

Attachment B

BASIC ORDERING AGREEMENT BETWEEN GENERAL TERMS AND CONDITIONS FOR COMMERCIAL ITEMS AND SERVICES DOE CONTRACTORS (07/31/2014)

1. DEFINITIONS

The following terms shall have the meanings below:

- a. Government means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
- b. Seller means the person or organization that has entered into this Basic Ordering Agreement (BOA).
- c. Company means any DOE Contractor and authorized Subcontractor utilizing the BOA.
- d. Item means "commercial items or services" and "commercial component", as defined in FAR 52.202-1.
- e. Order means individual requests for Items or Services (hereinafter referred to as "Item") issued under this BOA.
- f. Authorized Subcontractor means a subcontractor holding an active subcontract issued by a DOE Contractor.
- g. BOA Procurement Representative means the person responsible for negotiating and administrating the BOA.
- h. Order Procurement Representative means the person responsible for negotiating and administration of the respective Order.
- i. Site Specific Terms and Conditions mean those unique requirements of the Company issuing Orders under this BOA which are signed by Company and Seller.

2. ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) item description, (2) face of the Order, (3) Site Specific Terms and Conditions, (4) face of the BOA, and (5) the BOA general terms and conditions.

3. TITLE AND ADMINISTRATION

All property rights and interests resulting from this BOA and Orders shall pass directly from Seller to the Government. Company shall make payments under Orders from funds advanced by the Government and agreed to be advanced by DOE, and not from its own assets. The Company may assign the BOA and Orders to DOE or its designee, and in case of such transfer and notice thereof to Seller, Company shall have no further responsibilities hereunder.

4. ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing the BOA or Orders or delivering the items identified therein, agrees to comply with all the terms and conditions, all specifications and all other documents that this BOA or Order incorporates by reference or attachment. Company hereby objects to any Terms and Conditions contained in any acknowledgment of the BOA or Order that are different from or in addition to those

mentioned in this document. Failure of Company to enforce any of the provisions of the BOA or Order shall not be construed as evidence to interpret the requirements of the BOA or Order, nor a waiver of any requirement, nor of the right of Company to enforce each and every provision. All rights and obligations shall survive final performance of the BOA or any Order there under.

5. NEW MATERIALS

Unless otherwise specified in the BOA or Order, all items delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property. This does not include the use of recycled or recovered material as defined by the Environmental Protection Agency in 40 CFR 247.

6. TRANSPORTATION

Transportation shall be "FOB Destination" unless specified otherwise in the Order and no insurance cost shall be allowed unless authorized in writing on the specific Order. The bill of lading shall indicate that the transportation is for the Government and is subject to the standard Government bill of lading terms and any special rates or charges.

7. RISK OF LOSS

Where Company is liable to Seller for loss of conforming items occurring after the risk of loss has passed to Company, Company shall pay Seller the lesser of (1) the agreed price of such items, or (2) Seller's cost of replacing such items. Such loss shall entitle Seller to an equitable extension in delivery schedule obligations.

8. PAYMENT

Unless otherwise provided, terms of payment shall be Net 30 days from the latter of (1) receipt of Seller's proper invoice, if required, or (2) delivery (and acceptance, if required by the Order) of items/completion of work. Any offered discount shall be taken if payment is made within the discount period that Seller indicates. Payments may be made either by check, purchase card or electronic funds transfer, at the option of Company. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made. Notwithstanding anything to the contrary stated herein, the Company shall be entitled at any and all times to set off against any amounts payable by the Company hereunder any amount owing from Seller to the Company under Orders or any subcontracts with Seller.

9. DATA REPORTING REQUIREMENTS

- a.** Upon written request from the Government or Company, Seller shall report quarterly savings to the contractually named point of contact from the individual sites utilizing this BOA. Savings shall be calculated in one of the following two established methodologies (noted in the order of precedence):
 - 1.** BOA pricing paid below seller pricing previous price paid (Historically Pricing or established GSA Pricing).
 - 2.** BOA pricing paid below seller's most preferred supplier pricing.
- b.** Upon written request from the Government or Company, Seller shall report annual savings data, based on a fiscal year of October 1 - September 31, to the ICPT steering Committee Chair.

10. COMPLIANCE WITH LAWS

- a.** Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent Orders, referenced DOE directives, rules, and

regulations (including DOE regulations) and such compliance shall be a material requirement of this BOA and resulting Orders. Seller warrants that each chemical substance constituting or contained in items furnished under this BOA is on the list of substances published by the Administrator of the Environmental Protection Agency pursuant to the Emergency Preparedness and Community Right-to-Know Act and Toxic Substances Control Act as amended. With each delivery Seller shall provide Company any applicable Material Safety Data Sheet as required by the Occupational Safety and Health Act and applicable regulations including, without exception, 29 CFR 1910.1200.

- b. Seller shall include this article in all subcontracts, at any tier, involving the performance of this BOA.

11. TERMINATION FOR CAUSE

- a. Only the Company issuing the BOA may terminate the BOA for cause, in whole or in part, if the Seller fails to comply with any of the terms of the BOA and does not cure such non-compliance within 15 days of receipt of written notice from Company or an alternative cure period mutually agreed upon by the parties. Only the Company issuing any Order may terminate the Order for cause, in whole or in part, if Seller fails to comply with any of the terms of the Order and does not cure such non-compliance within 15 days of receipt of written notice from Company or an alternative cure period mutually agreed upon by the parties. In either event, the Company shall not be liable for any amount for items not accepted.
- b. If the BOA or any Order is terminated for cause, the Company may require Seller to deliver to the Company any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of the BOA or Order. The Company shall pay the agreed-upon price for completed items delivered and accepted. The Company and Seller shall agree on the amount of payment for all other deliverables.
- c. Seller shall not be liable to Company for delays in performance occasioned by causes beyond Seller's reasonable control and without its fault or negligence.
- d. The rights and remedies of the Company in this clause are in addition to any other rights and remedies provided by law or under the BOA or resulting Order.

12. BANKRUPTCY

If Seller enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the BOA Procurement Representative within five days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the BOA and Order numbers for which final payment has not been made.

13. TAXES

Taxes shall be collected and paid in accordance with the Site Specific Terms and Conditions of the respective Order.

14. CHANGES (FAR 52.243-1)

CHANGES—FIXED PRICE (AUG 1987)

- (a) The Company may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any

one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government or Company in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Company shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Seller must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Company decides that the facts justify it, the Company may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Seller's proposal includes the cost of property made obsolete or excess by the change, the Company shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Seller from proceeding with the contract as changed.

15. TERMINATION FOR CONVENIENCE

The Company issuing the BOA may, in its sole discretion, terminate the BOA, or may terminate the fabrication of all or any portion of the items not then completed, at any time, by giving the Seller a written notice of termination. The Company issuing the Order may, in its sole discretion, terminate the order, or may terminate the fabrication of all or any portion of the items not then completed, at any time, by giving the Seller written notice of termination. Upon receipt of a notice of termination, the Seller shall, unless the notice requires otherwise, discontinue all performance on the date and to the extent specified in the notice, and shall otherwise minimize costs to the Company. Payment for items already completed or in the process of completion, shall be adjusted between the Seller and the Company in a fair and reasonable manner, but such payment shall exclude any allowance for the uncompleted portion of the items, or any anticipated profits thereon. Such payment for items already completed or in the process of completion shall be the total compensation due to the Seller for termination for convenience by the Company.

16. SUSPENSION

The Company issuing the BOA may, for any reason, direct the Seller to suspend performance of any part of or all of the performance of the BOA for an indefinite period of time. The Company issuing the Order may, for any reason, direct the Seller to suspend performance of any part of or all of the performance of the Order. If any such suspension significantly delays the progress of or causes the Seller additional direct expenses in the performance of the BOA or any Order, not due to the fault or negligence of the Seller, the compensation to the Seller shall be adjusted by a modification to the BOA or any Order and the time of performance shall be extended by the actual duration of the suspension. Any claim by the Seller for compensation of a schedule extension must be supported by an appropriate document asserted within ten (10) days from the date an order is given to the Seller to resume the performance of the BOA or any Order.

17. INCORPORATION BY REFERENCE

The BOA incorporates certain clauses by reference. These clauses apply as if they were incorporated in their entirety. For Federal Acquisition Regulation (FAR) provisions incorporated by reference, "Contractor" means Seller and "Contracting Officer" means the Company BOA Procurement Representative. The FAR clauses may be obtained from the Company upon request.

The following clauses are incorporated by reference and Seller can submit waiver requests where applicable:

- FAR 52. 219-8 Utilization of Small Business Concerns (MAY 2004)
- FAR 52.222-26 Equal Opportunity (APR 2002), (The required poster is available at:
<http://www.dol.gov/dol/esa/public/regs/compliance/posters/eeo.htm>)
- FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, (DEC 2001), and
- FAR 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)
- FAR 52.227-3 Patent Indemnity (APR 1984)
- FAR 52.227-9 Refund of Royalties (APR 1984)
- FAR 52.222-21 Prohibition of Segregated Facilities (FEB 1999)

18. WARRANTY AND DISCLAIMER

a. Seller shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Seller or by third-party providers, or because of other causes beyond Seller's reasonable control, but Seller shall use reasonable efforts to provide advance notice in writing or by email of any scheduled service disruption.

b. HOWEVER, SELLER DOES NOT WARRANT THAT THE 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 SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

19. MISCELLANEOUS

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. This Agreement is not assignable by either party without the other party's written consent, not to be unreasonable withheld, except that Company may transfer and assign this Agreement without consent to the Department of Energy (DOE), or a DOE designated successor. This Agreement along with the documents referenced in Sections 1 and 2 are 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, and all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. 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 whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

20. CONFIDENTIALITY; PROPRIETARY RIGHTS

a. Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business that is marked at the time of disclosure as "confidential" or "proprietary" or the like (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Seller Proprietary Information shall include any technical specifications and pricing, even if not so marked or designated. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use or divulge to any third person any such Proprietary Information (except in performance of the Services or as otherwise permitted herein). The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public without breach of this Section, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

b. Seller shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies, and Seller will be free to (i) use such information and data (during and after the Term) solely in an aggregate or other de-identified form to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Seller offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.

21. RESTRICTIONS AND RESPONSIBILITIES

a. Company will not, directly or indirectly: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any Software, documentation or data related to the Services or upon which the Services are based; (ii) modify, translate, or create derivative works based on the Services or any Software; (iii) use the Services for timesharing or service bureau purposes or otherwise for the benefit of a third party (except its DOE client); or (iv) obscure any proprietary notices or labels. Company may use the Services only for sessions or meetings in which Company is an active participant.

b. Company represents, covenants, and warrants that Company will use the Services only in compliance with Seller's Acceptable Use Policy attached at Schedule 1 and all applicable laws and regulations (including but not limited to policies and laws related to privacy (intellectual property, consumer and child protection, obscenity or defamation). Seller may suspend any use of the Services it reasonably believes may be (or that is alleged to be) in violation of the foregoing.

SCHEDULE 1

Acceptable Use Policy

This Acceptable Use Policy (the "AUP") is incorporated by reference into the BOA. The following terms and conditions supplement the BOA and are not exhaustive. Please be respectful of others when you use the Service.

When you use the Services, you will not:

- Communicate any message or otherwise transmit content that: (i) is unlawful, harmful, threatening, abusive, harassing, tortious, fraudulent, excessively violent, defamatory, vulgar, obscene, pornographic, libelous, invasive of another's privacy, hateful racially, ethnically or otherwise objectionable; (ii) you do not have a right to transmit under any law or under contractual or fiduciary relationships; (iii) poses or creates a privacy or security risk to any person; or (iv) infringes any intellectual property or other proprietary rights of any party;
- Impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- Exploit or solicit personal information from anyone under the age of 18;
- Violate any applicable local, state, national or international law (including without limitation export laws), or any regulations having the force of law;
- Interfere with, damage, disable, overburden, impair or disrupt the Service, servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service; or
- Obtain or otherwise attempt to access any materials or information through any means not intentionally made available or provided for through the Service.

If you become aware of any actual or potential violations of the foregoing, please contact us at support@bluejeans.com. Without limiting any other remedies Seller may have, Seller reserves the right to investigate and take appropriate legal action against anyone who, in our discretion, violates this AUP, including without limitation, suspending or terminating the account of such violators.

