view resources like reports or budget items.
3. **Citizens** can view reports published to the public

OpenGov report permissions have four levels:
- **Private** - shared only with the report creator. The report creator can invite individuals from their organization to the report
- **My Organization** - everyone at the account can view the report.
- **The OpenGov Network** - any logged in OpenGov user can view the report.
- **Public** - anyone with a link can view the report.

### How is Private Information (PI) or Personally Identifiable Information (PII) or Sensitive Information (SI) handled at OpenGov?

The OpenGov platform restricts report access. Only an authorized customer administrator can release data to the public. Customers are responsible for redacting sensitive information before sharing within OpenGov applications.

### How do users report vulnerabilities to OpenGov?

Users should report vulnerabilities to support@opengov.com. Reported vulnerabilities will be confirmed and then fixed, by working with the reporting party and our security advisors, in a timely manner.

### What is OpenGov's breach disclosure policy?

OpenGov's breach disclosure policy is to disclose incidents without delay. However, delays may occur due to the nature of the investigation. For example, delays are sometimes required by law enforcement.

### What controls does OpenGov exercise over the qualification and performance of their team?

For every employee, OpenGov validates references and runs a comprehensive background check.

## APPLICATION CONFIGURATION

### What is OpenGov's hosting hardware and software platform?

OpenGov uses services provided by Amazon Web Services including EC2, DynamoDB, ElastiCache, RDS, Redshift, and S3. We use Chef, Docker, and Kubernetes for application configuration management and run on of Linux with up-to-date security patches.

### How does OpenGov release software?

OpenGov engineering uses an Agile development process, which is an industry best practice. This process involves decomposing development into sprints measured in weeks. Following automated and manual testing, software is released to production after one or more sprints.

## DATA RETENTION AND BACKUP
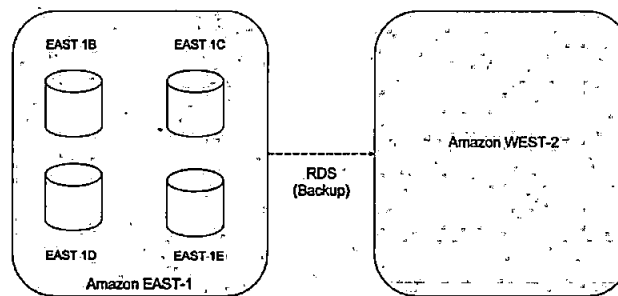


### What is OpenGov's backup and disaster recovery plan?

To backup data and our services, OpenGov takes daily snapshots of our entire database using Amazon's RDS service. These snapshots are stored in multiple data-centers and in a back-up region (AWS WEST-2). All raw data is backed up on Amazon S3 as well.

In the event of losing data due to a software failure, OpenGov will restore from the last saved snapshot. This is a simple and reversible operation on AWS. All raw uploads are preserved on S3 and are recoverable at any point in time.

To avoid datacenter or server disruptions, OpenGov relies on Amazon's multi-availability zones to ensure that we can continue operations in case of a datacenter or server failure. We host our production servers and databases in Amazon's EAST-1 region. This region has multiple zones, each with its own datacenter. Across these zones, data is continuously replicated. Every twenty-four hours, a snapshot is sent to Amazon's WEST-2 region for backups.

In the case of a server or datacenter failure within a region, Amazon's multi-availability zones ensure that OpenGov can continue operations. This service performs real-time replication to separate data-centers. If a

data-center goes down due to a natural or man-made disaster or hardware fault, OpenGov is automatically switched to a replicated database immediately limiting data loss to a few seconds.

In case of a failure across the entire region, we will manually switch to another Amazon region. This may take several hours.

**What is the data backup retention period?**

Seven days.

## AUDITING

**What are the policies and procedures for logging, authentication, authorization and password management events (successful login, unsuccessful login, etc.) including how long this information is kept and who has access to the log data?**

OpenGov collects logs for all events described, and stores them securely in AWS. Log data is retained for at least 60 days.

**What logs does OpenGov collect?**

- Application and services logs that identify transactions have been performed, at what time, by whom, and on what data.
- Change management logs that identify deployments and updates to OpenGov's business environment, including software.
- Operating system logs.

*Updated October 2017*