

## **GSA SOLARBEAM™ SERVICE AGREEMENT**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between Solarbeam International, Inc., (hereinafter referred to as "Solarbeam") and \_\_\_\_\_ (hereinafter referred to as "the Service Company"), for the purpose of Solarbeam contracting with the Service Company to engage in pre-sale and warranty activities and to install and service security equipment for the Government (the Service Company and Solarbeam are hereinafter referred to as the "Parties").

WHEREAS Solarbeam has entered into a contract with the General Services Administration to sell and install security equipment and parts, including security equipment and parts provided by affiliated entities ("Solarbeam security equipment") (Multiple Award Schedule 084, FSC Group 6350, GS-07F-0339W, as amended);

WHEREAS Solarbeam wishes to subcontract to the Service Company the pre-sale activities, the installation and service and provide post-sale warranty support under the General Services Administration ("GSA") contract;

WHEREAS this Agreement is intended to carry out the terms of the contract with the GSA to provide the pre-sale activities, the installation and service and post-sale warranty support and does not establish an exclusive agreement between Solarbeam and the Service Company.

NOW THEREFORE, in consideration of the mutual promises and covenants and the duties and obligations imposed on the Parties, the Parties agree as follows:

1. **Effective Date.** This Agreement shall be effective upon execution by the Parties.
2. **Prime Contractor.** During the term of this Agreement, it is the intent of the Parties that their relationship be that of independent contractors (Solarbeam being the prime contractor with the Government and the Service Company being the subcontractor). This relationship is intended to be non-exclusive. Nothing contained herein shall limit or impede Solarbeam to enter into similar relationships with other companies.
3. **Scope of Work.** Service Company agrees to conduct pre-sale technical activities (including site survey, design and engineering), to perform installation services of Solarbeam security equipment from the GSA Government price list, and to provide warranty support on each sale to the Government under the GSA Contract for which the Service Company is the named provider of services. Service Company agrees to provide other support reasonably requested by Solarbeam on each such order for the Government. Service Company agrees to be licensed and bonded in accordance with local law or the ordering agency requirements. Service Company may, upon written agreement, perform or meet any agency unique requirements. Service Company shall commence performance by signing and returning an executed copy of the order to the Solarbeam Customer Service office in accordance with the GSA Service Company Guide, which is incorporated by reference.

4. **Relationship to Government.** Solarbeam will recommend to the Government that it communicate directly with the Service Company regarding conduct of the pre-sale technical activities and the performance of the installation services. All communications between the Service Company and the Government with respect to the products and services to be provided by the Service Company in accordance with this Agreement clearly shall identify any and all non-Schedule products or services as "open market." Services rates offered under Solarbeam's Schedule Contract are exclusive to the products offered under the Schedule Contract.
5. **Payment.** Solarbeam will pay the Service Company within ten (10) business days after Solarbeam receives payment directly from the Government on a purchase order for which the Service Company is the named provider of services; provided however, if the Government withholds payment or fails to pay Solarbeam for reasons other than the Service Company's failure to perform in accordance with the terms hereof, as determined by Solarbeam, Solarbeam shall pay the Service Company within forty-five (45) calendar days after completion, to the satisfaction of the customer, of the services set forth on the purchase order. Solarbeam authorizes the Service Company to accept orders and payments from the Government. If the Service Company receives direct payment from the Government on a purchase order for which the Service Company is the named provider of services, the Service Company agrees to pay Solarbeam, in accordance with paragraph 6, within ten (10) business days after the Service Company receives payment from the Government.
6. **Prices.** All Solarbeam security equipment prices are subject to the price list attached to the GSA contract (Attachment 1) or as amended and agreed upon by the Government and Solarbeam, and said GSA prices include the ¾% industrial funding fee. The pricing of non-Schedule, open market products or services and the pricing of Schedule ancillary services shall be the responsibility of the Service Company. The pricing of installation shall include the price for the posting of a bond as required by the contract, the ordering agency, or the state in which the contract is to be performed. Solarbeam shall pay to Service Company the difference between the gross amount of the purchase order less the sum of (i) the dealer price of the equipment, (ii) the Industrial Funding Fee, and (iii) any and all transportation costs borne by Solarbeam for deliveries of the product to the Service Company. Installation fees, fees for miscellaneous wire and hardware, and service charges by Service Company will be added to the cost of Solarbeam equipment and used to compute the Industrial Funding Fee, which Solarbeam must pay to the Federal Supply Service of the GSA at the end of each contract quarter. Solarbeam will deduct ¾% of the gross or total purchase order for the Industrial Funding Fee, as required by the GSA. If the Service Company receives payment directly from the Government and installation is included in the gross GSA installed price under Solarbeam's GSA contract, the Service Company shall pay Solarbeam the GSA dealer price for the

equipment purchased plus the ¾% industrial funding fee on the total purchase price of the sale of installed Solarbeam equipment including installation and other direct costs as shown on the Government purchase order; plus any and all transportation costs borne by Solarbeam for deliveries of the product to the Service Company.

It is understood and agreed that Service Company may choose to be paid for installation under its own GSA Security Convergent Special Item Contract. In the event that installation is provided under pricing set forth in Service Company's GSA contract, in addition to the foregoing, Service Company shall pay Solarbeam the ¾% Industrial Funding Fee applicable to the Service Company installation fees, fees for miscellaneous wire and hardware and any other direct cost and other service charges. Labor rates and pricing of miscellaneous wire and hardware and any other direct cost for the installation of Solarbeam security equipment will be set by the Service Company at the point of Government sale and will include the ¾% Industrial Funding Fee. Any additional agreed upon service fees (no IFF on travel expenses) between the Government and the Service Company will include the ¾% Industrial Funding Fee. Service Company shall be subject to audit by the Government, with respect to sales made under the contract, for a period of three years after final payment. The Service Company shall comply with the same terms and conditions regarding prices as Solarbeam for sales made under the contract, including any modifications to the contract, and maintain a system of reporting sales under the contract to Solarbeam which includes: (1) date of sale; (2) agency to which the sale was made; (3) product/model sold; (4) the quantity of the product sold; (5) the price at which it was sold, including discounts on labor; and (6) other significant sales data.

7. **Warranties.** The Service Company agrees to honor Solarbeam's warranty of products and equipment (see Service Company Guide incorporated by reference, Attachment 2). Service Company agrees to warrant to Solarbeam that the installation of Solarbeam offered equipment and related services shall be performed in a safe, good and workmanlike manner and that the services, including related material, shall materially conform to the specifications furnished to the Government by Solarbeam and shall be free from material defects for two years from the date of installation. The Service Company further agrees to warrant to Solarbeam the installation of non-Solarbeam parts, hardware and wire for two years from the date of installation. These warranty provisions reflect the fact that, in its security system installation business, the Service Company has not offered (and does not currently offer) a warranty of merchantability or fitness for a particular purpose (whether express or implied) for use in any of the equipment, wiring, hardware or other parts associated with the installation of any security system, and the fact that such warranties are not typically provided to Service Company by its equipment, wiring, hardware or parts manufacturers. This disclaimer of any warranty of merchantability and fitness for a particular purpose is a prevailing commercial practice in the security system installation industry.

8. **Limitation of Liability.** Service Company and Solarbeam shall not be liable to each other in contract or otherwise for any incidental or consequential damages. However, to the extent the Government imposes liability in the form of Liquidated Damages for the failure to meet contract delivery schedules in the Government purchase order, and Solarbeam has shipped the product to the Service Company in reasonable time for Service Company to perform its obligations hereunder, and is not otherwise at fault, Service Company shall be liable for the Liquidated Damages.
9. **Indemnification.** The Service Company shall conduct pre-sale activities, and shall install Solarbeam products and security equipment in conformance with the terms, conditions, and instructions of Solarbeam. Service Company shall provide the necessary personnel, materials, and facilities and do all things necessary for and incidental to the furnishing of all required services and/or supplies. Notwithstanding paragraphs 7 and 8, each Party assumes liability for its own default or other failure to perform in accordance with the terms of this Agreement and will indemnify the non-defaulting party for damages sustained as a result of such default or other failure to perform, including attorney's fees, all costs of litigation and interest. Notwithstanding any other provision of this Agreement, the Service Company agrees to indemnify Solarbeam against liability, including costs, for actual or alleged claim or contribution infringement of or inducement to infringe any United States or foreign patent, trademark or copyright, arising out of the performance of the contract, provided the Service Company is reasonably notified of such claims and proceedings.
10. **Governing Law.** This Agreement shall be governed by the laws of Florida except those provisions which are based on the FAR or other agency clauses, which shall be construed and interpreted according to the federal common law of government contracts as applied by federal judicial bodies and quasi-judicial federal agencies. Any dispute arising under this Agreement shall be tried in either the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or the United States District Court in and for the Southern District of Florida, and the parties hereby consent to jurisdiction and venue in such courts.
11. **Compliance.** Service Company agrees to abide by the conditions and terms of the General Services Administration Contract, including the following Federal Acquisition Regulation clauses which are incorporated by reference to the extent they are applicable and required:
- a. 52.222-26, Equal Opportunity (E.O. 11246);
  - b. 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. § 4212);
  - c. 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. § 793);
  - d. 52.219-8, Utilization of Small Business Concerns; and
  - e. 52.222-41, Service Contract Act of 1965 (41 U.S.C. § 351).

The Service Company agrees to comply with 31 U.S.C. § 1352 relating to limitation on the use of appropriated funds to influence certain federal contracts; 18 U.S.C. § 431 relating to officials not to benefit; 40 U.S.C. § 327 *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. § 51-58 Anti-Kickback Act of 1986; 41 U.S.C. § 265 and 10 U.S.C. § 2409 related to Whistle Blower Protection; 49 U.S.C. § 40118, Fly American; and 41 U.S.C. § 423 relating to procurement integrity.

12. **Insurance.** Service Company agrees to maintain, at its own expense, during the performance of this Agreement, the kinds and minimum amounts of insurance required by the Government. The insurance shall cover Worker's Compensation and Employer's Liability Insurance, General Liability Insurance and Automobile Liability Insurance. Before commencing work under this Agreement the Service Company shall provide Solarbeam with proof that the required insurance has been obtained. If required by the Government, the Service Company will provide an individual insurance rider for the government site where the purchase order or requirement has been issued, shall send the insurance rider to Solarbeam, and shall name Solarbeam as an additional insured. The insurance policy shall contain an endorsement to the effect that no adverse material change (including termination) can occur until permitted by the laws of the State in which the contract is to be performed or for 30 days following written notice to the Contracting Officer of the Government, whichever period is longer.
13. **Sanctions.** The Service Company represents that it is not suspended or debarred and it is not on the List of Suspended and Debarred Parties maintained by the GSA. The Service Company represents that it is not using in the performance of the contract, any supplies or services originating from sources within or that were located in or transported from or through, countries whose products are banned from importation into the United States. Those countries currently include Cuba, Iran, Iraq, Libya, North Korea and Sudan. The Service Company represents that it shall not use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.
14. **Notice of Labor Disputes.** If the Service Company has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance of this Agreement, it shall immediately give Solarbeam written notice.
15. **Term.** The term of this Agreement shall be from the date of execution by the Parties through the end of the initial term of the GSA contract. This Agreement may be terminated earlier than at the end of such initial term upon the following terms and conditions:
  - a. At any time upon the written mutual agreement of the Parties.
  - b. By either Party upon material breach by the other Party. The Service Company shall not be in default because of any failure to perform that arises from causes beyond the control and without the fault or negligence of Service Company.

- c. In the event the Service Company enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Service Company agrees to immediately furnish by certified mail or electronic commerce method to Solarbeam, written notice of the bankruptcy.
- d. By either Party, without cause, by providing ninety (90) days prior written notice to the other party.
- e. Solarbeam may terminate performance of work under this Agreement if and to the extent the Government terminates performance of work under the GSA Contract for the Convenience of the Government. Upon written notice by Solarbeam the Service Company shall immediately stop all work covered by the termination. Subject to the terms of this Agreement, the Service Company shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination plus reasonable charges the Service Company can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. Solarbeam may take any action that may be necessary, or that Solarbeam may direct, for the protection and preservation of the property related to this Agreement that is in the possession of the Service Company and in which Solarbeam or the Government has or may acquire an interest.
- f. The Service Company may be terminated by Solarbeam if any officer or employee of the Service Company offers to give or gives a gratuity to any officer or employee of the government, and intends by that gratuity to obtain a contract or favorable treatment. In addition, notwithstanding any other provision of this Agreement, Service Company shall indemnify Solarbeam for all damages, fines and penalties, including exemplary damages, which may be imposed by the government, for the giving of a gratuity to any officer or employee of the government or for any other violation by the Service Company of any federal, state, or local laws, ordinances, rules or regulations.

16. **Confidentiality.** Except as provided in this Agreement, the Service Company agrees that it will not, without compulsion of legal process, give or cause to be given, or in any way publish or disseminate to any person or entity, the terms of this Agreement or the terms of the prime contract between Solarbeam and the General Services Administration, except to the extent that information is publicly available.

17. **Service Company Guide.** The Service Company has read the GSA Service Company Guide, Attachment 2, which is incorporated by reference, and will comply with its requirements.

18. **Authorization.** The undersigned individuals signing this Agreement on behalf of Solarbeam and the Service Company represent and warrant that they are authorized to execute this Agreement.

19. **Nonassignment.** This Agreement cannot be assigned or subcontracted by either party without the other party's prior written consent, which consent shall include a requirement that any other contractor will agree to abide by the terms and conditions herein. This Agreement shall be binding upon and inure to the benefit of the Parties' respective successors and assigns.

20. **Waiver or Modification.** No failure or delay in requiring strict compliance with any obligation of this Agreement (or in the exercise of any right or remedy provided herein) shall constitute a waiver or modification of any such obligation, requirement, right or remedy or preclude the exercise of any right or remedy or right to require strict compliance with any obligation set forth herein.

21. **Force Majeure.** Neither party shall be liable to the other for any delay or failure in performance hereunder due to fires, strikes, labor disputes, embargoes, requirements imposed by governmental regulations, civil or military authorities, acts of God, the public enemy or other causes which are beyond the control of the party unable to perform (hereinafter "force majeure"). If a force majeure occurs, the party delayed or unable to perform shall give immediate notice to the other party and the other party may terminate this Agreement if the force majeure remains in effect for more than thirty (30) days.

22. **Entire Agreement.** The terms in this Agreement and any attachments referred to herein, which are incorporated into the Agreement by reference, constitute the entire agreement between the parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. This Agreement may only be modified by a writing signed by both parties.

23. **Compliance with Laws.** Service Company shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations in the performance of this Agreement.

24. **Attorneys' Fees.** The prevailing party in any dispute arising under this Agreement shall recover its reasonable attorneys' fees, in addition to recoverable costs and disbursements, at trial and on any appeal.

SOLARBEAM INTERNATIONAL, INC.  
200 NE 2<sup>nd</sup> Drive  
Homestead FL 33030

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signature)

By: \_\_\_\_\_  
(Authorized Signature)

Name: \_\_\_\_\_  
(Print or Type)

Name: \_\_\_\_\_  
(Print or Type)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## GSA SERVICE COMPANY GUIDE

### **THIS GUIDE CONTAINS ESSENTIAL INFORMATION REGARDING THE SERVICE COMPANY'S RESPONSIBILITIES WHILE PARTICIPATING UNDER SOLARBEAM INTERNATIONAL INC.'S FEDERAL SUPPLY SCHEDULE.**

Multiple Award Schedule 084, FSC Group 6350, Total Solutions for Law Enforcement, Security, Facilities Management, Fire, Rescue, Clothing, Marine Craft and Emergency/Disaster Response.

Contract Number GS-07F-0339W  
Delivery Time: 45 days  
Emergency Delivery: Contact Solarbeam  
Warranty: Standard Commercial  
Minimum Order: \$0.00  
Contract period: March 23, 2010-March 22, 2015

As Prime Contractor, Solarbeam International, Inc., is subject to the Equal Opportunity Clause as provided in Executive Order 11246, dated September 24, 1965, and amended by Executive Order 11375, dated October 13, 1967. The Equal Opportunity Clause requires that the Service Company display the standard Equal Opportunity poster in a conspicuous place available to all employees and applicants for employees. Prime Contractors and Subcontractors are required to file the Equal Opportunity Employer Information Report EEO-1, standard form 100.

Service Company is required to provide pre-sale technical support (preliminary site surveys, design, and engineering), process orders, and provide post-sale warranty support (see Value Added Services below).

#### **Orders**

Orders are received and processed by the Solarbeam International, Inc. (hereinafter Solarbeam) customer service office. Government orders may be sent directly to the Service Company by the Government. In the event the Government sends an order directly to the Service Company, the Service Company shall send Solarbeam the Government purchase order, together with the Service Company purchase order (showing the Government purchase order of Solarbeam items from the Solarbeam GSA schedule) to be delivered by the Service Company to the appropriate Government site. Solarbeam will ship the items listed on the Government purchase order (and the Service Company purchase order) to the Service Company for delivery to the Government site.

#### **Payment**

Government orders shall be placed in the name of Solarbeam and payment accepted in the name of Solarbeam. Solarbeam will pay Service Company within ten business days of Solarbeam receiving payment from the Government on each order. Solarbeam Customer Service is the point of contact for the Service Company and Government contract administration. In the alternative, the Service Company is authorized to accept payment from the Government. When the Service Company receives a direct payment from the Government, the Service Company shall pay Solarbeam within ten business days of receiving payment from the Government on each order.

Inquiries should be addressed to:

GSA Coordinator  
SOLARBEAM INTERNATIONAL, INC.  
200 NE 2<sup>nd</sup> DRIVE  
HOMESTEAD, FL 33030  
Phone No.: (305) 245-5854  
Facsimile: (305) 248-7429  
Email: gsa@solarbeam.com

#### **Value Added Services**

The Service Company will offer the following Value Added Services:

##### **Pre -Sale**

1. Site survey - A complete walk through of the site will be performed by the Service Company to determine the vulnerability assessment of the site. Because each site has different security needs, a complete risk assessment will be performed by the Service Company. Service Company will evaluate the intrusion

detection and central monitoring capability needs (e.g., access control, duress, fire, closed circuit CCTV, define perimeter to be protected and topography).

2. Overall Security System and Central Monitoring Capability Specification - As a result of the Site Survey, Service Company will provide written specifications for the site. This specification will provide parts and labor for evaluation. If the site provides specifications to the Service Company, the Service Company will prepare a proposal meeting the needs of the site for the installation of such system.

### **Installation**

1. In coordination with site management, Service Company will provide complete installation. Service Company has trained installation employees familiar with Solarbeam products. Service Company has the staff, training, and out-fitting of installation employees. Service Company will perform installation, including wire installation, mounting of equipment, final connections, programming, and final test and inspection.
2. Installation by the Service Company includes complete training on the operation of the system for the on-site building supervision.

### **Warranty and Downloading Capability**

1. Service Company will honor Solarbeam's warranty and provide service for repairs for the life of the system. Solarbeam's obligation shall be limited to repairing or replacing at its option, free of charge for materials or labor, any part which is provided not in compliance with Solarbeam's specifications or proves defective in materials or workmanship under normal use and service for a maximum of two years from the manufacturing date code. Solarbeam warrants its products as follows: (a) new defective products, defined as items returned within 90 days of purchase or 210 days of manufacture; (b) defective in warranty, defined as items not returned within 90 days of purchase or 210 days of manufacture but within the two years from manufacturing date code unless extended by special warranty arrangements; and (c) out of warranty, defined as product returned that has a date code older than two years from the manufacturing date code. Factory direct returns require a "return for authorization for credit" that should be requested from Solarbeam's Office of Customer Service prior to returning the items. The warranty shall not apply to equipment not manufactured by Solarbeam or to equipment which shall have been repaired or altered by others or to equipment which, has been subjected to negligence, accident or damage beyond Solarbeam's control. The warranty shall not apply to the improper operation of security equipment, maintenance or storage or to other than normal use of service. The foregoing warranties are exclusive and in lieu of all other express and implied warranties except warranties of title. Service and repairs can be contracted in advance or arranged for on an as needed basis with any Service Company authorized by Solarbeam.
2. Solarbeam on-line downloading capability allows evaluation, and trouble shooting, of any problem to be done from the Service Company location resulting in minimum disruption to the user site.

### **Additional Service Company Responsibilities**

1. Service Company will provide when requested, required proof of insurance and any insurance rider either to Solarbeam, or the site where the work is to be performed, or as directed by the government-contracting officer.
2. Service Company will provide Solarbeam product documentation as required to the site manager or other requesting government employees.
3. Pricing will be provided for Solarbeam offered equipment in accordance with the applicable GSA price schedule. Labor and complete installation, including wire and hardware, will be priced by the Service Company and must be accepted by the government prior to initiating work. Pricing of installation may include the expenditure by the Service Company of up to the government approved micro-purchase amount\* for miscellaneous wire and hardware. If there is a need to exceed the government micro-purchase\* amount for wire and hardware, authorization should be coordinated through the Solarbeam Government Sales Manager, Telephone: (305) 245-5854.

\* The present government approved micro-purchase amount is \$3,000.