

## PART I GENERAL PROVISIONS



*The Purchase Order is subject to all instructions on the face thereof, and also to the following general provisions.*

### 1. DEFINITIONS

The following terms as used throughout this Order shall have the meanings set forth below:

- (a) "Arcata" or "Buyer" means Arcata Associates, Inc..
- (b) "Seller" or "Contractor" means the individual, corporation, or association contracting to furnish the items or services described in this Order.
- (c) "Contract", "Subcontract", "Purchase Order", "Agreement", and "Order" (whether capitalized or not) are used interchangeably and refer to this procurement.

### 2. APPLICABLE LAW

The validity, construction, and interpretation of this Order, and the rights and duties of the parties to this transaction, shall be governed by the laws of the state from which the Order emanated (see letterhead of the Order). The invalidity of one Order provision shall not affect the validity of any other provision.

### 3. COMPLIANCE WITH LAWS

Seller warrants compliance with all applicable Government laws, executive orders, rules, and regulations regarding the production, sale, and delivery of the supplies and services specified and hereby indemnifies Buyer against any loss or liability due to Seller's violations or noncompliance with such laws, executive orders, rules, and regulations.

### 4. WARRANTY

Seller represents and warrants (1) that the rates charged for the goods and/or services purchased pursuant hereto shall be no higher than Seller's current rates to any other customer for the same quality and quantity of such goods or services; (2) that all goods and services delivered pursuant hereto will be new, unless otherwise specified, and free from defects in material and workmanship; (3) that all goods and services will conform to applicable specifications, drawings, and standards of quality and performance, and that all items will be free from defects in design and suitable for their intended purpose; (4) that the goods covered by this order are fit and safe for consumer use, if so intended. All representations and warranties of Seller together with its service warranties and guarantees, if any, shall run to Buyer and Buyer's customers. The foregoing warranties shall survive any delivery, inspection, acceptance, or payment by Buyer.

### 5. PRICE

The price of the supplies includes all applicable federal, state, and local taxes, duties, and fees, unless otherwise provided in this order. Seller warrants that the prices, terms, warranties, and benefits contained in this order are comparable to or better than those offered to any other of seller's customers. Buyer shall receive the benefit prospectively or retrospectively if seller offers any item or service included in this order to any other customer at a lower price, more favorable terms, more favorable warranties, or more favorable benefits up to one year after completion of this order.

### 6. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

In connection with this procurement, Seller certifies that the proposed prices were reached independently, without consultation, communication, or agreement with any others for restricting competition, and that the prices quoted have not been nor will be knowingly disclosed, directly or indirectly, by Seller, to any other Offeror or competitor.

### 7. INDEMNIFICATION

(a) Seller shall indemnify, defend and hold Arcata and Arcata's customers harmless from and against any and all damages, losses, liabilities and expenses (including reasonable attorneys' fees) arising out of or relating to any claims, causes of action, lawsuits or other proceedings, regardless of legal theory, that result, in whole or in part, from Seller's (or any of Seller's subcontractors, suppliers, employees, agents or representatives): (i) intentional misconduct, negligence, or fraud, (ii) breach of any representation, warranty or covenant made herein, or (iii) products or services including, without limitation, any claims that such products or services infringe any United States patent, copyright, trademark, trade secret or any other proprietary right of any third party.

(b) Buyer shall promptly notify Seller of any claim against Buyer that is covered by this indemnification provision and shall authorize representatives of Seller to settle or defend any such claim or suit and to represent Buyer in, or to take charge of, any litigation in connection therewith.

(c) Infringement Indemnity. (1) In lieu of any warranty by Buyer or Seller against infringement, statutory or otherwise, it is agreed that Seller shall defend, at its expense, any suit against Buyer or its customers based on a claim that any item furnished under this order or the normal use or sale thereof infringes any U.S. Letters patent or copyright, and shall pay costs and damages finally awarded in any such suit, provided that Seller is notified in writing of the suit and given authority, information, and assistance at Seller's expense for the defense of same. If the use or sale of said item is enjoined as a result of such suit, Seller, at no expense to Buyer, shall obtain for Buyer and its customers the right to use and sell said item or shall substitute an equivalent item acceptable to Buyer and extend this patent indemnity thereto; (2) Notwithstanding the foregoing paragraph, when this order is performed under the Authorization and Consent of the U.S. Government to infringe U.S. Patents, Seller's liability for infringement of such Patents in such performance shall be limited to the extent of the obligation of Buyer to indemnify the U.S. Government.

### 8. DISCLOSURE

Seller shall not disclose information concerning work under this Subcontract to any third party, unless such disclosure is necessary for the performance of the subcontract effort. No news releases, public announcement, denial or confirmation of any part of the subject matter of this Subcontract or any phase of any program hereunder shall be made without prior written consent of Buyer. The restrictions of this paragraph shall continue in effect upon completion or termination of this Subcontract for such period of time as may be mutually agreed upon in writing by the parties. In the absence of a written established period, no disclosure is authorized. Failure to comply with the provisions of this Clause may be cause for termination of this subcontract.

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### 9. INSPECTION AND ACCEPTANCE OF THE SUPPLIES.

If the supplies or the tender of delivery fail in any respect to conform to this Purchase Order, buyer may accept or reject the whole or any unit thereof. Buyer may reject supplies within a reasonable time (not less than thirty business days) after delivery or tender. Acceptance occurs after buyer signifies to seller that it has accepted the supplies. Acceptance does not of itself impair any other legal or equitable remedy for non-conformity. Acceptance may be revoked if it was made with the reasonable assumption that any non-conformity would be cured, the non-conformity was difficult to discover before acceptance, or is otherwise permitted by law or equity. Revocation of acceptance is equivalent to rejection. Upon rejection the buyer may, at its option, and in addition to any other available recourse, return at seller's cost the supplies (a) for a complete credit, (b) repair and return at no increase in price and on buyer's schedule, or (c) an exchange on buyer's schedule.

### 10. REMEDIES FOR DEFECTS

If any of the supplies are found at any time prior to acceptance to be defective in material or workmanship, or otherwise not in conformity with the requirements of this order, buyer (in addition to any other rights which it may have under warranties or otherwise) may at its option (1) correct or have corrected the nonconformity at seller's expense, or (2) reject and return such supplies or other deliverable items at seller's expense, such supplies or other deliverable items not to be replaced without suitable written authorization from buyer. If seller fails promptly to remove such supplies or lots of supplies that are required to be removed, or promptly to replace or correct such supplies or lots of supplies, buyer either (1) may by contract or otherwise replace or correct such supplies and charge to seller the cost occasioned to buyer thereby, or (2) may terminate this contract for default; and in either event may charge seller the costs of damages occasioned to buyer thereby. Unless seller corrects or replaces such supplies within the delivery schedule, buyer may require the delivery of such supplies at a reduction in price that is equitable under the circumstances. To defray the cost of shipping and handling, a service charge on rejected items will be billed to seller.

### 11. CHANGES

Buyer shall have the right to make changes in this order provided the changes are the kind that seller makes for other buyers. If any such change affects delivery or amount to be paid by buyer, seller shall notify buyer immediately. Any claim for adjustment shall be submitted within 30 days from date of receipt by seller of notification of change. No additional charge will be allowed unless authorized by buyer in writing. Any change in this order shall be authorized only by a Change Order hereto duly executed by the buyer.

### 12. DEFAULT

(a) The Buyer may, by written notice of default to the Seller, terminate the whole or any part of this Order in any one of the following circumstances: (i) if Seller fails to make progress in the work so as to endanger performance or (ii) if Seller fails to perform any of the other provisions of this Order in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as Buyer may authorize in writing) after receipt of notice from the Buyer specifying such failure; or (iii) Seller becomes insolvent or the subject of proceedings under any law relating to bankruptcy or the relief of debtors or admits in writing its inability to pay its debts as they become due.

(b) If this Order is so terminated, Seller shall submit a final termination settlement proposal to the Buyer. The Seller shall submit the proposal promptly but no later than six (6) months from the effective date of the termination. If Seller fails to submit the proposal within the time allowed, the Buyer may determine the amount, if any, due the Seller because of the termination. The amount will be determined in accordance with FAR Clause 52.249-6 in effect on the date of the prime contract.

(c) Seller shall transfer title and deliver to Buyer, in the manner and to the extent requested in writing by Buyer at or after termination such complete articles, partially completed articles and materials, parts, tools, dies, patterns, jigs, fixtures, plans, drawings, information and contract rights as Seller has produced or acquired for the performance of the terminated part of this Order, and Buyer will pay Seller the contract price for complete articles delivered to and accepted by Buyer and the fair value of the other property of Seller so requested and delivered.

(d) Seller shall continue performance of this Order to the extent not terminated. Buyer shall have no obligations to Seller with respect to the terminated part of this Order except as herein provided. In case of Seller's default, Buyer's rights as set forth herein shall be in addition to Buyer's other rights although not set forth in this Order.

(e) Seller shall not be liable for damages resulting from default due to causes beyond the Seller's control and without Seller's fault or negligence in accordance with FAR Clause 52.249-14 "Excusable Delays" provided, however, that if Seller's default is caused by the default of a subcontractor or supplier, such default must arise out of causes beyond the control of both Seller and subcontractor or supplier, and without the fault or negligence of either of them and, provided further, the supplies or services to be furnished by the subcontractor or supplier were not obtainable from other sources.

### 13. REMEDIES FOR DEFAULT

Buyer, by written notice to seller, may terminate this order, in whole or in part, if seller is in default. Upon such termination, buyer may procure, upon such terms as it shall deem appropriate, supplies similar to those so terminated, in which case seller shall continue performance of this order to the extent not terminated and shall be liable to buyer for any excess cost for such similar supplies. As an alternate remedy, and in lieu of termination for default, buyer, at its sole discretion, may elect (1) to extend the contract delivery schedule, and/or (2) to waive other deficiencies in seller's performance, in which case an equitable reduction in the Purchase Order price shall be negotiated. If the failure to perform is caused by the default of a subcontractor at any tier and if such default arises out of causes beyond the control of both seller and subcontractor and without the fault or negligence of either of them, seller shall not be liable for any excess costs for the failure to perform, unless the supplies or services to be furnished by subcontractor were obtainable from other sources in sufficient time to permit seller to meet the required delivery schedule. The rights and remedies of the buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by this order or by law or equity. Failure of buyer to insist on strict performance shall not constitute a waiver of any of the provisions of this order or waiver of any other default of seller.

### 14. STOP-WORK ORDER

Buyer may, at any time, by written notice to seller, require seller to stop all or part of the work or delivery of supplies called for by this order for a period of up to ninety days and for any additional agreed period (Time Period). Upon receiving such notice, seller shall immediately comply with its terms and take all reasonable steps to avoid incurring any additional costs associated with the stopped work during the Time Period. Buyer will, prior to the end of the Time Period, either cancel the stop work order or terminate this order in whole or in part as permitted

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by this order. If a Stop-Work Order is issued, buyer shall modify the delivery schedule and/or price in this order as buyer deems equitable under the circumstances, provided seller requests such change within fifteen days of the end of the Time Period.

### 15. TERMINATION FOR CONVENIENCE

For its own best interest, Buyer reserves the right to terminate this contract, in whole or in part, by written notice of termination for convenience to Seller. If the contract is so terminated, the parties, duties and obligations, including Seller's compensation, shall be equitably negotiated between Buyer and Seller. If the terminated contract is solely for services, Buyer shall be liable only for payment for services performed before the effective date of termination.

### 16. TOOLS, MATERIALS, AND INFORMATION

Designs, sketches, drawings, blueprints, patterns, dies, molds, tools, gauges, equipment, or special appliances made or procured by Seller especially for producing the product covered by this Order, then, unless otherwise provided, immediately upon manufacture or procurement shall become the property of Arcata. Unless otherwise provided on the face of this Order by Supplement or Change Order, any such items or materials or engineering data or other technical proprietary information furnished by and paid for by Arcata shall become consignment at Seller's risk, shall be used exclusively in the production of Arcata products required by this Order, shall be subject to disposition by Arcata at all times and, upon demand, shall be delivered to Arcata.

### 17. EQUIPMENT MODIFICATION/ENHANCEMENTS

Upon approval of equipment configuration by Buyer, if applicable hereto, Seller shall make no modifications, revisions, or changes affecting form, fit, or function of the supplies without written consent of Buyer.

### 18. WORK ON ARCATA OR ITS CUSTOMER'S PREMISES

When the order requires Seller to perform work on Buyer's or Buyer's customer's premises, the Seller shall take all necessary precautions to prevent any injury to persons or damage to property during the progress of such work. The Seller agrees to indemnify Buyer against all loss or liability resulting from any act or omission by Seller, its employees, agents, or subcontractors. Seller shall maintain Public Liability, Property Damage, and Employee's Liability and Compensation Insurance in sufficient amount to protect Buyer from said risks and from claims under any applicable Workmen's Compensation and Occupational Disease Acts, or other applicable law, status, or regulation.

### 19. SUBCONTRACTING

Seller is hereby granted the right to subcontract any portion of this order, provided that all work so subcontracted, when combined, does not amount to a substantial portion of the order. Nothing in this order shall be seen as prohibiting seller's purchase of standard commercial articles, raw materials, or other supplies specified in this order if these are typically purchased by seller in the normal course of business. This right to subcontract shall not be deemed an assignment of obligation and seller shall remain liable under this order regardless of subcontracts.

### 20. ASSIGNMENT BY SELLER

Except as herein otherwise expressly provided, neither this subcontract/order nor any interest hereunder nor any sums becoming due to the Seller by reason hereof shall be assignable by the Seller without the prior written consent of the Buyer, provided, however, that claims for money due or to become due to the Seller from the Buyer arising out of this subcontract/order may, with written consent of the Buyer, be assigned to a bank trust company, or other financial institution, including any federal lending agency.

### 21. SELLER CONTACTS WITH BUYER'S CUSTOMER AND OTHER VENDORS

Buyer shall be responsible for all liaison and communications with Buyer's customer and Buyer's other vendors for the term of this Purchase Order. Seller shall not communicate with Buyer's customers or Buyer's other vendors regarding this Purchase Order, unless otherwise authorized in writing by Buyer.

### 22. PROPERTY

The rights and obligations of seller with respect to any property furnished by buyer shall be the same as those which seller has with respect to Government Furnished Property under any provisions contained in this order but shall in no event be less than reasonable care. These rights and obligations do not extend to risk of loss, wherein regardless of any provisions to the contrary seller shall retain full risk of loss for any buyer furnished property at all times. Upon order completion, seller shall return all such property to buyer in the same condition in which it was received, allowing for reasonable wear and tear, except to the extent that the property has been incorporated into supplies delivered under this order or consumed in the normal performance of work.

### 23. LEASED EQUIPMENT SUPPORT

Lessor agrees to maintain, in good working order, any leased equipment supplied here. Lessor also agrees to furnish, when ordered by Buyer, any necessary supporting service for the leased equipment supplied. This includes, but is not limited to, spare parts, hardware and software maintenance services, equipment modifications, update bulletins, etc., for the normal useful life of such equipment. This clause shall apply when such support services are necessary and applicable to the equipment furnished.

### 24. INTERPRETATION OF ORDER - NOTICE OF AMBIGUITIES

This Order and any and all identified writings or documents incorporated by reference herein or physically attached hereto constitute the parties' complete agreement; no other prior to contemporaneous agreements either written or oral shall be considered to change, modify, or contradict said Order. Any ambiguity in the Purchase Order will not be strictly construed against the Buyer but will be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting. It is the obligation of the Seller to exercise due diligence to discover and to bring to the attention of the Buyer at the earliest possible time any ambiguities, discrepancies, inconsistencies, or conflicts in or between the specifications and the applicable drawings or other documents incorporated by reference here. Failure to comply with such obligation shall be deemed a waiver and release of any and all claims

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for extra costs or delays arising out of such ambiguities, discrepancies, inconsistencies, or conflicts.

### 25. DISPUTES

Any dispute not disposed of in accordance with the "Disputes Clause" of "Schedule B U.S. GOVERNMENT TERMS PART 1-FAR CLAUSES, 3. DISPUTES" if any, shall be determined in the following manner.

- (a) Buyer and Seller agree to enter into Negotiation to resolve any dispute. Both parties agree to negotiate in good faith to reach a mutually agreeable settlement within a reasonable amount of time.
- (b) If negotiation is unsuccessful, Buyer and Seller agree to enter into binding Arbitration. The American Arbitration Association (AAA) Commercial Arbitration Rules (most recent edition) are to govern this Arbitration. The Arbitration shall take place in Clark County in the State of Nevada. The Arbitrator shall be bound to follow the applicable subcontract provisions and Nevada law in adjudicating the dispute. It is agreed by both parties that the Arbitrator's decision is final, and that no party may take any action, judicial or administrative, to overturn this decision. The judgment rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

Pending any decision, appeal or judgment referred to in this provision or the settlement of any dispute arising under this Subcontract, Seller shall proceed diligently with the performance of this Subcontract.

### 26. ACKNOWLEDGMENT - ACCEPTANCE OF ORDER

This Order becomes a binding contract, subject to the terms and conditions hereof when reasonably accepted by acknowledgment or by commencement of performance. The acknowledgment copy of this Order shall be returned to Arcata within ten (10) calendar days from date of receipt. No other form shall be substituted for the Arcata supplied acknowledgment. The terms and conditions and each thereof contained in this Order cannot be added to, modified, superseded, or otherwise altered except by written instructions signed by an authorized representative of Buyer. Each shipment received by Buyer under this Order shall be deemed valid only on the terms and conditions contained in Part I and/or Part II.

### 27. PACKING

Seller shall be responsible for safe packing in conformity with the carrier's tariff. Seller must number all packages within a shipment with the corresponding numbers shown on the invoice. Seller shall include a packing list bearing the Order Number, quantity, description of items shipped, and any other information called for in the contract. One copy of the packing list shall be forwarded to Buyer, and one copy shall be included in Seller's invoice. No extra charge for packing will be paid unless specifically authorized by the Buyer.

### 28. INVOICES

Invoices are to be submitted in three copies to the address as shown on the face of the Order; to be honored, invoice must show Buyer's Order Number, deliverable description, and quantity and price identical to the Purchase Order. Payment and discount for prompt payment, where offered, will be figured from date the merchandise is accepted by Buyer and date an acceptable invoice is received by Buyer, whichever is later.

### 29. ORDER OF PRECEDENCE

The order of precedence of the documents applicable to this Order shall be as indicated in the Order. If not specified therein, the following order of precedence shall apply:

- (a) Arcata Purchase Order Form
- (b) Part I General Provisions (except as otherwise noted herein)
- (c) Statement of Work
- (d) Technical Specifications
- (e) Other documents appended to the Order

### 30. ASSIGNMENT OF CONTRACT

Seller hereby agrees to permit assignment of the order and the rights granted thereunder, to NASA, Marshall Space Flight Center, or to another party that may be selected by NASA. Any such assignment will be at the sole discretion of NASA.

### 31. AVAILABILITY OF FUNDS FOR NEXT CONTRACT PERIOD

Funds are not presently available for performance under this subcontract beyond December 31 of each Arcata UNITEs contract year. Arcata's obligation for performance of this subcontract is contingent upon the SAIC exercising the next option period and appropriating funds from which payment for subcontract purposes can be made. Should an option year not be exercised by the Government, Arcata shall provide written notice to the subcontractor. No legal liability on the part of Arcata for payment may arise for performance under this subcontract beyond December 31st of each contract option year, until funds are made available to Arcata from the SAIC Contracting Officer for continuation of performance of the prime contract.

## U.S. GOVERNMENT TERMS AND CONDITIONS

*Applicable to all U.S. Government subcontracts*

### PART II - FAR CLAUSES

If this Purchase Order bears a Government contract/subcontract order number, then the following U.S. Government clauses shall also be applicable to this procurement.

1. The Federal Acquisition Regulations (FAR) clauses, listed below and in effect on the date of this Purchase Order, are incorporated herein by reference. In the event of a conflict between Part I, General Provisions and Part II, Government Provisions - FAR clauses, the Part II FAR clauses shall govern. Where used in the FAR, the term "Contractor" shall mean "Seller" and the terms "Government" and "Contracting Officer" shall mean "Buyer". This substitution shall not apply to a clause where the accepted meanings of these terms are given in the body of the FAR clause.

2. Federal Acquisition Regulations (FAR) Clauses Incorporated by Reference

<u>Clause No.</u>	<u>Title</u>	<u>Notes</u>
52.203-6	Restrictions on Subcontractor Sales to the Government (Sept 2006)	1
52.203-6	Alternate I (OCT 1995)	1A
52.204-9	Personal Identity Verification of Contractor Personnel (Sept 2007)	13
52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Sept 2006)	
52.211-15	Defense Priority and Allocation Requirements (Sept 1990)	2
52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data-Modifications (Oct 1997)	
52.219-8	Utilization of Small Business Concerns (May 2004)	1
52.219-9	Small Business Subcontracting Plan (Nov 2007)	3
52.222-3	Convict Labor (Jun 2003)	4
52.222-21	Prohibition of Segregated Facilities (Feb 1999)	4
52.222-26	Equal Opportunity (Mar 2007)	4
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006)	4
52.222-36	Affirmative Action for Workers with Disabilities (Jun 1998)	4
52.222-41	Service Contract Act of 1965, As Amended (Nov 2007)	7
52.222-43	Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts) (Nov 2006)	8
52.223-5	Pollution Prevention and Right-to-Know Information (Aug 2003))	12
52.223-6	Drug-Free Workplace (May 2001)	12
52.223-14	Toxic Chemical Release Reporting (Aug 2003)	12
52.225-13	Restrictions on Certain Foreign Purchases (Feb 06)	
52.227-14	Rights in Data - General (Alternate I, II, III, IV, or V) (Dec 07)	
52.227-16	Additional Data Requirements (Jun 1987)	
52.233-1	Disputes (Jul 2002) -- Alternate I (Dec 1991)	5
52.233-3	Protest After Award (Aug 1996) -- Alternate I (Jun 1985)	5

3. National Aeronautics and Space Administration (NASA) Federal Acquisition Regulation Clauses Incorporated by Reference.

<u>Clause No.</u>	<u>Title</u>
1852-204-76	Security Requirements for Unclassified Information Technology Resources (MAY 2007)
1852.227-86	Commercial Computer Software – Licensing (Dec 1987)
1852-237-72	Access to Sensitive Information (JUN 2005)
1852.237-73	Release of Sensitive Information (JUN 2005)

**NOTES**

1. Applies to purchases over \$100,000.
- 1A. Applies to Commercial Items over \$100,000.
2. Arcata Purchase Orders are rated orders on behalf of NASA.
3. Applies to purchases over \$500,000 which offer subcontracting capabilities.
4. Clause applies to purchases over \$10,000.
5. "Contracting Officer" means "Arcata".
6. Applies to the purchase of supplies that may involve ocean transportation subject to the Cargo Preference Act of 1954.
7. Applies to contracts for services over \$2,500.
8. Applicable to fixed price multiyear service contracts where FAR 52.222-41 is incorporated.
9. Applicable to service contracts where the value exceeds the simplified acquisition threshold.
10. Applies to the foreign portion of international circuit transmission contracts.
11. Applies to purchases exceeding \$2,500.
12. Applicable for non-commercial items over \$100,000 (simplified acquisition)
13. The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.