

**GENERAL PROVISIONS AND FAR FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS
FOR NON-COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT**

PART I GENERAL PROVISIONS

1. DEFINITIONS

The following terms shall have the meanings set forth below:

(a) "Contract" means the instrument of contracting, such as "Purchase Order," "PO," "Subcontract," or other such type designation, including these General Provisions, all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.

(b) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.

(c) "Arcata" means Arcata Associates, Inc. The party responsible to administer and/or execute this Contract.

(d) "Seller" means the party identified on the face of this Contract with whom Arcata is contracting to furnish the items or services described in this Contract.

(e) "Customer" means Arcata Associates, Inc. Customer or Government Agency.

2. APPLICABLE LAW

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

3. WARRANTY

Seller represents and warrants (1) that all goods and services delivered pursuant hereto will be new, unless otherwise specified, and free from defects in material and workmanship; (2) 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; (3) 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 Arcata and Arcata's customers. The foregoing warranties shall survive any delivery, inspection, acceptance, or payment by Arcata.

4. 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.

5. EXTRAS

Work shall not be supplied in excess of quantities specified in this Contract. Seller shall be liable for handling charges and return shipment costs for any excess quantities.

6. GRATUITIES/KICKBACKS

(a) No gratuities (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as a supplier, and no kickbacks shall be offered or given by Seller to any employee of Arcata.

(b) By accepting this Contract, Seller certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

7. INDEPENDENT CONTRACTOR RELATIONSHIP

(a) Seller is an independent contractor in all its operations and activities hereunder. The employees used by Seller to perform Work under this Contract shall be Seller's employees exclusively without any relation whatsoever to Arcata.

(b) Seller shall be responsible for and hold harmless Arcata and its customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

8. PRIORITY RATING

If so identified, this Contract is a "rated order" certified for national defense use, and the Seller shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

9. INTELLECTUAL PROPERTY

(a) Seller warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Seller agrees to defend, indemnify, and hold harmless Arcata and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorney's fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

(b) All data, copyrights, reports, and works of authorship developed in performance of this Contract shall be the sole property of Arcata, shall be used by Seller solely in work for Arcata. To the extent that any of the deliverable items may not, by operation of law, be works made for hire, Seller hereby assigns to Arcata the ownership of copyright in the deliverable items and Arcata shall have the right to obtain and hold in its own name copyrights, registrations, and similar protection which may be

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available in the deliverable items. Seller agrees to give Arcata or its designees all assistance reasonably required to perfect such rights.

(c) To the extent that any pre-existing inventions, technology, designs, works of authorship, and mask works, technical information, computer software, and other information or materials are used, included, or contained in the Work or deliverable items are not owned by Arcata pursuant to this or a previous agreement with Seller, Seller grants to Arcata an irrevocable, nonexclusive, worldwide, royalty-free license to: (i) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials and derivative works thereof; and (ii) authorize others to do any, some or all of the foregoing.

(d) All reports, memoranda or other materials in written form, including machine readable form, prepared by Seller pursuant to this Contract and furnished to Arcata by Seller hereunder shall become the sole property of Arcata.

10. PROHIBITED SOFTWARE

(a) This clause only applies to Work that includes the delivery of software.

(b) As used herein, "Prohibited License" means the General Public License ("GPL") or Lessor/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including without limitation licenses referred to as "GPL-Compatible, Free Software License."

(c) As used herein, "Prohibited Software" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a Prohibited License, or (3) software provided under a license that (a) subjects the delivered software to any Prohibited License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates Arcata to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

11. INFORMATION OF SELLER

Seller shall not provide any Proprietary Information to Arcata without prior execution of a proprietary information agreement by the parties.

12. INFORMATION OF ARCATA ASSOCIATES, INC.

Information provided by Arcata to Seller remains the property of Arcata and its Customers. Seller agrees to comply with the terms of any proprietary information agreement with Arcata and to comply with all proprietary information markings and restrictive legends applied by Arcata and its Customers to anything provided hereunder to Seller. Seller agrees not to use any Arcata provided information for any purpose except to perform this Contract and agrees not to

disclose such information to third parties without the prior written consent of Arcata. Seller shall maintain data protection processes and systems sufficient to adequately protect Arcata and its Customer's Information.

13. RELEASE OF INFORMATION

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by Seller without the prior written approval of Arcata.

14. QUALITY CONTROL SYSTEM

(a) Seller shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.

(b) Records of all quality control inspection work by Seller shall be kept complete and available to Arcata and its customers.

15. INSPECTION AND ACCEPTANCE

(a) Arcata and its Customers may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. Seller shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.

(b) No such inspection shall relieve Seller of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract. Arcata's final inspection and acceptance shall be at destination.

(c) If Seller delivers non-conforming Work, Arcata on behalf of its Customers, may, in addition to any other remedies available at law or at equity: (i) accept all or part of such Work at an equitable price reduction; or (ii) reject such Work.

(d) Seller shall not re-tender rejected Work without disclosing the corrective action taken.

16. TIMELY PERFORMANCE

(a) Seller's timely performance is a critical element of this Contract.

(b) Unless advance shipment has been authorized in writing by Arcata, Arcata may store at Seller's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.

(c) If Seller becomes aware of difficulty in performing the work, Seller shall timely notify Arcata, in writing, giving pertinent details. This notification shall not change any delivery schedule.

(d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of Seller's normal flow time unless there has been prior written consent by Arcata.

17. PARTS OBSOLESCENCE

Arcata may desire to place additional orders for Work purchased hereunder, Seller shall provide Arcata with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any Work purchased under this Contract.

18. CONTRACT DIRECTION

(a) Only the Arcata Procurement Representative has authority on behalf of Arcata to make changes to this Contract. All amendments must be in writing and executed by the parties.

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- (b) Arcata and its Customer engineering and technical personnel may from time to time render assistance or give technical advice or discuss or affect an exchange of information with Seller's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.
- (c) Except as otherwise herein, all notices to be furnished by the Seller shall be in writing and sent to Arcata.

19. TERMINATION FOR CONVENIENCE

For its own best interest, Arcata 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 Arcata and Seller. If the terminated contract is solely for services, Arcata shall be liable only for payment for services performed before the effective date of termination.

20. SURVIVABILITY

- (a) If this Contract expires, is completed, or is terminated, Seller shall not be relieved of those obligations contained in the following clauses:

- Applicable Laws
- Electronic Contracting
- Export Control
- Independent Contractor Relationship
- Information of Arcata
- Intellectual Property
- Work on Arcata or Its Customer's Premises
- Indemnification
- Prohibited Software
- Disclosure
- Warranty

21. SEVERABILITY

Each clause, paragraph and sub-paragraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

22. WORK ON ARCATA OR ITS CUSTOMER'S PREMISES

When the contract requires Seller to perform work on Arcata or its 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 Arcata 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 Arcata from said risks and from claims under any applicable Workmen's Compensation and Occupational Disease Acts, or other applicable law, status, or regulation.

23. ASSIGNMENT BY SELLER

Except as herein otherwise expressly provided, this Contract 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 Arcata, provided, however, that claims for money due or to become due to the Seller from Arcata arising out of this subcontract/order may, with written consent of Arcata, be assigned to a bank trust company, or other financial institution, including any federal lending agency.

24. SELLER CONTACTS WITH BUYER'S CUSTOMER AND OTHER VENDORS

Arcata shall be responsible for all liaison and communications with Arcata's Customer and other suppliers for the term of this Contract. Seller shall not communicate with Arcata's Customers or other suppliers regarding this Contract, unless otherwise authorized in writing by Arcata. Notwithstanding the above, Arcata's Customer Quality or Technical Representative may engage the Seller in technical or other discussions relevant to performance of this Contract. In the event of such discussion, no changes or contractual direction is authorized and only Arcata's authorized Procurement Representative will provide any such contractual direction to Seller.

25. PROPERTY

The rights and obligations of Seller with respect to any property furnished by Arcata 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 Arcata furnished property at all times. Upon order completion, Seller shall return all such property to Arcata 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.

26. ORDER OF PRECEDENCE

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

- (a) Arcata Purchase Order Form
- (b) General, Special or Flowdown Provisions (except as otherwise noted herein)
- (c) Statement of Work
- (d) Technical Specifications (including Engineering Drawings)
- (e) Other documents appended to the Order

27. DISPUTES

All disputes under this Contract that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Contract as directed by Arcata.

28. ACKNOWLEDGEMENT – ACCEPTANCE OF ORDER

This Contract 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 Contract shall be returned to Arcata within ten (10) calendar days from

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date of receipt. No other form shall be substituted for the Arcata supplied acknowledgment. The terms and conditions and each thereof contained in this Contract cannot be added to, modified, superseded, or otherwise altered except by written instructions signed by an authorized representative of Arcata. Each shipment received by Arcata under this Contract shall be deemed valid only on the terms and conditions contained in Part I and/or Part II.

29. ELECTRONIC CONTRACTING

The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any acknowledgement thereof, on the basis that this Contract or acknowledgement contains an electronic signature.

30. OFFSET CREDIT/COOPERATION

This Contract has been entered into in support of Arcata and its Customer's international offset programs. All offset benefit credits resulting from this Contract are the sole property of Arcata to be applied to the offset program of their Customer's choice. Seller agrees to assist Arcata and its Customers in securing appropriate offset credits from the respective country government authorities.

31. PACKING

Seller shall be responsible for safe packing in conformity with the carrier's tariff or specific instructions provided elsewhere in this contract. 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 Arcata, and one copy shall be included in Seller's invoice. No extra charge for packing will be paid unless specifically authorized by Arcata.

32. EXPORT CONTROL

- (a) Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq; and the Export Administration Act, 50 U.S.C. app 2401-2420, including the Export Administration Regulation, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, under contract to Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.
- (b) Seller agrees to notify Arcata if any deliverable under this Contract is restricted by export control laws or regulations.
- (c) Seller shall immediately notify the Arcata Procurement Representative if Seller is, or becomes, listed in any Denied Parties List for or if Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

- (d) If Seller is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Seller represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.
- (e) Where Seller is a signatory under an Arcata customer, export license or export agreement (e.g., TAA, MLA), Seller shall provide prompt notification to Arcata in the event of changed circumstances including but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect the Seller's performance under this Contract.
- (f) Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers or subcontracts at any tier, in the performance of any of its obligations under this clause.

33. INVOICES

Invoices are to be submitted in three copies to the address as shown on the face of the Contract to be honored. The invoice must show Arcata's Purchase Order Number, deliverable description, 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 Arcata or the date an acceptable invoice is received by Arcata, whichever is later.

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A. INCORPORATION OF FAR CLAUSES

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contracts Disputes Act shall have no application to this Contract. Any reference to a “Disputes” clause shall mean the “Disputes” clause of this Contract.

B. GOVERNMENT SUBCONTRACT

This Contract is entered into by the parties in support of a U.S. Government contract.
As used in the FAR clauses referenced below and otherwise in this Contract:

1. “Commercial Item” means a commercial item as defined in FAR 2.101.
3. “Contracting Officer” shall mean the U.S. Government Contracting Officer for the government prime contract under which this Contract is entered.
4. “Contractor” and “Offeror” means the Seller, as defined in this ARCDoc 3, acting as the immediate subcontractor to ARCATA.
5. “Prime Contract” means the contract between the U.S. Government and Arcata or Arcata Customers.
6. “Subcontract” means any contract placed by the contractor or lower-tier subcontractors under this Contract.

C. AMENDMENTS REQUIRED BY PRIME CONTRACT

Contractor agrees that upon the request of ARCATA it will negotiate in good faith with ARCATA relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as ARCATA may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to the “Changes” clause of this Contract.

D. PRESERVATION OF THE GOVERNMENT’S RIGHTS

If ARCATA or its Customers furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Furnished Items) which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that ARCATA acting on its own behalf, may modify or limit any rights the Government may have to authorize the Contractor’s use of such Furnished Items in support of other U. S. Government prime contracts.

E. FAR FLOWDOWN CLAUSES

REFERENCE TITLE

1. The following FAR clauses apply to this Contract:

<u>Clause No.</u>	<u>Title</u>	<u>Notes</u>
52.203-6	Restrictions on Subcontractor Sales to the Government (SEP 2006)	1
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)	1
52.203-13	Contractor Code of Business Ethics and Conduct (Aug 2010)	17
52.203-14	Display of Hotline Poster(s) (Dec 2007)	17
52.204-2	Security Requirements (AUG 1996)	15
	Applicable if the Work requires access to classified information.	
52.204-9	Personal Identity Verification of Contractor Personnel (Jan 2011)	15
	Applicable where the Contractor will have physical access to a federally-controlled facility or access to a Federal Information system.	
52.211-5	Material Requirement (AUG 2000)	5
52.215-2	Audit and Records Negotiations (Oct 2010)	1, 13
	(Applicable if: (1) Contractor is required to furnish cost or pricing data, or (2) the Contract requires Contractor to furnish cost, funding, or performance reports).	

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<u>Clause No.</u>	<u>Title</u>	<u>Notes</u>
52.215-10	Price Reduction for Defective Certified Cost or Pricing Data (OCT 2010) Applicable if submission of cost or pricing data is required. Notes 5 and 13 apply except the first time "Contracting Officer" appears in paragraph (c)(1). Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)	5, 13, 15
52.215-11	Price Reduction for Defective Cost or Pricing Data – Modifications (OCT 2010) Applicable if submission of cost or pricing data is required. Notes 5 and 13 apply except the first time "Contracting Officer" appears in paragraph (d)(1). Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.	5, 13, 15
52.215-12	Subcontractor Certified Cost or Pricing Data (OCT 2010) Applicable if not otherwise exempt under FAR 15.403.	3A
52.215-13	Subcontractor Certified Cost or Pricing Data – Modifications (OCT 2010) Applicable for modifications if not otherwise exempt under FAR 15.403.	3A
52.215-14	Integrity of Unit Prices (OCT 2010) Delete paragraph (b) of the clause).	1
52.215-15	Pension Adjustments and Asset Reversions (OCT 2010) Applicable if this Contract meets the applicability requirements of FAR 15.408(g).	15, 16
52.215-16	Facilities Capital Cost of Money (JUN 2003) Applicable only if this Contract is subject to the Cost Principles at FAR Subpart 31.2 and the Contractor proposed facilities capital cost of money in its offer.	15
52.215-17	Waiver of Facilities Capital Cost of Money (OCT 1997) Applicable only if this Contract is subject to the Cost Principles at FAR Subpart 31.2 and the Contractor did not propose facilities capital cost of money in its offer.	15
52.215-18	Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other than Pensions (JUL 2005) Applicable if this Contract meets the applicability requirements of FAR 15.408(j).	15, 16
52.215-19	Notification of Ownership Changes (OCT 1997) Applicable if this Contract meets the applicability requirements of FAR 15.408(k).	15, 16
52.215-20	Requirements for Certified Cost or Pricing Data and Data Other than Certified Cost or Pricing Data (Oct 2010)	5
52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data- Modifications (Oct 2010)	5
52.215-23	Limitation on Pass Through Charges (OCT 2009)	3A
52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JAN 2011)	
52.219-9	Small Business Subcontracting Plan (Jan 2010) Applicable if the Contractor is not a small business. Note 5 applies to paragraph (c) only. The Contractor's subcontracting plan is incorporated herein by reference.	3, 5
52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation (Jul 2005) Applicable if the Contract may require or involve the employment of laborers and mechanics.	15
52.222-21	Prohibition of Segregated Facilities (Feb 1999)	4
52.222-26	Equal Opportunity (APR 2002) Only paragraphs (b)(1)-(11) apply.	4
52.222-35	Equal Opportunity for Veterans (Sep 2010)	13
52.222-36	Affirmative Action for Workers with Disabilities (OCT 2010)	1,4
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	1
52.222-50	Combating Trafficking in Person (FEB 2009)	5,13
52.223-3	Hazardous Material Identification and Materials Safety Data (Jan 1997) Applicable if this Contract involves hazardous material.	13, 15
52.223-7	Notice of Radioactive Materials (Jan 1997) Applicable to Work containing covered radioactive material. In the blank insert "30".	5, 13, 15
52.223-11	Ozone-Depleting Substances (May 2001) Applicable if the Work was manufactured with or contains ozone-depleting substances.	15
52.223-14	Toxic Chemical Release Reporting (AUG 2003) Delete paragraph (e).	1, 5
52.225-1	Buy American Act- Supplies (FEB 2009) Applicable if the Work contains other than domestic components.	5, 14
52.225-5	Trade Agreements (AUG 2009) Applicable if the Work contains other than U.S. made or designated country end products as specified in the clause.	14

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<u>Clause No.</u>	<u>Title</u>	<u>Notes</u>
52.225-8	Duty Free Entry (OCT 2010) Applicable if supplies will be imported into the Customs Territory of the United States.	5, 15
52.225-13	Restrictions on Certain Foreign Purchases (JUN 2008)	
52.227-1	Authorization and Consent (JUL 1995) Applicable only if the Prime Contract contains this clause.	15
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (DEC 2007)	1, 5, 13
52.227-9	Refund of Royalties (APR 1984) Applicable when reported royalty exceeds \$250.	5, 13
52.227-10	Filing of Patent Applications – Classified Subject Matter (DEC 2007) Applicable if the Work or any patent application may cover classified subject matter.	15
52.227-11	Patent Rights – Ownership by the Contractor (DEC 2007) Applicable if this Contract includes, at any tier, experimental, developmental, or research Work and contractor is a small business concern or domestic nonprofit organization. Reports required by this clause shall be filed with the agency identified in the Contract. If no agency is identified, contact the Arcata Procurement representative identified on the face of the Contract.	15
52.227-14	Rights in Data - General (DEC 2007)	
52.228-5	Insurance – Work on a Government Installation (JAN 1997) Applicable if this Contract involves Work on a Government installation. Unless otherwise specified by this contract, the minimum kinds and amount of insurance shall be as described in FAR 28.307-2.	5, 15
52.230-2	Cost Accounting Standards (OCT 2010) When referenced in this Contract, full CAS coverage applies. “United States” means “United States or “Arcata” Delete paragraph (b) of the clause.	15
52.230-3	Disclosure and Consistency of Cost Accounting Practices (OCT 2008) When referenced in this Contract, modified CAS coverage applies. “United States” means “United States or Arcata”. Delete paragraph (b) of the clause.	15
52.230-6	Administration of Cost Accounting Standards (JUL 2010) Applicable if FAR 52.230-2 or FAR 52.230-3 applies.	15
52.233-3	Protest After Award (AUG 1996) In the event Arcata’s customer has directed ARCATA to stop performance of the Work under the Prime Contract under which this Contract is issued pursuant to FAR 33.1, ARCATA may, by written order to Contractor, direct Contractor to stop performance of the Work called for by this Contract. “30 days” means “20 days” in paragraph (b)(2). In paragraph (f) add after “33.104(h) (1)” the following: “and recovers those costs from Arcata”.	13, 15
52.234-1	Industrial Resources Developed Under Defense Production Act Titled III (DEC 1994)	5, 13
52.237-2	Protection of Government Buildings, Equipment and Vegetation (APR 1984) Applicable if Work is performed on a Government installation.	5, 15
52.242-13	Bankruptcy (JUL 1995)	5, 13
52.242-15	Stop-Work Order (AUG 1989)	5, 13
52.243-1	Changes – Fixed Price (AUG 1987)	5, 13
52.243-6	Change Order Accounting (APR 1984) Applicable if the Prime Contract requires Change Order Accounting.	5, 15
52.244-6	Subcontracts for Commercial Items (DEC 2010)	
52.245-1	Government Property (AUG 2012)	5,15
52.246-2	Inspection of Supplies – Fixed Price (AUG 1996)	5, 13
52.246-4	Inspection of Services – Fixed Price (AUG 1996)	13
52.247-63	Preference for Privately Owned U.S. Flag Air Carriers (JUN 2003) Applicable if this Contract involves international air transportation.	15
52.247-64	Preference for Privately Owned U.S. Flag Commercial Vessels (FEB 2006)	
52.248-1	Value Engineering (OCT 2010)	1, 5
52.249-2	Termination for Convenience of the Government (Fixed Price) (MAY 2004) In paragraph (c) “120 days” is changed to “60 days”. In paragraph (d), “15 days” is changed to “30 days”, and “45 days” is changed to “60 days”. In paragraph (e) “1 year” is changed to “6 months”. Paragraph (j) is deleted. In paragraph (i) “90 days” is changed to “45 days”. Settlement and payments under this clause may be subject to the approval of the Contracting Officer.	5, 13
52.249-8	Default (Fixed Price Supply and Service) (APR 1984)	5, 13

NOTES

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1. Applies to purchases over \$150,000.
- 1A. Applies to Commercial Items over \$150,000.
2. Arcata Purchase Orders are rated orders on behalf of NASA.
3. Applies to purchases over \$650,000 which offer subcontracting capabilities.
- 3A. Applies to purchases over \$700,000 which offer subcontracting capabilities.
4. Clause applies to purchases over \$30,000.
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 \$3,000.
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 \$3,000.
12. Applicable for non-commercial items over \$150,000 (simplified acquisition)
13. "Government" means "Arcata"
14. Applies to purchases over \$30,000.
15. Apply to Contracts as indicated.
16. Communication/notification required under this clause from/to the Contractor to/from the Contracting Officer shall be through Arcata.

F. CERTIFICATIONS AND REPRESENTATIONS

1. This clause contains certifications and representations that are material representations of fact upon which ARCATA will rely in making awards to Contractor. By submitting its written offer, or providing oral offers/quotations at the request of ARCATA, or accepting any Contract, Contractor certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document, or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by ARCATA. Contractor shall immediately notify ARCATA of any change of status with regard to these certifications and representations.

(a) FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

(Applicable to solicitations and contracts exceeding \$150,000)

(a) *Definitions.* As used in this provision—"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(b) *Prohibition.* The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(c) *Certification.* The offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(d) *Disclosure.* If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) *Penalty.* Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, for each such failure.

(b) FAR 52.209-5 Certification Regarding Responsibility Matters

a)(1) The Offeror certifies, to the best of its knowledge and belief, that --

(i) The Offeror and/or any of its Principals --

(A) Are [] are not [] presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

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(B) Have [] have not [], within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (if offeror checks “have”, the offeror shall also see 52.209-7, if included in this solicitation); and

(C) Are [] are not [] presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision; and

(D) Have [], have not [], within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples.

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ii) The Offeror has [] has not [], within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) “Principal,” for the purposes of this certification, means an officer; director; owner; partner; or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror’s responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

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(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(c) FAR 52.222-22 Previous Contracts and Compliance Reports.

Contractor represents that if Contractor has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26) (i) Contractor has filed all required compliance reports and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(d) FAR 52.222-25 Affirmative Action Compliance.

Contractor represents (1) that Contractor has developed and has on file at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (2) that in the event such a program does not presently exist, Contractor will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this Contract.