



OATI ETS SERVICE AGREEMENT

THIS AGREEMENT (Agreement) is dated and executed as of _____, 2020, (the Effective Date) between Open Access Technology International, Inc. (OATI), a Minnesota corporation, with principal offices at 3660 Technology Drive NE, Minneapolis, Minnesota 55418, and _____ (Customer), a _____ corporation, with principal offices at _____. OATI and Customer may each be referred to individually as "Party" and collectively as "Parties."

- A. OATI shall furnish the facilities, equipment, and personnel appropriate to carry out the services under this Agreement (ETS Services).
- B. Customer intends to use the subscribed service according to generally accepted utility practice.
- C. A Fee is established for each customer site. OATI ETS services consist of software applications and services for the energy industry provided from the OATI Data Center, which include North American Electric Standards Board (NAESB)-compliant Tagging services, Congestion Management related information, OASIS related information, Electronic Scheduling Services, and other services.
- D. Customer desires to use services upon the terms and conditions contained in this Agreement.

NOW, THEREFORE, for good and valuable consideration including the exchange of promises, the receipt of which is hereby acknowledged by the parties, OATI and Customer agree as follows:

ARTICLE ONE OATI ETS SERVICES USE

- 1.1 **OATI ETS Services Use.** OATI grants Customer a nontransferable, nonexclusive right to use OATI ETS Services, subject to the terms and conditions of this Agreement.
- 1.2 **Title.** Legal title to OATI ETS Services is vested in OATI.

ARTICLE TWO FEES

- 2.1 **Service Initiation Fee/Monthly Recurring Fee.** There shall be a Service Initiation Fee and/or a Monthly Recurring Fee for each Customer Site (a single geographical location with a unique mailing address) for use of the ETS services. In the event Customer represents more than one (1) Registered Entity, the fees will be modified by the total number of Registered Entities being served. Fees are specified on Schedule A, attached hereto and incorporated herein by reference, and may be modified upon written notification to Customer.
- 2.2 **Invoice; Payment.** OATI will invoice the Service Initiation Fee and begin invoicing Customer for the Monthly Recurring Fee upon receipt of an executed Agreement. OATI will submit electronic invoices in accordance with the instructions in Schedule A. Customer may pay invoices electronically, accompanied by a remittance notification sent to payments@oati.net. Customer shall pay the invoice in U.S. Dollars on a Net 30-day basis. A finance charge of 1.5% per month is due and payable on undisputed amounts paid beyond terms.

OPEN ACCESS TECHNOLOGY INTERNATIONAL, INC.

3660 Technology Drive NE | Minneapolis, MN 55418 | Phone 763.201.2000 | Fax 763.201.5333 | www.oati.com

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ARTICLE THREE
WARRANTY; LIMITATION OF LIABILITY

3.1 Warranty; Limitation of Liability. OATI warrants that it has the rights to grant the access provided hereunder. OATI makes no other warranty of any kind, express or implied, including, without limitation, warranties of merchantability and/or fitness for a particular purpose. OATI shall not be liable to Customer for any damages, whether direct, indirect, special, or consequential arising out of the use of or inability to use OATI ETS services, even if advised of the possibility of such damages. Specifically, OATI is not responsible for any costs, including, without limitation, those incurred as the result of lost profits or revenue, loss of use of OATI ETS services, loss of data, costs of recovering data, the costs of any substitute programs, claims by third parties, or other similar costs. Customer agrees that OATI ETS services are not consumer goods for purposes of federal or state warranty laws.

ARTICLE FOUR
NONDISCLOSURE AGREEMENT

4.1 Nondisclosure Agreement. Except for requests made under the California Public Records Act (Government Code sections 6250 et seq.), Customer will not publish or otherwise disclose any unpublished or proprietary confidential information or secret(s) relating to OATI ETS services, operations or other associated products or services. Further, Customer agrees not to disclose the materials, apparatus, processes, formulae, plans and methods used in development or manufacture or marketing of OATI ETS products or services. OATI will not publish or otherwise disclose the identity of Customer data except when explicitly provided prior, written consent of the Customer, or as otherwise required under applicable law, rule, or order. Likewise, Customer agrees not to make any drawings, writings or any other record in any form or nature which relates to any part(s) of OATI ETS services. Additionally, Customer will not publish or otherwise disclose secret, proprietary or confidential information of others to which it may have had access or about which it obtained knowledge in the course of its use of the OATI ETS services. OATI will not publish or otherwise disclose any non-public information relating to Customer's business, whether in oral, written, or machine-readable form. This paragraph will survive termination of this Agreement.

4.2 Public Information Notice: OATI ETS SERVICES CONTAIN PROTECTED NONPUBLIC DATA AND ARE NOT CONSIDERED PUBLIC INFORMATION OR DATA. THEY ARE NOT SUBJECT TO PUBLIC INSPECTION AND COPYING PURSUANT TO THE LAWS OF ANY STATE REGARDING PUBLIC ACCESS TO INFORMATION. FURTHER, OATI ETS SERVICES AND ALL DATA, DISPLAYS, MATERIALS AND INFORMATION COMPRISING OATI ETS SERVICES ARE PROTECTED UNDER U.S. AND INTERNATIONAL COPYRIGHT LAWS.

4.3 Notice. Except for requests made under the California Public Records Act (Government Code sections 6250 et seq.), Customer agrees to notify OATI in writing immediately upon receipt of any requests for disclosure prior to any disclosures. Notification shall include the name, address, telephone, and fax numbers of the requester, as well as a description of the specific information requested. Within five (5) business days of receipt, OATI shall provide a written response directly to the requester providing the basis of its exemption from disclosure with a copy sent directly to Customer. IN NO EVENT shall Customer provide any materials, documents, viewings, or other disclosures to any person, legal or natural, without the prior, written consent of OATI. In the event a court of competent jurisdiction orders the release of such data, Customer will notify OATI upon receipt of the order and prior to providing such data in compliance with said order, but any such disclosure will be limited to only that required by such order. For requests made under the California Public Records Act (Government Code sections 6250 et seq.), Customer agrees to notify OATI with the same such notice and OATI will provide the same such written response to Customer within 10 days of Customer's receipt of

the request. Customer will inform OATI if the requested information will be disclosed and cooperate with OATI should OATI wish to obtain a timely protective order.

4.4 Employees and Contractors. This Article 4 is binding on all employees of the above-named OATI ETS Customer.

ARTICLE FIVE **TERM; DEFAULT**

5.1 Term; Extension. Unless terminated pursuant to Section 5.2 below, this Agreement will be in effect for a period of thirty-six (36) months from the Effective Date of this Agreement. This Agreement shall be automatically renewed for successive twelve (12) month terms (Extended Term) unless at least sixty (60) days prior to the end the then-current term, either Party notifies the other Party that this Agreement shall not be renewed for the Extended Term. On termination of this Agreement, Customer shall promptly return to OATI all OATI proprietary materials, and shall erase from all computer storage and computer storage devices any image of copies of OATI ETS services.

5.2 Default. Either Party has the right to terminate this Agreement and any user right granted, on written notice to the other Party if such other Party (a) materially fails to perform any of its obligations under this Agreement, which failure has not been corrected within fifteen (15) calendar days after receipt of written notice thereof, or (b) takes action to liquidate and dissolve, becomes insolvent, suffers the appointment of a receiver, assigns all or part of its assets for the benefit of creditors, or is involved in any proceeding (voluntary or involuntary) under any bankruptcy or insolvency laws.

ARTICLE SIX **GENERAL PROVISIONS**

6.1 Relationship of the Parties. The Parties shall not represent themselves as agents or representatives of the other Party, and neither Party shall have the right or power to bind, commit or obligate the other Party.

6.2 Notice. Unless otherwise specifically provided, all notices required or permitted by this Agreement shall be in writing and may be delivered personally, or may be sent by certified mail, return receipt requested, or overnight courier, addressed:

If to OATI: Open Access Technology International, Inc.
3660 Technology Drive NE
Minneapolis, MN 55418
Attention: Contract Administration

If to Customer: _____

Attention: _____

Any notice shall be deemed to have been received as follows: (1) personal delivery, upon receipt; or (2) overnight delivery or certified mail, upon delivery.

6.3. Users. Customer shall provide OATI with a list of all authorized users of OATI ETS services at each Customer site and shall promptly notify OATI of any changes. Customer is responsible for all acts or omissions of the authorized users during their use of OATI ETS services. A User shall be limited to a human being using a workstation and a browser to connect to, and interact with OATI services for their designed and intended purposes. Programmatic access or retrieval of

information or data is strictly prohibited unless specifically authorized in writing by OATI or provided by an OATI service.

6.4 Further Actions. The Parties agree to execute such further documents, and take such further actions, as may be reasonably required or expedient to carry out the provisions and intentions of this Agreement, or any agreement or document relating hereto or entered into in connection herewith.

6.5 Assignment. This Agreement including each Party's rights and obligations hereunder shall not be assignable without the prior written consent of the other Party, provided however, that assignment shall be allowed, upon sixty (60) days prior written notice, to an entity acquiring all or substantially all of a Party's business assets and that agrees to be bound by the terms of this Agreement. Any attempted assignment in violation of this provision is void.

6.6 Choice of Law. This Agreement shall be governed and construed and enforced in accordance with the laws of the state of Minnesota without regard to its choice of law provisions.

6.7 Entire Agreement. This Agreement with attachments supersedes any prior agreements and contains the entire agreement of the Parties and all representations with respect to the subject matter hereto. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement and the attachment hereto.

6.8 Amendments. Any amendments to this Agreement shall be in writing and signed by all Parties hereto.

6.9 Counterparts. This Agreement may be executed in counterparts, any one of which shall be deemed to be an original, but such counterparts when taken together shall constitute but one agreement.

6.10 Captions. Captions are for convenience only and shall not be deemed part of the contents of this Agreement.

6.11 Parties In Interest. This Agreement shall be binding upon and inure solely to the benefit of the Parties hereto, and nothing in this Agreement, expressed or implied, is intended to confer upon any other person any rights or remedies of any nature under or by reason of this Agreement.

6.12 Waiver. The waiver of any of the rights or remedies arising pursuant to this Agreement on any one occasion by any Party shall not constitute a waiver of any rights or remedies in respect to any subsequent breach or default of the terms of this Agreement.


6.13 Delays. Neither Party shall be liable or deemed in default for any delay or failure in performance of this Agreement resulting directly or indirectly from any cause completely, solely, and exclusively beyond the control of that Party.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its authorized representative as of the Effective Date.

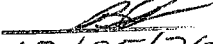
CUSTOMER:

By: _____
Name: _____
Title: _____
Date: _____

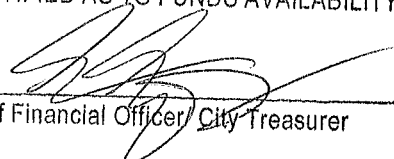
**OPEN ACCESS TECHNOLOGY
INTERNATIONAL, INC.:**

By: 
Name: Sasan Mokhtari, Ph.D.
Title: President and CEO
Date: 2/6/2020

LEGAL


02/05/2020

CERTIFIED AS TO FUNDS AVAILABILITY:

BY: 
Chief Financial Officer/ City Treasurer

APPROVED AS TO FORM:

BY: 
ASSISTANT CITY ATTORNEY

Filename: RVSD ETS Service Agreement v2



SCHEDULE A

WEBSMARTTAG - AGENT, AUTHORITY, AND APPROVAL

Item	Monthly Recurring Fee (USD)	Comments
webSmartTag PSE Agent Service (1.8.x) for PSE Entity Codes - RVSRV and BANN01	\$734	Up to 50 tags maximum average daily volume over a 30-day period. Includes 5 User IDs.
webSmartTag BA/TP Authority and Approval Service (1.8.x) for BA/TP Entity Codes - RVSD and BANN	\$734	Up to 50 tags maximum average daily volume over a 30-day period. Includes 5 User IDs.
Additional PSE Entity Code	\$451	RCMU01
Additional PSE Entity Code	\$438	SCP1
webSmartTag User IDs	\$293	One block of five (5)
PSE Approval Service	\$138	
NAESB 1.8.2 Modifications	\$79	
Monthly Total	\$2,867	

Notes:

1. Minimum term of contract services is thirty-six (36) months.
2. Service shall only be utilized from one (1) geographical location unless otherwise noted.
3. Monthly Recurring Fees will be increased annually by 3% beginning on January 01, 2021.
4. The services herein described conform with the applicable North American Electric Standards Board (NAESB) Electronic Tagging Functional Specifications, and with the applicable operating policies.
5. OATI will send invoices to and communicate billing matters with the following individual:

Accounts Payable Contact:

Name: _____

Phone Number: _____

Email: _____

Filename: RVSD webSmartTag Schedule A

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