



Department of Administration
Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

State of West Virginia
Master Agreement

Order Date: 2018-12-21

CORRECT ORDER NUMBER
 MUST APPEAR ON ALL PACKAGES,
 INVOICES, AND SHIPPING PAPERS.
 QUESTIONS CONCERNING THIS
 ORDER SHOULD BE DIRECTED TO
 THE DEPARTMENT CONTACT.

Order Number: CMA 1200 1200 AUD1900000001	Procurement Folder: 531314
Document Name: NASPO ValuePoint Cooperative Agreement for Cloud Solutions	Reason for Modification:
Document Description: NASPO ValuePoint Master Agreement No. AR247	NASPO ValuePoint Cooperative Agreement for Cloud Solutions
Procurement Type: Central Master Agreement	NASPO ValuePoint Master Agreement No. AR247
Buyer Name: Melissa Pettrey	
Telephone: (304) 558-0094	
Email: melissa.k.pettrey@wv.gov	
Shipping Method: Best Way	Effective Start Date: 2019-01-01
Free on Board: FOB Dest, Freight Prepaid	Effective End Date: 2019-12-31

VENDOR	DEPARTMENT CONTACT
Vendor Customer Code: 000000195808 CARAHSOFT TECHNOLOGY CORP 12369 SUNRISE VALLEY DR SUITE D-2 RESTON VA 20191 US Vendor Contact Phone: (999) 999-9999 Extension: Discount Percentage: 0.0000 Discount Days: 0	Requestor Name: Kelly K Vickers Requestor Phone: (304) 558-2261 Requestor Email: kelly.vickers@wvsao.gov

INVOICE TO	SHIP TO
STATE AUDITOR'S OFFICE 1900 KANAWHA BLVD E 1900 KANAWHA BLVD E CHARLESTON WV 25305-0230 US	STATE AUDITORS OFFICE 1900 KANAWHA BLVD E CHARLESTON WV 25305-0230 US

Total Order Amount	Open End
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PURCHASING DIVISION AUTHORIZATION SIGNED BY: DATE: ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM SIGNED BY: DATE: ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION SIGNED BY: DATE: ELECTRONIC SIGNATURE ON FILE
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Extended Description:

THE VENDOR, CARAHSOFT TECHNOLOGY CORP AGREES TO ENTER INTO THIS OPEN-END COOPERATIVE CONTRACT IN ACCORDANCE WITH WEST VIRGINIA CODE OF STATE RULE 148CSR1 SECTION 148-1-7-8 TO PROVIDE CLOUD SOLUTIONS PER THE NASPO VALUEPOINT MASTER AGREEMENT NO: AR2472 AND THE STATE OF WEST VIRGINIA PARTICIPATING ADDENDUM.

THIS CONTRACT SHALL BECOME EFFECTIVE ON 01/01/20019 AND EXTEND FOR A PERIOD OF ONE YEAR AND MAY BE RENEWED ANNUALLY WITH MUTUAL AGREEMENT OF ALL PARTIES FOR AS LONG AS THE MASTER AGREEMENT REMAINS IN EFFECT.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	43231601			EA	\$50,854.320000
	Service From	Service To			

Commodity Line Description: Budgeting and Planning Tier Between \$100-200 Million

Extended Description:

OG-BP-B100200M-RR-1Y

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
2	43231601			EA	\$8,482.320000
	Service From	Service To			

Commodity Line Description: Citizen Engagement - Story Builder Upgrade Only Tier

Extended Description:

Between \$100-200 Million, OG-CESB-B100200M-RR-1Y

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
3	43231601			EA	\$5,279.670000
	Service From	Service To			

Commodity Line Description: ERP Integrations Tier Between \$100-200 Million

Extended Description:

OG-INTERP-B100200M-RR-1Y

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
4	43231601			EA	\$65,475.630000
	Service From	Service To			

Commodity Line Description: Operational Performance - Performance Measures Tier

Extended Description:

Between \$750-1 Billion, OG-OPPM-B7501B-RR-1Y

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
5	43231601			EA	\$8,593.200000
	Service From	Service To			

Commodity Line Description: Basic Budgeting and Planning Deployment - Prepaid Hours Tier

Extended Description:

Between \$100-200 Million, OG-PSBPBP-B100200M-NR-0Y

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
6	43231601			EA	\$16,572.600000
	Service From	Service To			

Commodity Line Description: Standard Operational Performance Deployment - Prepaid Hours

Extended Description:

Between \$750-1 Billion, OG-PSOPSP-B7501B-NR-0Y

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
7	43231601			EA	\$1,850.000000
	Service From	Service To			

Commodity Line Description: Open Checkbook Bulk Purchase Annual Fee

Extended Description:

OG-CB-BP-ASF

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
8	43231601			EA	\$105.000000
	Service From	Service To			

Commodity Line Description: Annual data upload fee

Extended Description:

OG-TR-SDBP-ADU

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
9	43231601			EA	\$1,020.000000
	Service From	Service To			

Commodity Line Description: Open Checkbook Bulk Purchase Deployment Fee

Extended Description:

OG-CB-BP-Dep

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ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** – Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** – Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** – The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** – Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor.
5. **PAYMENT** – Any reference to prepayment are deleted. Fees for software licenses, subscriptions, or maintenance are payable annually in advance. Payment for services will be in arrears.
6. **INTEREST** – Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** – Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** – Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** – Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** – The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** – Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** – The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages is hereby deleted. Vendor's liability under the agreement shall not exceed three times the total value of the agreement. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** – Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** – Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** – Any references to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** – Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** – Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** – Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** – All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.
22. **DELIVERY** – All deliveries under the agreement will be FOB destination unless otherwise stated in the State's original solicitation. Any contrary delivery terms are hereby deleted.

ACCEPTED BY:

STATE OF WEST VIRGINIA

Spending Unit: WV Purchasing Division

Signed: [Signature]

Title: Director

Date: 12/21/18

VENDOR

Company Name: OpenGov, Inc.

Signed: Paul H. Denton

Title: CFO

Date: December 21, 2018

OPENGOV SOFTWARE SERVICES AGREEMENT

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 State of West Virginia ("**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. The Parties acknowledge that this Agreement is subject to the NASPO Value Point Cloud Solutions #AR2472 Flow Down terms (referenced pursuant to such terms as the Service Level Agreement issued against the Participating Addendum) and West Virginia's Participating Addendum (WV-96A).

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 **Software Services.** 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 **Support.** 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 **Professional Services.**

(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

OPENGOV SOFTWARE SERVICES AGREEMENT

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 **Restrictions.** 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 **Responsibilities.** 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 **Software Services.** 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 **Customer Data.** 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 **Access to Customer Data.** 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 **Feedback.** 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

OPENGOV SOFTWARE SERVICES AGREEMENT

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 Fees; Invoicing; Payment; Expenses.

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

(c) Invoicing and Payment. 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) Travel Expenses. 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 Credit Card Customers. 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 Taxes. 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 Term. 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**").

OPENGOV SOFTWARE SERVICES AGREEMENT

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

OPENGOV SOFTWARE SERVICES AGREEMENT

9.1 By Type. 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 By Amount. 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 Limitation of Liability Exclusions. 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 No Limitation of Liability by Law. 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 Logo Use. 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 Notice. 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 Anti-corruption. 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 Injunctive Relief. 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 Force Majeure. 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 Severability Waiver. 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 Assignment. 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

OPENGOV SOFTWARE SERVICES AGREEMENT

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 Independent Contractors. 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 Attorneys' Fees. 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 Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of West Virginia without regard to its conflict of laws provisions.

10.11 Complete Agreement. 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: State of West Virginia
Signature: 
Name: Mr. Michael Sheets
Title: Director
Date: 12/21/18

DocuSigned by:
OPENGOV, INC 
Signature: PAUL DENTON
Name: PAUL DENTON
Title: CFO
Date: 12/21/2018



CLOUD SOLUTIONS 2016-2026
Lead by the State of Utah

wwMaster Agreement #: AR2472

Contractor: **CARASOFT TECHNOLOGY CORPORATION**

Participating Entity: **STATE OF WEST VIRGINIA**

The following products or services are included in this contract portfolio:

- All OpenGov products and accessories listed on the Contractor page of the NASPO ValuePoint website.

The following products or services are not included in this agreement:

- Any products which the purchase of may cause direct harm to a West Virginia vendor

Master Agreement Terms and Conditions:

1. **Scope:** This addendum covers *Cloud Solutions* lead by the State of *Utah* for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. **Participation:** This NASPO ValuePoint Master Agreement may be used by the West Virginia State Auditor's Office. Issues of interpretation and eligibility for participation are solely within the authority of the State's Chief Procurement Official.
3. **Access to Cloud Solutions Services Requires State CIO Approval:** 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.
4. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Carahsoft Technology Corporation
Address:	1860 Michael Faraday Drive, Suite 100, Reston, VA 20190
Telephone:	703-230-7435
Fax:	
Email:	NASPO@carahsoft.com



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Participating Entity

Name:	State of West Virginia – Purchasing Division
Address:	2019 Washington St. East, Charleston, WV 25305
Telephone:	304-558-0094
Fax:	
Email:	Melissa.K.Pettrey@wv.gov

5. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

GOVERNING LAW – The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.

- A. The terms contained in the WV-96 attached hereto as Exhibit A.
- B. **PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.
- C. **ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.
- D. **BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the



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fingerprint-based state and federal background inquiry. After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

6. **Subcontractors:** All contactors, dealers, and resellers authorized in the State of West Virginia, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
7. **Orders:** Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: <i>State of West Virginia</i>	Contractor:
Signature: 	Signature: <i>Kristina Smith</i>
Name: <i>Mr. Michael Sheets</i>	Name: Kristina Smith
Title: <i>Director</i>	Title: Director of Contracts
Date: <i>12/20/18</i>	Date: 12/19/2018

[Additional signatures may be added if required by the Participating Entity]

NASPO ValuePoint
PARTICIPATING ADDENDUM



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For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	sberry@naspovaluepoint.org

***Please email fully executed PDF copy of this document
to
PA@naspovaluepoint.org
to support documentation of participation and posting
in appropriate data bases.***

102771	OpenGov	Budgeting and Planning Tier Between \$100-200 Million	OG-BP-B100200M-RR-1Y	\$51,368.00	\$50,854.32
103509	OpenGov	Citizen Engagement - Story Builder Upgrade Only Tier Between \$100-200 Million	OG-CESB-B100200M-RR-1Y	\$8,568.00	\$8,482.32
103684	OpenGov	ERP Integrations Tier Between \$100-200 Million	OG-INTERP-B100200M-RR-1Y	\$5,333.00	\$5,279.67
103957	OpenGov	Operational Performance - Performance Measures Tier Between \$750-1 Billion	OG-OPPM-B7501B-RR-1Y	\$66,137.00	\$65,475.63
104277	OpenGov	Basic Budgeting and Planning Deployment - Prepaid Hours Tier Between \$100-200 Million	OG-PSBPBP-B100200M-NR-0Y	\$8,680.00	\$8,593.20
104451	OpenGov	Standard Operational Performance Deployment - Prepaid Hours Tier Between \$750-1 Billion	OG-PSOPSP-B7501B-NR-0Y	\$16,740.00	\$16,572.60
104465	OpenGov	Open Checkbook Bulk Purchase Annual Fee	OG-CB-BP-ASF	\$2,000.00	\$1,850.00
104466	OpenGov	Annual data upload fee	OG-TR-SDBP-ADU	\$150.00	\$105.00
104467	OpenGov	Open Checkbook Bulk Purchase Deployment Fee	OG-CB-BP-Dep	\$1,200.00	\$1,020.00