



State of Oklahoma

Office of Management and Enterprise Services

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**ADDENDUM 1 TO  
STATE OF OKLAHOMA CONTRACT WITH FRANCIS SOLAR  
RESULTING FROM STATE WIDE CONTRACT No. 0036**

This Addendum 1 ("Addendum") is an Amendment to the Contract awarded to Francis Solar in connection with Solicitation 0900000328 ("Solicitation") and is effective ~~October~~ 18, 2019.

November

**Recitals**

Whereas, the State issued a Solicitation for proposals to provide products and/or services related to electric vehicle supply equipment (EVSE), as more particularly described in the Solicitation;

Whereas, Francis Solar submitted a proposal which contained various other Contract Documents; and

Whereas, the State and Francis Solar have negotiated the final terms under which Francis Solar will perform the Services under the Contract.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

**1. Addendum Purpose.**

This Addendum memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to Francis Solar as of even date with execution of this Addendum. The parties agree that Supplier has not yet begun performance of work contemplated by the Solicitation.

**2. Negotiated Documents of the Contract.**

2.1. The parties have negotiated certain terms of the Contract as follows:

- i. hosting terms as contained in Attachment A to this Addendum titled, "Hosting Agreement"; and
- ii. negotiated additional terms to the Solicitations as contained in Attachment B to this Addendum titled, "Negotiated Additional Terms."

- 2.2. Accordingly, any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.
- 2.3. Francis Solar affirmatively acknowledges it takes no exception to the Solicitation.

**State of Oklahoma by and through the Office  
of Management and Enterprise Services**

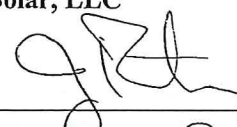
By: 

Name: James L. Reese, II

Title: Chief Information Officer

Date: 11-18-2019

**Francis Solar, LLC**

By: 

Name: JASON PITCOCK

Title: SVP

Date: 10-28-2019

**Attachment A to  
Addendum 1 to  
STATE OF OKLAHOMA CONTRACT WITH FRANCIS SOLAR  
RESULTING FROM STATE WIDE CONTRACT 0036**

**HOSTING TERMS**

**I. Definitions**

- a. "State Data" shall mean all data supplied by or on behalf of the State of Oklahoma in connection with the Contract, excluding any confidential information of Francis Solar.
- b. "Data Breach" shall mean the unauthorized access by an unauthorized person that results in the use, disclosure or theft of State Data.
- c. "Non-Public Data" shall mean State Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by the State as Non-Public Data, or that a reasonable person would deem confidential.
- d. "Personal Data" shall mean State Data that contains 1) any combination of an individual's name, social security numbers, driver's license, state/federal identification number, account number, credit or debit card number and/or 2) contains electronic protected health information that is subject to the Health Insurance Portability and Accountability Act of 1996, as amended.
- e. "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the hosted environment used to perform the services.

**II. State Data**

- a. The State will be responsible for the accuracy and completeness of all State Data provided to Francis Solar by the State. The State shall retain exclusive ownership of all State Data. Non-Public Data and Personal Data shall be deemed to be State's confidential information. Francis Solar shall restrict access to State Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).

- b. Francis Solar shall promptly notify the State upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to State Data or State's use of the hosted environment. Francis Solar shall notify the State by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Francis Solar shall not respond to subpoenas, service or process, FOIA requests, and other legal request related to State without first notifying the State and obtaining the State's prior approval, which shall not be unreasonably withheld, of Francis Solar's proposed responses. Francis Solar agrees to provide its completed responses to the State with adequate time for State review, revision and approval.
- c. Francis Solar will use commercially reasonable efforts to prevent the loss of or damage to State Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any State Data that may be lost or damaged by Francis Solar. Francis Solar will promptly notify State of any loss, damage to, or unauthorized access of State Data. Francis Solar will use commercially reasonable efforts to reconstruct any State Data that has been lost or damaged by Francis Solar as a result of its negligence or willful misconduct. If State Data is lost or damaged for reasons other than as a result of Francis Solar's negligence or willful misconduct, Francis Solar, at the State's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any State Data lost or damaged.

### **III. Data Security**

- a. Francis Solar will use commercially reasonable efforts, consistent with industry standards, to provide security for the hosted environment and State Data and to protect against both unauthorized access to the hosting environment, and unauthorized communications between the hosting environment and the State's browser. Francis Solar shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.
- b. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of Personal Data.
- c. Francis Solar represents and warrants to the State that the hosting equipment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Francis Solar will regularly update

the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Francis Solar will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to State by Francis Solar, Francis Solar will promptly notify State of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Francis Solar has used to remediate the virus. Should the virus propagate to State's IT infrastructure, Francis Solar is responsible for costs incurred by State for State to remediate the virus.

- d. Francis Solar shall provide its services to State and its users solely from data centers in the U.S. Storage of State Data at rest shall be located solely in data centers in the U.S. Francis Solar shall not allow its personnel or contractors to store State Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Francis Solar shall permit its personnel and contractors to access State Data remotely only as required to fulfill Francis Solar's obligations under the Contract.
- e. Francis Solar shall allow the State to audit conformance to the Contract terms. The State may perform this audit or contract with a third party at its discretion and at State's expense.
- f. Francis Solar shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. Francis Solar may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

#### **IV. Security Assessment**

- a. The State requires any entity or third-party vendor hosting Oklahoma State Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Francis Solar submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards during the term of the contract, including renewals, constitutes a material breach.
- b. To the extent Francis Solar requests a different sub-contractor than the third-party vendor already approved by the State, the different sub-contractor is subject to the State's approval. Francis Solar agrees not to migrate State's data or otherwise utilize the different third-party hosting Francis Solar in connection with key business functions that are Francis Solar's obligations under the contract until the State approves the third-party hosting vendor's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or

delayed. In the event the third-party hosting vendor does not meet the State's requirements under the State Certification and Accreditation Review, Francis Solar acknowledges and agrees it may not utilize the third-party vendor in connection with key business functions that are Francis Solar's obligations under the contract, until such third party meets such requirements.

**V. Security Incident or Data Breach Notification:** Francis Solar shall inform State of any Security Incident or Data Breach

- a. Francis Solar may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves State Data, Francis Solar will coordinate with State prior to any such communication.
- b. Francis Solar shall report a Security Incident to the State identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice period required by applicable law or regulation (i.e. HIPAA requires notice to be provided within 24 hours).
- c. Francis Solar shall: (i) maintain processes and procedures to identify, respond to and analyze Security Incidents; (ii) make summary information regarding such procedures available to State at State's request, (iii) mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Francis Solar; and (iv) documents all Security Incidents and their outcomes.
- d. If Francis Solar has reasonable belief or actual knowledge of a Data Breach, Francis Solar shall (1) promptly notify the appropriate State identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

**VI. Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Francis Solar.

- a. Francis Solar, unless stipulated otherwise, shall promptly notify the State identified contact within 2 hours or sooner, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Data Breach. Francis Solar shall (1) cooperate with State as reasonably requested by State to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related

to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

- b. Unless otherwise stipulated, if a Data Breach is a direct result of Francis Solar's breach of its obligation to encrypt Personal data and Non-Public Data or otherwise prevent its release, Francis Solar shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – all not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Francis Solar based on root cause.
- c. If a Data Breach is a direct result of Francis Solar's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Francis Solar shall indemnify and hold harmless the State against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

**VII. Notice:** Contact information for State for notifications pursuant this Hosting Agreement are consistent with the Contract with a copy sent to:

Chief Information Officer  
3115 N. Lincoln Blvd  
Oklahoma City, OK 73105

And

Chief Information Security Officer  
3115 N. Lincoln Blvd  
Oklahoma City, OK 73105

And

OMES Information Services General Counsel  
3115 N. Lincoln Blvd  
Oklahoma City, OK 73105

**VIII. Francis Solar Representations and Warranties:** Francis Solar represents and warrants the following

- a. The product and services provided under this Hosting Agreement do not infringe a third party's patent or copyright or other intellectual property rights.

- b. Francis Solar will protect State's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.
- c. The execution, delivery and performance of the Contract, the Hosting Agreement and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Francis Solar will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Francis Solar and any third parties retained or utilized by Francis Solar to provide goods or services for the benefit of the State.
- d. Francis Solar shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the Hosting Environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protected" devices, or any other harmful or disruptive program.

## **IX. Indemnity**

- a. Francis Solar's Duty of Indemnification. Francis Solar agrees to indemnify and shall hold the State of Oklahoma and State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees) (collectively "Damages") (other than Damages that are the fault of State) arising from or in connection with Francis Solar's breach of its express representations and warranties in this Hosting Agreement and the Contract. If a third party claims that any portion of the products or services provided by Francis Solar under the terms of the Contract or this Hosting Agreement infringes that party's patent or copyright, Francis Solar shall defend and indemnify the State of Oklahoma and State against the claim at Francis Solar's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, the State of Oklahoma and/or State. The State of Oklahoma and/or State shall promptly notify Francis Solar of any third party claims and to the extent authorized by the Attorney General of the State, allow Francis Solar to control the defense and any related settlement negotiations. If the Attorney General of the State of Oklahoma does not authorize sole control of the defense and settlement negotiations to Francis Solar, Francis Solar shall be granted authorization to equally participate in any proceeding related to this section but Francis Solar shall remain responsible to indemnify State



and the State of Oklahoma for all associated costs, damages and fees incurred by or assessed to the State of Oklahoma and/or State. Should the software become, or in Francis Solar's opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated under this Hosting Agreement, Francis Solar may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

**X. Termination and Suspension of Service:**

- a. In the event of a termination of the contract, Francis Solar shall implement an orderly return of State Data in a mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of State Data.
- b. During any period of service suspension, Francis Solar shall not take any action to intentionally erase any State Data.
- c. In the event of termination of any services or agreement in entirety, Francis Solar shall not take any action to intentionally erase any State Data for a period of:
  - i. 10 days after the effective date of termination, if the termination is in accordance with the contract period
  - ii. 30 days after the effective date of termination, if the termination is for convenience
  - iii. 60 days after the effective date of termination, if the termination is for cause

After such period, Francis Solar shall have no obligation to maintain or provide any State Data and shall thereafter, unless legally prohibited or otherwise stipulated, delete all State Data in its systems or otherwise in its possession or under its control.

- d. The State shall be entitled to any post termination assistance generally made available with respect to the services.
- e. Francis Solar shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the State. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to State.

**ATTACHMENT B TO  
ADDENDUM 1 TO  
STATE OF OKLAHOMA CONTRACT WITH FRANCIS SOLAR  
RESULTING FROM STATE WIDE CONTRACT No. 0036**

**Negotiated Additional Terms**

The Solicitation is hereby amended to include the terms as set forth below and supersedes all prior terms submitted by **Francis Solar** or discussed by the parties.

**Solicitation, Section B Special Provisions, Subsection B.2.3. is hereby added:**

If the Supplier is permitted to utilize subcontractors in support of this Contract, the Supplier shall remain solely responsible for its obligations under the terms of this Contract and for its actions and omissions and those of its agents, employees and subcontractors.

Per Solicitation, Section B Special Provisions, Subsection B.2 the State approves Supplier's use of the following as a subcontractor(s) under this Contract: EvGateway, Inc. Without waiving the order of precedence herein, the state accepts the terms and conditions of this approved subcontractor to the extent the terms and conditions do not reduce any rights or enlarge any obligations of the State or authorized users as set forth in the Solicitation.