

# OpenGov End User License Agreement

## Texas DIR Contract DIR-CPO-5327

The parties to this End User License Agreement (this "Agreement") are OpenGov, Inc., a Delaware corporation ("OpenGov"), and the party procuring OpenGov's products and services ("Customer") through Vertosoft, LLC, an authorized reseller ("Reseller"). This Agreement sets forth the terms under which OpenGov will provide its products and services to Customer through the Reseller, subject to DIR Contract DIR-CPO-5327 ("DIR-CPO-5327").

### 1. Definitions

- 1.1. "Customer Data" means the data that is provided by Customer to OpenGov pursuant to this Agreement (for example, by email or through Customer's software systems of record) including any data transmitted through the Software Services.
- 1.2. "Documentation" means any written, electronic, or online materials produced by OpenGov, and made available to Customer in connection with the Software Services, including user guides, training materials, FAQs, and technical support content, but excluding Product Documentation.
- 1.3. "Intellectual Property Rights" means all past, present, and future intellectual property rights including those associated with works of authorship, copyrights, moral rights, trademarks, trade names, trade secrets, patent rights, and any other proprietary rights in intellectual property of every kind and nature.
- 1.4. "Purchase Order" means the document(s) used between the Reseller and the Customer to purchase the Software Services and Professional Services that OpenGov will provide to Customer. All such Purchase Order(s) are incorporated into this Agreement by reference.
- 1.5. "Party" (or "Parties") refers to OpenGov and/or Customer. For the avoidance of doubt, Reseller is not a Party to this Agreement.
- 1.6. "Product Documentation" means the technical specifications that describe the features, functionality, configuration, and intended operation of the Software Services located at <https://opengov.my.site.com/support/s/agreement-product-documentation>, which is incorporated into this Agreement by reference.
- 1.7. "Professional Services" means the implementation, configuration, training, consulting, or other professional services provided by OpenGov or its authorized partners, and identified in the applicable Statement of Work.
- 1.8. "Software Services" means the commercial-off-the-shelf software products and services provided by OpenGov and identified in the applicable Purchase Order. Software Services do not include Work Product as defined in DIR-CPO-5327, Appendix A, Section 5.1.1.
- 1.9. "Statement of Work" or "SOW" means the document(s) separately executed by the Parties

or attached as an exhibit to this Agreement or any applicable Purchase Order, that specifies the Professional Services that OpenGov will provide to Customer. All such SOW(s) are incorporated into this Agreement by reference.

- 1.10. "Subscription Term" means the time period from the start date of the Software Services specified on the first Purchase Order to the last end date of the Software Services specified on any Purchase Order.

## **2. Software Services, Support, and Professional Services**

### **2.1. Software Services.**

- 2.1.1. Subject to the terms and conditions of this Agreement, OpenGov will use commercially reasonable efforts to provide the Software Services.
- 2.1.2. Support and Service Levels. Customer support is available by email to support@opengov.com or by using the chat messaging functionality of the Software Services. Customer may report issues any time; however, OpenGov will address issues during business hours. OpenGov will provide the applicable level of support in accordance with the Support and Software Service Levels located at <https://opengov.com/service-sla>, which is incorporated into this Agreement by reference.

### **2.2. Professional Services.**

- 2.2.1. Subject to the terms and conditions of this Agreement, OpenGov will use commercially reasonable efforts to provide the Professional Services, if applicable. Unless otherwise specified in the SOW, any pre-paid Professional Services must be utilized within one year from the start of the Subscription Term.

## **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. In addition, Customer shall not, and shall not knowingly or negligently, 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, copy or otherwise commercially exploit the Software Services; (d) perform or disclose any benchmarking or performance testing of the Software Services, including but not limited to load testing or stress testing; (e) remove any proprietary notices included with the Software Services; (f) use the Software Services in violation of applicable law; or (g) transfer any personal, sensitive, or personally identifiable information to OpenGov in a manner that violates Customer's obligations under the Data Processing Addendum.
- 3.2. Responsibilities. Customer shall be responsible for obtaining and maintaining computers, third-party software systems of record, and application programming interfaces needed to connect to, access or otherwise use the Software Services.

Customer shall also 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, in accordance with industry standards, and (c) all uses of Customer user accounts by any party other than OpenGov. OpenGov is not responsible for the operation, support, or security of any third-party software, systems, or services not provided by OpenGov.

- 3.3. Data Processing Addendum. To the extent OpenGov processes any Customer Data that contains personal information, personally identifiable information, or sensitive personal information on behalf of Customer in the course of providing the Software Services and Professional Services under this Agreement, the Parties agree to comply with the terms of the Data Processing Addendum, located at <https://opengov.com/data-processing-addendum>, which is incorporated into this Agreement by reference.

#### **4. Intellectual Property Rights; License Grants; Access to Customer Data**

- 4.1. OpenGov's Intellectual Property Rights. OpenGov exclusively owns and retains all right, title, and interest to the Software Services, Professional Services, Documentation, and Product Documentation, including all Intellectual Property Rights therein. This includes, without limitation, all underlying technology, software, user interfaces, visual design elements (such as the "look and feel"), custom fonts, graphics, workflows, button icons, and any derivative works (e.g., enhancements, modifications, or corrections), including but not limited to those that are created in connection with or through the Software Services, Professional Services, Documentation, or Product Documentation. Customer may not reproduce, modify, distribute, or create derivative works based on any part of the Software Services, in whole or in part, without OpenGov's prior written consent.
- 4.2. License Grant to Customer. OpenGov grants Customer a non-exclusive, non-transferable, non-sublicensable, royalty-free license to use the Software Services, Documentation, and Product Documentation during the Subscription Term for its internal use and the purpose as described in this Agreement. No additional rights or licenses shall be deemed granted.
- 4.3. Customer's Intellectual Property Rights. Customer retains all right, title, and interest, including all Intellectual Property Rights, in and to Customer Data. Customer grants OpenGov and its authorized partners (such as cloud hosting providers) a non-exclusive, royalty-free license to access, use, store, edit, reformat, and otherwise process Customer Data for the purpose of providing, maintaining, developing, and improving OpenGov's products and services.
- 4.4. Aggregated and Anonymized Data. Customer agrees that OpenGov and its authorized partners may use aggregated and anonymized data derived from Customer Data to provide, maintain, develop and improve OpenGov's products and services, to provide general customer service support and improvements, and to perform data and usage analytics. Any insights, developments, or improvements arising from such aggregated,

anonymized data shall be owned by OpenGov.

- 4.5. Access to Customer Data. Customer may download Customer Data from the Software Services at any time during the Subscription Term, excluding during routine software maintenance periods. For a period of 30 days after expiration of the Term, Customer may request that OpenGov complete a one-time transfer of Customer Data in a format customarily used in the industry at OpenGov's then-current hourly rate.
- 4.6. Deletion of Customer Data. Unless otherwise requested pursuant to this Section 4.6, upon the termination of this Agreement, Customer Data shall be deleted pursuant to OpenGov's standard data deletion and retention practices, which is to delete Customer Data 45 days after termination or expiration of the Agreement. Upon written request, Customer may request deletion of Customer Data prior to the date of termination of this Agreement, in accordance with the notice requirements set forth in Section 10.2.
- 4.7. Feedback. "Feedback" means any suggestions, comments, ideas, recommendations, usage, or other input provided by Customer to OpenGov regarding the services. Customer grants OpenGov a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license to use such Feedback in the Software Services, Professional Services, Documentation, and Product Documentation. OpenGov will exclusively own all right, title, and interest, including all Intellectual Property Rights, in and to any improvements, modifications, or derivative works to the Software Services, Professional Services, Documentation, and Product Documentation that are based on or derived from such Feedback.

## **5. Confidentiality**

- 5.1. "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. OpenGov's Confidential Information includes, without limitation, the software underlying the Software Services, Documentation, and Product Documentation.
- 5.2. Confidential Information does not include information that: (a) was publicly known or becomes publicly known through no breach of this Agreement by the receiving Party; (b) is required to be disclosed upon request under any applicable federal, state, or local public records laws; (c) Customer expressly directs OpenGov make publicly available; (d) was lawfully known to the receiving Party without restriction on disclosure before receipt from the disclosing Party; (e) is disclosed to the receiving Party by a third party who has the right to make such disclosure without restriction; or (f) is independently developed by the receiving Party without access to the disclosing Party's Confidential Information.
- 5.3. Each Party agrees to use the other's Confidential Information only in connection with this Agreement. Each Party further agrees to protect the other Party's Confidential Information using the measures that it employs with respect to its own Confidential

Information of a similar nature, but in no event with less than reasonable care. If a Party is required to disclose Confidential Information by law, subpoena, or court order, it must, to the extent legally permitted, promptly notify the other Party in writing prior to the disclosure to give the other Party an opportunity to oppose or limit the disclosure.

## **6. Term and Termination**

- 6.1. Subscription Term. This Agreement begins on the start date of the Purchase Order and will remain in effect until the termination or expiration of all active Purchase Orders entered into under this Agreement (“Term”), unless earlier terminated pursuant to this Section 6.
- 6.2. Renewal. This Agreement will renew if Customer enters another Purchase Order for the Software Services and/or additional Professional Services before the end of the Subscription Term.
- 6.3. Termination.
  - 6.3.1. Termination for Non-Appropriation. Customer may terminate this Agreement for non-appropriation pursuant to DIR-CPO-5327, Appendix A, Section 11.2.1.1.
  - 6.3.2. Termination for Convenience. Customer may terminate this Agreement for convenience pursuant to DIR-CPO-5327, Appendix A, Section 11.2.3.
  - 6.3.3. Termination for Cause. Customer may terminate this Agreement for Cause pursuant to DIR-CPO-5327, Appendix A, Section 11.2.4.2. OpenGov may terminate this Agreement if Customer materially breaches any term of this Agreement and fails to cure such breach within 30 days after receiving written notice by OpenGov.
- 6.4. Effect of Termination. Upon termination of this Agreement pursuant to Section 6: (a) Customer shall pay in full for all of the Software Services and Professional Services for the then-current annual term in the Purchase Order; (b) OpenGov shall stop providing the Software Services and the Professional Services to Customer; and (c) with the exception of Customer Data, the return and deletion of which are addressed in Section 4, each Party shall, upon request of the other Party, return or delete any of the other Party’s Confidential Information. See DIR Contract DIR-CPO-5327, Appendix A, Sections 11.2.6—Customer Rights Under Termination, and 11.2.7—Vendor or Order Fulfiller Rights Under Termination.

## **7. Payment of Fees**

Fees for the Software Services and Professional Services are due at the beginning of each year of the Subscription Term, and Customer must timely pay all applicable fees to Reseller to avoid interruption of the Software Services or Professional Services. Fees for Professional Services are due in advance, unless indicated otherwise in the Purchase Order.

## **8. Representations and Warranties; Disclaimer**

- 8.1. By OpenGov.
  - 8.1.1. General Warranty. OpenGov represents and warrants that it has all right and authority necessary to enter into and perform this Agreement.

- 8.1.2. Professional Services Warranty. OpenGov further represents and warrants that the Professional Services, if any, will be performed in a professional and workmanlike manner in accordance with the related SOW and generally prevailing industry standards. For any breach of the Professional Services warranty, OpenGov will re-perform the applicable services. If OpenGov is unable to re-perform such work as warranted, Customer will be entitled to recover all fees paid to OpenGov for the deficient work. Customer must give written notice of any claim under this warranty to OpenGov within 90 days of the completion of the Professional Services pursuant to the applicable SOW to receive such warranty remedies.
- 8.1.3. Software Services Warranty. OpenGov further represents and warrants that for the Term, the Software Services will perform in all material respects in accordance with the then-current Product Documentation. The foregoing warranty does not apply to (a) any Software Services that have been used in a manner other than as set forth in this Agreement or (b) any pre-release features, functionality, or beta software services that Customer elects to use in the beta phase of development. For any breach of the Software Services warranty, OpenGov will repair or replace any nonconforming Software Services so that the affected portion of the Software Services operates as warranted. If OpenGov is unable to do so, Customer may terminate the Agreement and Reseller will be entitled to a refund of the pre-paid, unused portion of the fees from the date of the discovery of the defect. Customer must give written notice of any claim under this warranty to OpenGov within 90 days of Customer discovering the defect to receive such warranty remedies.
- 8.2. By Customer. Customer represents and warrants that (a) it has all right and authority necessary to enter into and perform this Agreement and (b) OpenGov's use of Customer Data pursuant to this Agreement will not infringe, violate or misappropriate 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. 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 A 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 OR PAYABLE BY CUSTOMER TO RESELLER FOR THE SOFTWARE SERVICES UNDER THE APPLICABLE PURCHASE ORDER 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 arising out of fraud or willful misconduct by either Party; (b) either Party's infringement of the other Party's Intellectual Property Rights; (c) breach of obligations under Section 3.1; and (d) payment obligations under this Agreement.
- 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.

## **10. Miscellaneous**

- 10.1. Logo Use. Upon Customer's prior written consent, OpenGov shall have the right to use and display Customer's logos and trade names for marketing and promotional purposes in 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. For notices required by the Agreement the Parties must communicate more formally in a writing sent via USPS certified mail and via email. OpenGov's addresses for notice are: legal@opengov.com with a mailed copy to OpenGov, Inc., 660 3rd Street, Suite 100, San Francisco, CA 94107.
- 10.3. Anti-corruption. Neither OpenGov nor any of its employees or agents has offered or provided any illegal or improper payment, gift, or transfer of value in connection with this Agreement. The Parties will promptly notify each other if they become aware of any violation of any applicable anti-corruption laws in connection with this Agreement.
- 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 will be liable for any delay or failure to perform its obligations under this Agreement, due to any events beyond its reasonable control, including but not limited to acts of god, acts of governmental authority, war, riot, labor disputes, failures of performance by any third-party services, utilities, or equipment

failures, or any other events beyond the Party's reasonable control. Notwithstanding the foregoing, Customer shall remain obligated to perform its obligations under Section 7.

- 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.
- 10.7. Survival. The following sections of this Agreement shall survive termination or expiration: Section 5 (Confidentiality), Section 7 (Payment of Fees), Section 4.6 (Deletion of Customer Data), Section 8.3 (Warranty Disclaimer), Section 9 (Limitation of Liability), and Section 10 (Miscellaneous).
- 10.8. Assignment. There are no third-party beneficiaries to this Agreement. Neither Party may assign, or otherwise transfer this Agreement without the other Party's written consent, which consent may not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, either Party may assign, without such consent but upon written notice, its rights and obligations under this Agreement to its corporate affiliate or to 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, or as allowed by DIR-CPO-5327, Appendix A, Section 4.4(B). Any other attempted assignment shall be void. This Agreement will benefit and bind permitted assigns and successors.
- 10.9. Independent Contractors. This Agreement does not create an agency, partnership, joint venture, or employment relationship, and neither Party has any authority to bind the other.
- 10.10. Governing Law and Jurisdiction. This Agreement will be governed by the laws of Customer's jurisdiction, without regard to conflict of laws principles. The Parties submit to personal jurisdiction and venue in the courts of Customer's jurisdiction.
- 10.11. Complete Agreement. OpenGov has made no other promises or representations to Customer other than those contained in this Agreement and those required by DIR-CPO-5327. Any additional or different terms in a purchase order or click-through agreement are expressly rejected by the Parties and are void. Any modification to this Agreement must be in writing and signed by an authorized representative of each Party. No third parties are authorized to modify this Agreement. If there is a conflict between this Agreement and any other attached or incorporated document, the terms of DIR-CPO-5327 shall prevail.