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Section B - SUPPLIES OR SERVICES AND PRICES/COSTS

B-1 SERVICES BEING ACQUIRED

The Contractor shall, in accordance with the terms of this Contract, provide the personnel, equipment, materials, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to providing its best efforts so as to carry out in an efficient and effective manner all necessary and related services to manage and operate the Government-owned Sandia National Laboratories (hereinafter "the Laboratories", "the Laboratory", or “SNL”).

B-2 CONTRACT TYPE AND VALUE (Rev. M218, M222, M236, M241, M261, M266, M288, M293, M312, M319, M344, M365, M400, M404, M443, M448, M473, M484, M0512, M0528, M0538, M0541, M0563, M0567, A0572)

(a) This contract is a cost-reimbursement management and operating contract employing performance incentives. The Estimated Cost, Fixed Fee, and Performance Incentive Fee Pool is set forth below.

(b) The Estimated Cost of the specified Contract periods, exclusive of the Contractor's Fees, if any, is set forth below:

Contract Periods	Estimated Cost
October 1, 1993 through September 30, 2003	$15,395,011,897
October 1, 2003 through September 30, 2004	$ 2,173,608,020
October 1, 2004 through September 30, 2005	$ 2,297,398,587
October 1, 2005 through September 30, 2006	$ 2,345,479,105
October 1, 2006 through September 30, 2007	$ 2,205,151,025
October 1, 2007 through September 30, 2008	$ 2,313,723,190

	October 1, 2008 through September 30, 2009	$ 2,309,943,266
	October 1, 2009 through September 30, 2010	$ 2,549,525,767
	October 1, 2010 through September 30, 2011	$ 2,619,758,560
	October 1, 2011 through September 30, 2012	$ 2,558,164,887
	October 1, 2012 through September 30, 2013	$ 2,462,698,305
	October 1, 2013 through September 30, 2014	$ 2,613,000,000
	October 1, 2014 through September 30, 2015	$ 2,640,000,000
	October 1, 2015 through April 30, 2016	$ 1,540,000,000
Option:	May 1, 2016 through September 30, 2016	$ 1,100,000,000
	October 1, 2016 through April 30, 2017	$ 1,540,000,000
	TOTAL through 4/30/16 (excludes Option)	$ 46,023,462,609

(c) The Fixed Fee for the specified Contract period is set forth below:

Contract Period	Fixed Fee
October 1, 1993 through September 30, 2003	$155,733,103
October 1, 2003 through September 30, 2004	$ 15,400,000

	October 1, 2004 through September 30, 2005	$ 16,256,548
	October 1, 2005 through September 30, 2006	$ 16,596,769
	October 1, 2006 through September 30, 2007	$ 15,603,798
	October 1, 2007 through September 30, 2008	$ 16,372,062
	October 1, 2008 through September 30, 2009	$ 16,345,315
	October 1, 2009 through September 30, 2010	$ 18,040,617
	October 1, 2010 through September 30, 2011	$ 18,537,589
	October 1, 2011 through September 30, 2012	$ 18,101,748
	October 1, 2012 through September 30, 2013	$ 17,426,220
	October 1, 2013 through September 30, 2014	$ 18,300,000
	October 1, 2014 through September 30, 2015	$ 25,000,000
	October 1, 2015 through April 30, 2016	$ 14,583,333
Option:	May 1, 2016 through September 30, 2016	$ 10,416,667
	October 1, 2016 through April 30, 2017	$ 14,583,333
	TOTAL through 4/30/16 (excludes Option)	$ 382,297,102

(d) The maximum available Performance Incentive Fee pool and the Performance Incentive Fee earned is set forth below:

	Contract Period	Maximum Available Performance Incentive Fee Pool	Performance Incentive Fee Earned
	October 1, 2016 through April 30, 2017	$ 1,633,333	$ TBD
Option:	May 1, 2016 through September 30, 2016	$ 1,166,667	$ TBD
	October 1, 2015 through April 30, 2016	$ 1,633,333	$ TBD
	October 1, 2014 through September 30, 2015	$ 2,800,000	$ TBD
	October 1, 2013 through September 30, 2014	$ 9,800,000	$7,957,600
	October 1, 2012 through September 30, 2013	$9,335,475	$8,387,922
	October 1, 2011 through September 30, 2012	$9,697,365	$8,991,588
	October 1, 2010 through September 30, 2011	$9,930,851	$8,466,050
	October 1, 2009 through September 30, 2010	$9,664,616	$8,268,431
	October 1, 2008 through September 30, 2009	$8,756,419	$7,176,461
	October 1, 2007 through September 30, 2008	$8,770,748	$6,797,330
	October 1, 2006 through September 30, 2007	$8,359,178	$7,611,032
	October 1, 2005 through September 30, 2006	$8,891,126	$7,710,030

October 1, 2004 through September 30, 2005	$8,708,865	$7,081,178
October 1, 2003 through September 30, 2004	$8,200,000	$6,925,000
TOTALs (excluding Option)	$ 104,547,976	$85,372,622

*The estimated Cost, Fixed Fee, and Maximum Available Performance Incentive Fee Pool for the one month period, April 1, 2014 through April 30, 2014 is based on Sandia Corporation's FY 2014 Fee and Scope Proposal.

(e) The Total Estimated Cost, Fixed Fee, and Performance Incentive Fee Earned under this contract is $46,491,132,333.

(f) Pursuant to the Contract Clause entitled "Obligation of Funds," the total amount obligated by the Government with respect to this contract is **$44,079,206,147.36 (Mod 0572 dated 3/2/15).**

(g) There will be no annual negotiation of the fixed fee or maximum available performance incentive fee pool.

(h) Payment of fee will be made on the following schedule:

(1) Fixed Fee is authorized to be drawn down from the special financial institution account in monthly installments, representing one-twelfth (1/12) of the fixed fee amount, on the last day of each month.

(2) Performance Incentive fee earned shall be authorized for draw down in full, upon the NNSA Sandia Site Office Manager's issuance of the Fee Determination Official's determination.

B-3 AVAILABILITY OF APPROPRIATED FUNDS

Except as may be specifically provided to the contrary in Contract Clause "Nuclear Hazards Indemnity Agreement," the duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which the U.S. Department of Energy (DOE) National Nuclear Security Administration (NNSA) may legally spend for such purposes.

B-9999 AMERICAN RECOVERY AND REINVESTMENT ACT WORK VALUES (Added M331; Modified: A335, A336, A340, A341, A342, A346, A347, A348, A349, A350, A351, A352, A353, A354, A355, A356, A357, A361, A368, A369, A371, 373, 374, 377, 382, 385, 386, 387, 392, 394, 395, 397, 410, 452)

Total Funds authorized including maximum available performance fee, if any, for work funded under the American Recovery and Reinvestment Act (Recovery Act).

YEAR	Work Authorization No.	Total Funds Authorized
2009	KC/AL08/9/ARRA-1	$2,163,000.00
2009	100003-20476-09, Rev. 0	$200,000.00
2009	AT/NS08/9/ARRA-1	$75,000.00
2009	KC/AL08/9ARRA-2	$2,791,282.00
2009	09/CJ000/00/01, Rev.1	$3,000.00
2009	KC/AL08/9/ARRA-1 Rev.1	$1,127,000.00
2009	KJ/AL08/9/ARRA-1	$683,739.00
2009	AT/NS08/9/ARRA-2	$625,000.00
2009	TD-100003-20389-09	$360,000.00
2009	SL-100003-20479-09	$14,200,000.00
2009	SL-100003-20489-09	$3,800,000.00
2009	SL-100003-20480-09	$1,500,000.00
2009	FB-100003-20454-09	$500,000.00
2009	09/CJ000/00/02	$48,000.00
2009	SL-100003-20479-09 Rev. 1	$3,600,000.00
2009	SL-100003-20480-09 Rev. 2	$400,000.00
2009	SL-100003-20480-89 Rev. 1	$1,000,000.00
2009	EM-09CB-0080.R1	$200,000.00
2009	GT-100003-20685-09, Rev. 0	$564,600.00
2009	GT-100003-20685-09, Rev. 1	$588,600.00
2009	GT-100003-20685-09, Rev. 2	$471,000.00
2010	100254-20758-10	$323,440.00
2010	BT-100003-20717-10	$1,680,000.00
2010	WW-100003-20464-10	$93,554.00
2010	09/CJ000/00/03	30,000.00
2010	SNL-10-09-014577	223,000.00
2010	BA-100003-20847-10	1,200,000.00
2010	BA-100003-20857-10, Rev. 1	2,600,000.00
2010	BA-100003-20857-10, Rev. 2	400,000.00
2009	FB-100003-20454-10, Rev. 1	205,000.00
2009	BM-100003-20650-10, Rev. 1	275,000.00
2009	GT-100003-29685-10, Rev. 1	294,600.00
2009	GT-100003-29685-10, Rev. 2	55,400.00
2009	GT-100003-20685-10	53,907.00
2009	KJ/AL08/0/ARRA-1	600,000.00
2009	KJ/AL08/0/ARRA-2	1,113,880.00
2009	100003-20476-09	-739.93

2010	100254-20758-10	-248,714.74
2010	EM-10CB-0080-ARRA	265,000.00
2010	GT-100003-29685-10, Rev. 3	399,458.00
2010	GT-100003-29685-10, Rev. 4	372,215.00
2010	GT-100003-29685-10, Rev. 5	37,505.00
2010	TD-100003-20389-09	-353,711.76
2010	09/CJ000/00/01, Rev. 1	-221.40
2010	09/CJ000/00/02	-1,702.91
2010	09/CJ000/00/03	-15,522.74
2010	SL-100003-20480-10	2,991.00
2009	100254-20758-10	-74,725.26
2009	KC/AL08/9/ARRA-1	-16,181.68
	TOTAL	**$44,413,650.58**

The Contractor shall not start work funded under the Recovery Act until the Contractor receives a Work Authorization or Work-for-Others (WFO) Agreement and funds are placed into the Contract. The contractor is authorized to incur costs not to exceed the amount as stipulated under each Work Authorization or WFO Agreement.

Section C - DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

C-1 STATEMENT OF WORK

The work to be performed under this Contract is set forth in Part III, Section J, Appendix B, Statement of Work.

Section D - PACKAGING AND MARKING

D-1 PACKAGING AND MARKING

Packaging and marking of items to be delivered shall be in accordance with work authorization requirements or other written directions of the Contracting Officer or the Contracting Officer's Representative (COR).

Section E - INSPECTION AND ACCEPTANCE

E-1 FAR 52.246-9 INSPECTION of RESEARCH and DEVELOPMENT (Short Form) (APR 1984)

The Government has the right to inspect and evaluate the work performed or being performed under the Contract, and the premises where the work is being performed, at all reasonable times, and in a manner that will not unduly delay or disrupt the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

E-2 INSPECTION AND ACCEPTANCE

Inspection of all activities and acceptance for all work and effort under this Contract shall be accomplished by the Contracting Officer or any other duly authorized representative.

Section F - DELIVERIES OR PERFORMANCE

F-1 DELIVERIES

Delivery of products under this Contract shall be in accordance with the written direction of the Contracting Officer or any other duly authorized representative.

F-2 PLACE OF PERFORMANCE

The work under this Contract is to be carried out at a variety of locations, but the principal places of performance will be at Albuquerque, New Mexico and Livermore, California.

F-3 PERIOD OF PERFORMANCE (M222, M241, M266, M293, M319, M473, M0512, M0538, M0541)

The Parties recognize that the Contract's original period of performance for the management and operation of SNL commenced on October 1, 1993 and expired on September 30, 1998. Contract modification M081 extended the period of performance through September 30, 2003, and modification M202 further extended the period of performance through September 30, 2008. The Contractor earned all but one award term consistent with Clause H-12, Award Term, which extended the period of performance through September 30, 2012. Modification M473 extended the period of performance through September 30, 2013, with two three-month options, unless the contract is sooner reduced, terminated or extended in accordance with the provisions of this contract. Option 1: October 1, 2013 through December 31, 2013, and Option 2: January 1, 2014 through March 31, 2014. Modification M0512 extended the period of performance through March 31, 2014 by exercising Option 1 and Option 2. Modification M0538 extended the period of performance through April 30, 2014. This Modification M0541 extends the period of performance through April 30, 2016 (with a one-year option that, if exercised, would extend performance through April 30, 2017).

Section G - CONTRACT ADMINISTRATION DATA

G-1 GOVERNMENT CONTACTS (Replaced M462)

(a) The NNSA Sandia Site Office (SSO) Manager is the Contractor's focal point of contact for all technical and administrative matters, except as identified in (b) below, regarding this Contract. The Contracting Officer is the primary point of contact for all contractual matters. The SSO Manager and Contracting Officer can be reached at:

U.S. Department of Energy / National Nuclear Security Administration
Sandia Site Office
P.O. Box 5400, Mail Stop 0184
Albuquerque, NM 87185-5400

(b) The Patent Counsel, Office of General Counsel, is the Contractor's focal point for items concerning patent, intellectual property, licenses and technical data issues can be reached at:

U.S. Department of Energy / National Nuclear Security Administration
Patents Counsel / Office of General Counsel
P.O. Box 5400
Albuquerque, New Mexico, 87185-5400.

(c) Correspondence: To promote timely and effective administration, correspondence submitted under this Contract shall contain a subject line commencing with the Contract Number, as illustrated below:

"SUBJECT: Request for subcontract placement approval; Contract No. DE-AC04-94AL85000"

Section H - SPECIAL CONTRACT REQUIREMENTS

H-1 REDEFINING THE FEDERAL/CONTRACTOR RELATIONSHIP TO IMPROVE MANAGEMENT AND PERFORMANCE (Replaced M383)

(a) General

The NNSA is committed to improving the effectiveness and efficiency of the Nuclear Weapons Complex. This H-1 Clause sets forth an overview of NNSA's approach to achieve this commitment. Contract Clauses H-2 through H-10, and H-41 set forth the specific Contract requirements that will provide the Contractor the flexibility to improve its management and performance. The principles of Integrated Safety Management and Integrated Safeguards and Security Management will serve as the foundation of the implementing mechanisms at the Laboratory.

(b) Contract Relationship and Accountabilities

NNSA is responsible for establishing the work to be accomplished by the Contractor and will provide program and performance direction regarding **what** NNSA wants in each of its programs. The Contractor shall determine **how** program and operational requirements are executed and shall be accountable for performance in accordance with the terms and conditions of this Contract. The Contractor will have the flexibility to use its expertise and ingenuity to determine how the work is to be accomplished and is accountable for assuring safe, secure, effective, and efficient operations in accordance with the terms and conditions of this Contract. NNSA will issue performance direction to the Contractor only through a warranted Contracting Officer or a designated Contracting Officer Representative (COR). All other Federal staff and oversight components are therefore precluded from tasking the Contractor.

(c) Approach to Oversight

NNSA will rely on increased Contractor accountability through implementation of the Integrated Laboratory Management System (ILMS). The Contractor is also responsible for the oversight of its management practices through its management system and will ensure management and performance under the contract. Board

of Directors' approval and monitoring of the ILMS and major changes thereto shall be a key feature of ILMS. NNSA oversight is intended to evaluate contractor performance and measure results. Oversight will utilize the Contractor's ILMS, joint performance reviews, and other tools to evaluate performance while seeking to establish contractor assurance. In certain areas, NNSA oversight will focus on evaluating systems and performance rather than transactions. NNSA will determine the level of NNSA oversight of all contractor activities under this contract, transitioning where appropriate from a transactional to a performance and systems based approach.

(d) Empowering Contractor Expertise

The Contractor will identify, evaluate, and implement best commercial standards and best business practices and continuously pursue improvements in aspects of Contract performance where cost effective and efficient improvements can be achieved. The Contractor will also use the private-sector expertise of its parent organization to improve Contract performance, as appropriate.

(e) Results-Oriented, Streamlined Performance Appraisal

A results-oriented, streamlined performance appraisal process will be established with performance objectives and incentives, and associated measures, and targets that focus on those areas of greatest strategic value to NNSA using systems-based metrics.

H-2 PERFORMANCE DIRECTION (Replaced M383)

(a) The Contractor is responsible for the management, integration, and operation of the site in accordance with the Terms and Conditions of the Contract, duly issued Work Authorizations (WAs), and written direction and guidance provided by the Contracting Officer and/or the Contracting Officer Representative (COR). NNSA is responsible for establishing the work to be accomplished and overseeing the Contractor's performance against contract requirements. The Contractor will use its expertise and ingenuity to determine how program and operational requirements are executed and will make choices among acceptable alternatives to most effectively and efficiently accomplish the work called for by this Contract.

(b) Only the Contracting Officer may approve, authorize, modify, and priority rank WAs.

(c) (1) The Contracting Officer and the NNSA Administrator will appoint, in writing, specific NNSA employees as CORs with the authority to issue Performance Direction to the Contractor. CORs are authorized to act

within the limits of their delegation letter. A copy of each letter will be provided to the Contractor. COR functions include technical monitoring, inspection, and other functions of a technical nature not involving a change in the scope, cost, or terms and conditions of the Contract.

(2) The Contractor must comply with written Performance Directions that are signed by the COR and:

(i) Redirect the Contract effort, shift work emphasis within a work area or a WA, require pursuit of certain lines of inquiry, further define or otherwise serve to accomplish the Statement of Work (SOW), or

(ii) Provide information that assists in the interpretation of drawings, specifications, or technical portions of the work description.

(3) Performance Direction by a COR does not:

(i) authorize the Contractor to exceed the funds obligated on the Contract;

(ii) authorize any increased cost or delay in delivery in a WA;

(iii) entitle the Contractor to an increase in fee; or

(iv) change any of the terms or conditions of the Contract.

(d) (1) The Contractor shall accept only Performance Direction that is provided in writing by a COR and that is within the SOW and a WA.

(2) The COR is authorized to review and approve technical reports, drawings, specifications, and technical information delivered by the Contractor.

(e) (1) The Contractor shall promptly comply with each duly issued Performance Direction unless the Contractor reasonably believes that the Performance Direction violates this clause. If the Contractor believes the Performance Direction violates this clause, the Contractor shall suspend implementation of the Performance Direction and promptly notify the Contracting Officer of its reasons for believing that the Performance Direction violates this clause. The Contractor shall confirm these reasons in writing to the Contracting Officer within ten days from the receipt of the Performance Direction. Oral notification to the Contracting Officer shall be confirmed in writing within ten days of the oral notification.

(2) The Contracting Officer will determine if the Performance Direction is within the SOW and WA. This determination will be issued in writing and the Contractor shall promptly comply with the Contracting Officer's direction. If it is not within the SOW or WA, the Contracting Officer may issue a change order pursuant to the Changes clause.

(f) The Parties agree to maintain full and open communication at all times, and on all issues affecting contract performance, during the term of this Contract. Performance direction issued pursuant to this clause shall be consistent with the approach described in Clause H.1(b) that government direction will be limited to "what" the contractor intends to accomplish. The contractor shall identify concerns to the Contracting Officer whenever it believes that performance direction defines "how" the Contractor is intended to accomplish the work, and the Contracting Officer will work to revise the performance direction as appropriate.

H-3 SANDIA MANAGEMENT SYSTEM (Replaced M383, M0567)

(a) The Contractor shall maintain registration of its management system, as described by the Sandia Management System Description, to a national or international consensus standard such as ISO 9001. The management system description shall be approved and monitored by the Sandia Board of Directors. This management system will provide transparency to enable the Government to monitor the Contractor's performance. The Contractor shall notify the Contracting Officer of significant changes to the management system. An effectively working management system will provide the government the opportunity to reduce transactional performance monitoring.

(b) The Contractor's management system shall have the following key attributes:

(1) Description of the management system to include vision, mission, management structure, key activities, management entity accountabilities and commitment to operational and business excellence.
(2) Electronic access to the management system information by government personnel with performance monitoring responsibilities.

(c) The Contractor's management system shall include the application of quality principles and defect prevention methods to plan the work, execute the work according to the plan, check the work against requirements, policies, and objectives, and report the results. The results shall be acted upon to continually improve the performance and quality of the work. The Contractor's management system shall have the following minimum attributes:

(1) A risk management process.

(2) Performance monitoring including metrics and associated performance targets.

(3) Rigorous, risk-based, credible assessments (including self-assessments and internal independent assessments). The Contractor is encouraged to seek external audits, peer reviews, assessments, and risk and vulnerability studies from nationally recognized experts to assess and improve its work processes.

(4) Identification and correction of negative performance/compliance trends before they become significant issues.

(5) Maintain ISO 14001 for Environmental Management System (EMS) registration and pursue other registrations/certifications as appropriate.

(6) Incident/event reporting including accident investigations.

(7) Issues management (including graded analysis of causes, identification of corrective actions, corrective action tracking, monitoring and closure, validation of effectiveness, and trend analysis).

(8) Feedback (customer and worker), lessons learned, and improvement activities. The Contractor will maintain an operating experience/lessons learned program that develops and evaluates site-specific lessons learned across all aspects of operations with a focus on preventing recurrence of problems.

(d) The Contractor will benchmark, share and incorporate good work practices locally and among DOE sites through the DOE Lessons Learned Database. The Contractor will also provide feedback through the Sandia Field Office to the issuing authority for DOE Corporate Operating Experience Documents (i.e., Special Operations Reports (SORs), Safety Alerts (SAs), and Safety Bulletins (SBs)) when specific implementation of lessons learned or corrective actions with a formal response are required.

(e) If the Contracting Officer determines that the Contractor is not fully complying with applicable laws or regulations, or that performance has degraded and that the Contractor is not taking appropriate and timely corrective action, the Contracting Officer may take any action deemed necessary and reasonable under this Contract including increasing performance monitoring of the Contractor.

(f) NNSA will revise its performance monitoring in accordance with the Contract Clause entitled "Oversight" when the Contractor has demonstrated to the Contracting Officer's satisfaction that the management system or components of the system are operating effectively.

H-4 OVERSIGHT (Replaced M383)

At all times during the term of this Contract, NNSA will continue, preserve and maintain the right to determine the level of NNSA oversight of all Contractor activities under this

Contract. In addition to the rights and remedies provided to the Government under other provisions of this Contract, the Contractor shall fully cooperate with NNSA oversight personnel, subject matter experts and external review and inspection team members in the performance of their assigned oversight functions, and shall provide complete access to facilities, information, and Contractor personnel. NNSA's oversight program will ensure that the Contractor's activities provide adequate protection to the health and safety of workers and the public.

Oversight activities will distinguish between Nuclear Facility Operations, other High Hazard Activities as jointly defined, and non-nuclear operations by risk intensity, frequency, and the evidence of performance. Generally, oversight will be performed on a transactional basis for nuclear operations and other high hazard activities and on a systems level for non-nuclear facility and business operations as determined appropriate by the Government.

H-5 ACCOUNTABILITY (Replaced M383)

The Contractor is responsible for the quality of its products and for assessing its operations, programs, projects and business systems and identifying deficiencies and implementing needed improvements in accordance with the terms and conditions of this Contract, regardless of whether NNSA has evaluated the Contractor's performance in any area of the Contract. The purpose of NNSA oversight is for assessing the Contractor's performance in meeting its obligations under this Contract. NNSA oversight shall not be relied upon by the Contractor in assessing its performance.

H-6 RESERVED (M383)

H-7 UTILIZATION OF PARENT CORPORATE SYSTEMS (Replaced M383)

If the Contractor, in the interest of efficiency and effectiveness of business operations, decides to adopt or adapt its parent corporate systems or services, it will ensure that the Government and Contractor's data in such systems is readily transferable to a successor contractor.

H-8 RESERVED (M383)

H-9 RESERVED (M383)

H-10 PERFORMANCE BASED MANAGEMENT (Replaced M383)

(a) Performance-Based Management System. This Contract is a management and operating performance-based contract, which holds the Contractor accountable for performance. This Contract uses clearly defined Performance Objectives (POs) in relation to fixed fee, Performance-Based Incentives (PBIs), and Multi-Site

Incentives (MSIs) in relation to incentive fee. The POs, PBIs, and MSIs are established in advance on a fiscal year basis and incorporated into the Performance Evaluation Plan. The Parties agree to continuously improve upon these objectives as mission and operational needs change.

(b) Performance Appraisal Process.

(1) Performance Evaluation Plan (PEP). The Government will define expectations. A PEP shall be developed and finalized by the Contracting Officer, with Contractor input, prior to the scheduled start date of the appraisal period. The PEP will document the process and associated performance objectives, performance-based incentives including multi-site performance incentives and associated measures and targets by which the Contractor's performance will be evaluated and rated. The Parties will strive to reach mutual agreement on POs, PBIs, and MSIs and associated measures and targets that reflect expected business, operational and technical performance tied to key end products and NNSA/DOE strategic goals and objectives. Performance Objectives will not be unduly prescriptive. In the event the parties cannot come to agreement of the PEP, the NNSA Sandia Site Office Manager reserves the unilateral right to make the final decision, including changes thereto, on all POs, PBIs, and MSIs and the methodology used to evaluate Contractor performance. The PEP shall be finalized:

(i) Prior to the start of an appraisal period, if the POs, PBIs, and MSIs and associated measures and targets have been mutually agreed to by the Parties; or

(ii) Not later than thirty days prior to the scheduled start date of the appraisal period, if the POs, PBIs, and MSIs and associated measures and targets have been unilaterally established by the NNSA Sandia Site Office Manager.

Only the Contracting Officer may revise the PEP, consistent with mission, operational, and business needs, during the appraisal period of performance. It is the goal of the parties to maintain stability and consistency of both performance objectives and expectations to avoid changes that might impact the efficiency and operation of the Laboratories. If changes are necessary in the PEP, formal change control procedures will be used.

(i) Bilateral changes will be made at least sixty calendar days prior to the end of the affected appraisal period;

(ii) Unilateral changes will be made at least ninety calendar days prior to the end of the affected appraisal period and at least thirty calendar days prior to the effective date of the change; or

(iii) If such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the appraisal period.

(2) SNL Appraisal Self-Assessment Report. An annual self assessment report will be prepared by the Contractor delineating its positive and negative aspects of performance against the POs, PBIs, and MSIs contained in the PEP and other significant factors as determined by the Contractor and Contracting Officer. This report shall also (i) include an assessment of the effectiveness of, and the improvements achieved through the ILMS in accordance with Contract Clause entitled "Integrated Laboratory Management System."

(c) Schedule for Incentive Fee (PBIs and MSIs) earned determination.

The NNSA Sandia Site Office Manager shall issue the Fee Determination Official's final total incentive fee amount earned determination in accordance with: the schedule set forth in the PEP; or as otherwise set forth in this contract. However, a determination must be made within sixty calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment, if one is required or permitted, or seventy calendar days after the end of the evaluation period, whichever is later, or a longer period if the Contractor and Contracting Officer agree. If the Contracting Officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the Contracting Officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

H-11 PERFORMANCE INCENTIVES

(a) Performance Incentives Negotiations.

The Parties shall establish the specific Performance Incentives that the Contractor will be assessed against for fee determination in accordance with the Contract Clause entitled "Performance Based Management".

(b) Determination of Performance Incentives.

(1) The NNSA shall, at the conclusion of each specified appraisal period, evaluate the Contractor's performance for all Performance Incentive requirements. Performance factors will be evaluated in the aggregate.

(2) The Performance Incentive fee determination will be made in accordance with the Performance Evaluation Plan. The determination as to the amount of Performance Incentive fee earned is a unilateral determination made by the Fee Determining Official (FDO).

(3) The Contractor shall be promptly advised in writing of the Performance Incentive fee determination, and the basis of the Performance Incentive fee determination.

(4) Performance Incentive fee not earned during the evaluation period shall not be allocated to future evaluation periods.

(c) Fee. The maximum fees allocated for payments to the Contractor for the performance of the work under this Contract are set forth in Part I, Section B, of the Schedule. The fixed fee amount together with Performance Incentives fee earned is available for payment in accordance with the Contract Clause entitled "Payments and Advances." There shall be no adjustment in the amount of the Contractor's fee by reason of differences between any estimate of cost for performance of the work under this Contract and the actual cost of performance of that work.

H-12 RESERVED **(AWARD TERM Clause deleted by modification M473)**

H-13 RESERVED

H-14 MODIFICATION AUTHORITY

Notwithstanding any of the other provisions of this Contract, a Contracting Officer shall be the only individual on behalf of the Government to:

(a) Accept nonconforming work;

(b) Waive any requirement of this Contract; or

(c) Modify any term or condition of this Contract.

H-15 SANDIA CORPORATION

(a) "Contractor" means Sandia Corporation, a Delaware corporation, a wholly-owned subsidiary of Lockheed Martin Corporation.

(b) "Contractor's parent organization" means the sole stockholder of the Contractor. Lockheed Martin Corporation, a Maryland Corporation, is the Contractor's parent organization.

(c) Until expiration or termination of this Contract, all of the stock of Sandia Corporation will be owned by the Contractor's parent organization. Upon the expiration or termination of this Contract, the Contractor, at the unilateral option of NNSA and upon payment to it of the amount of Sandia Corporation's paid-in-capital, shall effect: (1) the resignation of the existing board-of-directors and officers of Sandia Corporation, and the election of new directors and officers designated by NNSA, and; (2) assignment and transfer of all Sandia Corporation stock as may be directed by NNSA.

H-16 REPRESENTATIONS AND CERTIFICATIONS (Revised M473, M0538, M0541)

The Representations, Certifications, and Other Statements of Offeror completed by the Contractor and dated April 29, 2014, are hereby incorporated in this Contract by reference.

H-17 BUSINESS ENTITY - FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER (FFRDC)

Sandia Corporation shall operate as a separate, autonomous business entity, which has as its sole purpose the management and operation of Sandia National Laboratories. Accordingly, the Contractor will establish and maintain its own system of policies and procedures related to management and operation of the Laboratories, which is consistent

with the terms of this contract, DOE Directives, regulations, and practices. The Contractor shall conduct its business consistent with the policies and procedures applicable to FFRDC facilities as set forth in Federal Acquisition Regulations Part 35.017-1 (c) (4) and 35.017-2(h).

H-18 SANDIA CORPORATION OBLIGATIONS

Existing contractual agreements and regulatory obligations entered into under Contract No. DE-AC04-76DP00789 will continue during performance of this Contract. The contractual agreements shall include all (a) subcontracts and purchase orders; (b) agreements with domestic and foreign research organizations; (c) agreements with universities and colleges; and (d) other similar agreements. The Contractor shall continue to have responsibility and accountability under the terms of this Contract for all existing commercial and regulatory obligations of Sandia Corporation.

H-19 PERFORMANCE GUARANTEE

(a) The Contractor's parent organization, Lockheed Martin Corporation, has provided a performance guarantee in a manner and form acceptable to the Contracting Officer assuring the performance, duties, and responsibilities of the Contractor shall be satisfactorily fulfilled. The performance guarantee is set forth in Part III, Section J, Appendix F, entitled “Performance Guarantee.”

(b) In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H-20 CONTRACTOR COMMITMENTS

The Contractor agrees to use its best efforts to perform, or have performed in the case of those of the Contractor’s parent organization, those commitments set forth in Part III, Section J, Appendix H, entitled "Contractor and Corporate Parent Commitments, Agreements, and Understandings."

H-21 PRIVACY ACT SYSTEMS OF RECORDS

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the Contract’s "Privacy Act" clause.

DOE System No.	Title
DOE-31	Firearms Qualifications Records
DOE-45	Weapon Data Access Control System
DOE-48	Security Education and/or Infraction Reports
DOE-52	Alien Visits and Participation

The above list shall be revised from time to time by mutual agreement between the Contractor and the Contracting Officer as may be necessary to keep it current. Such changes need not be formally incorporated before the annual Contract update modification, but shall have the same effect as if actually listed above for the purpose of satisfying the listing requirement contained in Paragraph (a)(1) of the Contract's "Privacy Act" clause.

H-22 PERFORMANCE OF WORK AT DOE FACILITIES AND SITES OTHER THAN SANDIA NATIONAL LABORATORIES

In performance of the Contract's work at DOE or NNSA facilities and sites other than SNL, the Contractor shall comply with applicable requirements set forth in this Contract's Appendix G, List of Applicable Directives and NNSA Policy Letters, and any additional directives which have been established for the DOE/NNSA Prime Contractor at that DOE/NNSA facility/site that are applicable to the Sandia Corporation work being performed and that are applicable to the associated hazards at the particular facility or site.

H-23 ORGANIZATIONAL CONFLICTS OF INTEREST (OCI) - SPECIAL PROVISION (Rev. M432)

The Contractor and the Contractor's parent and affiliates shall comply with the provisions of the approved SNL OCI Management Plan in the performance of the Contract and any deviations or amendments to said Plan shall require the express written approval, in advance, from the Contracting Officer. The Contractor shall submit to the Contracting Officer annual OCI Disclosure Update Statements beginning July 1, 2004. OCI Disclosure Update Statements for fiscal year 2011 and forward shall be submitted on November 1st of the following fiscal year. Notwithstanding the annual disclosure requirement, any change in relevant facts since the last OCI Disclosure Update Statement shall be disclosed to the Contracting Officer pursuant to paragraph (c)(1), "Disclosure After Award" of the Contract's "Organizational Conflicts of Interest" clause. Initial notification to the Contracting Officer shall be accomplished as soon as the facts are known with a full disclosure within 60 days of the initial notification, unless otherwise directed by the Contracting Officer.

H-24 HOME OFFICE AND OTHER CORPORATE SUPPORT (Rev. M218, M236, M244, M261, M288, M312, M344, M400, M443, M473, M0512, M0538, M0541, 0564, 0567)

(a) Pursuant to the Contract's "Payments and Advances" clause, the parties have agreed that the following home office and other parent organization or affiliate-provided services, directly attributable to the performance of this Contract, are allowable costs if they meet all other criteria for allowability. Such support and services are not considered procurements as contemplated by the Contract's "Contractor Purchasing System" clause. Support activities include, but are not limited to, the following:

(i) Analysis and monitoring of employee benefits
(ii) Union negotiations and personnel support
(iii) Legal and/or labor contract support
(iv) Financial and tax accounting support
(v) Internal audit support
(vi) Participation in purchasing/national agreements
(vii) Environmental management
(viii) Provision of Corporate Ethics
(ix) Provision of advice and consultation on import/export compliance
(x) Improvement of technical operations
(xi) Conduct of Board of Directors meetings.

(b) The Contractor shall charge to the account of the Government as provided in the Contract's "Payments and Advances" clause, or as otherwise directed by the Contracting Officer, the amounts incurred for the above support services. Such amounts will be charged and accounted for as follows; however, in any event, they shall not be inconsistent with the cost principles in FAR 31.2 as supplemented by DEAR 931.2:

(i) Corporate Services Provided to SNL. Costs may include travel, per diem, and other out-of-pocket costs, plus the actual salaries of the persons performing such services plus a percentage factor of salaries to cover fringe benefits and payroll taxes. The percentage factor will be applied in accordance with the Cost Accounting Standards Disclosure Statement issued by Lockheed Martin Corporation. The budget for all costs will be subject to advance approval by the Contracting Officer. All such costs will be charged against a specific Sandia Corporation-issued order or Inter-Lockheed Martin Corporation Work Transfer Agreement (IWTA) for such services as applicable. The Contractor may issue such orders or IWTA within the total budget limitation approved by the Contracting Officer for this support.

(ii) Board of Directors Meetings. Meetings of the Contractor's Board of Directors are for the purpose of assessing management and performance under this Contract and providing management guidance and assistance. Full Board of Directors meetings and other ancillary board committee meetings may be held as determined by the Board at locations convenient to SNL and corporate facilities. The applicable fiscal year (FY) budget will be submitted to the Contracting Officer for prior approval. This paragraph is not intended to make allowable any other expressly unallowable costs cited elsewhere in this Contract.

(c) The Contractor shall provide periodic reports of activities and costs incurred as required by the Contracting Officer. The amount reimbursable under this Contract shall be subject to Government audit.

(d) The Fiscal Year 2015 estimated budget for these services through September 30, 2015, is $2,934,800.00. The Fiscal Year 2014 estimated budget for these services through September 30, 2014, is $2,460,400.00. Home Office and Other Corporate Support shall be reimbursed through the end of the contract, and any options, if exercised. The FY 2014 estimated budget for these services through April 30, 2014, is $1,388,567. The FY 2014 estimated budget for these services through March 31, 2014 is $1,190,200. The FY 2013 estimated budget for these services is $ 2,772,000. The FY 2012 estimated budget for these services is $2,725,300. The FY 2011 estimated budget for these services is $2,714,000.00. The FY 2010 estimated budget for these services is $2,399,000.00. The FY 2009 estimated budget for these services is $2,358,400. The FY 2008 estimated budget for these services is $1,996,500.00. The FY 2007 estimated budget for these services is $1,919,660.00. The total FY 2006 estimated budget for these services if $2,029,400.00. The total FY 2005 estimated budget for these services is $1,786,284.00. Budget limitations shall not be exceeded without prior Contracting Officer approval. The parties agree that the budgeted amounts for costs may be reviewed further for appropriateness and scope. In addition, the parties agree that a tracking process, acceptable to the Contracting Officer, providing sufficient detail for reasonable accountability, shall be implemented. The NNSA and Contractor agree to negotiate in good faith any adjustments to these budgeted amounts as a result of empirical information from any such tracking system or reviews.

H-25 CONTRACTOR EMPLOYEES

In carrying out the work under this Contract, the Contractor shall be responsible for the employment of all professional, technical, skilled, and unskilled personnel engaged by the Contractor in the work hereunder, and for the training of personnel. Persons employed by the Contractor shall be and remain employees of the Contractor and shall not be deemed employees of the NNSA or the Government; however, nothing herein shall require the establishment of any employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for the work hereunder.

H-26 ADVANCE UNDERSTANDING OF COSTS AND EXPENSES

(a) Personnel costs and related expenses incurred in accordance with the Personnel Appendix (Appendix A) shall be allowable to the extent indicated therein.

(b) The advance understanding enables both the Contractor and the NNSA to determine allocability, allowability and reasonableness of costs prior to incurrence, thereby avoiding subsequent disallowance and disputes; provide appropriate and reasonable compensation levels to recruit and retain Contractor employees to meet DOE mission objectives; and assure prudent expenditure of public funds. The Appendix A was negotiated in concert with the requirements of DOE Order 350.1, CONTRACTOR HUMAN RESOURCE MANAGEMENT PROGRAMS, Change 1, dated September 30, 1996.

(c) Should DOE Order 350.1, Change 1, be modified by the Department, and after review and acceptance by the NNSA, the NNSA and the Contractor agree to commence good faith negotiations to modify Appendix A as appropriate prior to the incorporation of the revised Order into the contract. This clause does not supercede the rights available to NNSA under the clause entitled "DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES".

H-27 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2003)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H-28 LOBBYING RESTRICTION (DEPARTMENT OF INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 2003)

The Contractor agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H-29 FLOWDOWN OF RIGHTS TO PROPOSAL DATA

The Contractor shall include the clause of 48 CFR 52.227-23 "Rights to Proposal Data (Technical)" in any subcontract awarded based on consideration of a technical proposal.

H-30 ASSET MANAGEMENT REQUIREMENTS

(a) Asset Management

The Contractor shall plan, acquire, maintain, operate, and dispose of NNSA/DOE facilities at the Laboratories through documented and integrated management processes including Sites Comprehensive Planning, Project Management, Maintenance, Real Property, Utilities Acquisition and Management, and Energy Management. Stewardship of the facilities at the Laboratories shall be accomplished in a cost-effective manner to meet the NNSA/DOE mission. Management of the facilities shall be based on incorporation of industry standards, a graded approach, and systematic analysis of life-cycle benefits received for the capital and operating costs incurred. The physical plant shall be maintained and operated in a manner that assures facilities are “fit for use.” The term “fit for use” is defined as facility conditions that can effectively, efficiently, and safely support the world class research, science based engineering, and production efforts that take place at the sites managed by the Contractor.

(b) Facilities Management Performance

(1) General

The minimum industry standard for controlling facilities and infrastructure design, construction, and materials for maintenance, repair, renovation, and new construction shall be either the Uniform Building Code as issued by the International Conference of Building Officials, 1997 version or later edition, or the International Building Code as issued by the International Code Council, 2000 version or later edition, at the discretion of the Contractor. Leased facilities or space, off-site or on-site, shall not be subject to the requirements of this paragraph (b)(1). Applicable

requirements of 10 CFR and of the applicable Directives in Contract Section J, Appendix G, List of Applicable Directives and NNSA Policy Letters, shall be used for the design and construction of nuclear facilities and accelerators in addition to the use of the Uniform Building Code, the International Building Code, and the referenced codes and standards. Use of the Uniform Building Code or the International Building Code as the minimum standard is not required to be applied retroactively to: facilities designed, constructed, modified, or having DOE approved project baselines prior to the date of incorporation of this paragraph in this Contract, or to temporary facilities such as trailers and modular facilities.

(2) Site Facility Plan

The Contractor shall establish and maintain a Site Facility Plan that addresses the current condition of the Laboratories and future needs based on the strategic plan for the Laboratories. The Site Facility Plan shall be updated annually. The NNSA shall provide to the Contractor guidance for the preparation of the Site Facility Plan for which the Contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the Contractor shall prepare, and maintain through annual updates, the Site Facility Plan to reflect those actions necessary to keep the development of facilities current with the needs of the Government and allow the Contractor to successfully accomplish its mission in support of National Security. In developing this Site Facility Plan, the Contractor shall follow the procedural guidance set forth in the applicable Directives in Contract Section J, Appendix G, List of Applicable Directives and NNSA Policy Letters. The Contractor shall use the Site Facility Plan to manage and control the development of facilities and lands. The Site Facility Plan and any NNSA directed revisions to the Site Facility Plan shall be submitted to the Contracting Officer for review and approval by NNSA. The Contractor may periodically during the year update and revise the Site Facility Plan to reflect changing mission needs. Changes to planned projects between official updates of the Site Facility Plan and the related NNSA approvals shall be approved through the NNSA project authorization process.

(3) Project Management

All capital investments shall be managed and controlled by the Contractor in accordance with the Project Execution Plan for each project.

(4) Real Property

Real property at the sites shall be acquired, operated, and disposed of in a manner to support the policies and standards established by NNSA/DOE with regard to optimization of space and proper utilization of facilities. The acquisition and disposal of real property shall be based on the facility needs identified in the Site Facility Plan.

(i) Acquisition of Real Property by Contractor Lease:

(A) The Contractor shall comply with "Contractor Plan for Acquisition of Leased Real Property," dated January 7, 1999, and as amended.

(B) Annually, the Contractor shall submit the "Contractor Plan for Acquisition of Leased Real Property."

(C) For purposes of implementation of Paragraph (a)(2) and (b) of Contract Clause entitled "Acquisition of Real Property", the Contractor shall provide a Preliminary Real Estate Plan (PREP) for all proposed acquisitions.

(ii) Acquisition of Real Property Other than by Contractor Lease (fee simple or temporary interest by easement, license or permit):

For purposes of implementation of Paragraphs (a)(1) and (a)(3) of Contract Clause entitled "Acquisition of Real Property", the Contractor shall provide a PREP for all proposed acquisitions.

(iii) Disposal of Real Property:

The Contractor shall provide a PREP for all proposed disposals.

(5) Operations and Maintenance

Facilities shall be operated and maintained in such a manner that they are fit for the intended use; promote operational safety; protect the environment, the workers, and the public; enhance the Laboratories' missions; minimize the use of energy resources; and protect the Government's capital investment.

(6) Utilities Acquisition and Management

Utility systems including electrical, water, natural gas, sewage, telephone, and steam shall be acquired, operated, and maintained to provide highly reliable and efficient systems.

(7) Resources Management

The Contractor shall manage the use of energy and water resources in a manner that minimizes consumption.

(c) Subcontract Requirements. To the extent the Contractor subcontracts performance of any of the responsibilities discussed in this clause, the subcontract shall contain the requirements of this clause relative to the subcontracted responsibilities.

H-31 STRATEGIC PURCHASING

(a) The Contractor shall participate with NNSA and other NNSA contractors as part of an "enterprise organization" taking advantage of the many benefits that can be achieved through strategic purchasing. Strategic purchasing can result in better pricing, better products, more timely delivery, reduced administrative costs and lead times for both the contractor and the NNSA, greater standardization and interchangeability across the NNSA complex, and increased awards to small business entities.

(b) The Contractor shall cooperate with NNSA and other NNSA contractors in identifying requirements under this Contract that are suitable for strategic purchasing and shall facilitate the identification of work to be directly acquired by NNSA to support the objectives discussed below. The Contractor shall use the contracting vehicles identified by the NNSA as strategic purchases and those awarded by the Integrated Contractor Purchasing Team (ICPT) to meet all suitable requirements under this Contract unless the cost of using such contracting vehicles is shown to be excessive, does not provide the best value and or impacts the Contractor's schedule. The Contractor may propose alternative acquisition strategies to the Contracting Officer.

(c) (1) The Contracting Officer reserves the right to identify to the Contractor any of the work in support of the Management and Operation of SNL and contemplated by Section C, Statement of Work, of this Contract that may be appropriate for performance by either another contractor directly contracted by the NNSA or performed by Government employees, to meet specific goals of the NNSA.

(2) Work so identified will be for the purpose(s) of: allowing the Government to conduct pilot programs, or to maximize the participation of small businesses in NNSA procurement programs. The Government and the Contractor will confer in advance on the strategy for changing responsibility for the work and will do so with the objective of minimum disruption to the site operations.

(3) The Government may designate the Contractor as the Technical Monitor for such contracts that are directly related to the scope of this Contract. The Contractor agrees to perform such monitoring duties as shall be more further described in the designation for each such contract. No designation shall include, and the Contactor shall not perform, the following duties:

a. Award, modification, change, or termination of the contract.

b. Receipt, processing or adjudication of any claims, invoices, or demands for payment of any form.

c. Any function determined to be inherently governmental.

(4) The Technical Monitor shall report to the Contracting Officer, or the Contracting Officer's Representative, any performance of a designated contract that may not be in compliance with its terms and conditions and is not authorized to take any other action regarding such noncompliance.

(5) Additionally, the NNSA agrees to insert provisions in all such contracts substantially as follows:

OTHER GOVERNMENT CONTRACTORS

The Government may undertake or award other contracts for additional work or services. The contractor agrees to fully cooperate with such other contractors and Government employees and carefully fit its own work to such other work as may be directed by the Contracting Officer. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees. (see, H-_____)

H-___. The Government may designate Sandia Corporation as Technical Monitor for any right, duty or interest in this contract. In that event, the contractor further agrees to fully cooperate with Sandia Corporation for all matters under the terms of the designation.

(d) In the cases where the Government directly contracts for such work, and retains administration, the Contractor shall fully cooperate with the new performing entity and provide reasonable support as required.

(e) Appropriate adjustments shall be made to the Contractor's Subcontracting Plan to recognize the changes to the subcontracting base and goals.

H-32 OPEN COMPETITION AND LABOR RELATIONS UNDER MANAGEMENT AND OPERATING AND OTHER MAJOR FACILITIES CONTRACTS (DEC 2002)

"Labor organization," as used in this clause, shall have the same meaning it has in 42 U.S.C. 2000e(d).

(a) Unless acting in the capacity of a constructor on a particular project, the Contractor shall not -

(1) Require bidders, offerors, contractors, or subcontractors to enter into or adhere to nor prohibit those parties from entering into or adhering to agreements with one or more labor organizations, i.e., project labor agreements, that apply to construction project(s) relating to this contract; or

(2) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for refusing to become or to remain signatories or to otherwise adhere to project labor agreements for construction project(s) relating to this contract.

(b) When the Contractor is acting in the capacity of a constructor, i.e., performing a substantial portion of the construction with its own forces, it may use its discretion to require bidders, offerors, contractors, or subcontractors to enter into a project labor agreement that the Contractor has negotiated for that individual project.

(c) Nothing in this clause shall limit the right of bidders, offerors, contractors, or subcontractors to voluntarily enter into a project labor agreements.

H-33 IMPLEMENTATION OF SECTION I CLAUSES (Rev. M216, M301, M376, M380, M388, M390, M417, M473, M0524, M0538, M0541)

(a) For purposes of implementation of Paragraph (d) of Contract Clause entitled "Accounts, Records, and Inspection," the parties agree that contractor official procurement file records are contractor-owned records. Associated official

financial records that are stand alone, separate and apart from the official procurement file records remain government-owned records.

(b) For purposes of implementation of Paragraph (b)(2) of Contract Clause entitled "Required Sources For Helium And Helium Usage Data," the parties agree to the following:

(i) Contractor delivery of Helium Supplier and Helium Usage Data to the Contracting Officer shall be considered met if the required data is entered into an appropriate database of Helium deliveries;
(ii) a copy of this data must be made available to the Contracting Officer upon request; and
(iii) the Contractor shall provide a quarterly report of helium usage to the Contracting Officer in a format determined by the Contracting Officer.

(c) For purposes of implementation of paragraph (e) (1) of the Contract Clause entitled "Penalties for Unallowable Costs," the parties agree the phrase "an audit" means a DOE/NNSA initiated audit.

(d) For purposes of implementation of paragraph (b)(1) of the Contract Clause entitled "Access to and Ownership of Records," the parties agree to the following:

(1) "Employee relations records" include records pertaining to qualifications or suitability for employment of any employee, applicant, or former employee, allegations, investigations, and resolution of employee misconduct, discipline, or charges of discrimination, negotiations, arbitration or grievance proceedings with any labor organization in connection with any labor contract, or affirmative action plans and related records.

(2) "Employee assistance program records" include psychological/psychiatric records and files maintained on individual employees, applicants, and former employees of contractor.

(e) For purposes of implementation of Paragraph (b) of Contract Clause entitled "Laws, Regulations, and DOE Directives," the parties agree to the following:

The NNSA Supplemental Directive (NA SD) Manual 452.3-1, *Defense Programs Business Requirements and Processes Manual,* will incrementally replace chapters and associated Technical Business Practices within the 56XB *Nuclear Weapon Development and Production Manual* using the Requirements Modernization and Integration (RMI) process.

Before the release of any RMI derived requirements, the contractor will be

notified by the Contracting Officer, or an authorized designee, and will have the opportunity to assess the effect of the contractor's compliance with the change on contract via a Site Impact Analysis. The contractor's analysis shall include cost and funding, technical performance, an implementation schedule, and shall also identify any potential inconsistencies between the change and other terms and conditions of the contract.

Within 30 days of receipt by the contractor from the Contracting Officer of notification of an approved change, the contractor shall advise the Contracting Officer (CO) in writing, if the change will result in an impact to the contractor. The contractor will outline the impact, to include cost and schedule, and may identify appropriate consideration pursuant to DEAR 970.5243-1, *Changes*.

(f) For purposes of implementation of paragraph (a) of the contract clause **DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES,** the parties agree to the recent changes in 10 CFR 707, entitled, "*Workplace Substance Abuse Programs at DOE Sites*". The changes are as follows: (1) the definition of Testing Designated Positions (TSD) now includes all new contractor and subcontractor applicants and personnel with security clearances; 2) the percent of personnel to be randomly tested on an annual basis has been decreased from 50% to 30%, and 3) a Workplace Substance Abuse Program plan or revision shall be submitted within 30 days from full execution of this modification.

(g) For purposes of implementation of the Contract Clause entitled "Insurance-Litigation and Claims," the parties agree that the cost allowability of punitive damages arising from the Contractor's actions or inactions in hiring, managing, disciplining or terminating its employees, shall be analyzed and determined using provisions of this Contract other than paragraph (g)(2) of said clause, which shall not apply. This Special Provision shall remain in effect for the term of this Contract, but in no event shall this Special Provision remain effective beyond April 30, 2016, and any options exercised and when, in the event this Contract is non-competitively extended, the parties may negotiate to retain, revise, or eliminate said Special Provision.

H-34 PREEXISTING CONDITIONS

(a) Any liability, obligation, loss, damage, penalty, fine, or claim (including, without limitation, a claim involving strict or absolute liability), action, suit, cost, expense or disbursement which may be incurred, imposed, or asserted by any party and arising out of any act or failure to act which occurred before October 1, 1993, in conjunction with the management and operation of Sandia National Laboratories, shall be deemed incurred under Contract No. DE-AC04-76DP00789. If it is not possible to relate or reasonably allocate particular activities to individual periods, the costs shall be presumed to have been incurred before October 1, 1993.

(b) Notwithstanding the provisions of subparagraph (a) above, to the extent the acts or failure to act of the Contractor after September 30, 1993, cause or add to any fine, or penalty, or remediation costs resulting from a condition in existence prior to October 1, 1993, the Contractor shall be responsible in accordance with the terms and conditions of this Contract. The Contractor has the duty to inspect existing facilities and sites and timely identify to the Government those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this Contract or applicable law or regulation, and the responsibility to take corrective action, as directed by the Contracting Officer or as required elsewhere in this Contract.

(c) The obligations of the Government under this clause are subject to the Contract Clause entitled "Obligation of Funds."

H-35 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2006) (Added M244)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H-36 IMPLEMENTATION OF ITER AGREEMENT ANNEX ON INFORMATION AND INTELLECTUAL PROPERTY (Added M283)

(1) Contractor agrees to be subject to the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (the ITER Agreement). Specifically, and without limitation, subject inventions and data produced in the performance of this contract and subcontracts related to the ITER project are subject to the license rights and other obligations provided for in the ITER Agreement's Annex on Information and Intellectual Property (the Annex) attached as Appendix K of this contract.

(2) Background intellectual property of the Contractor, as defined in the Annex, is also subject to the provisions of the ITER Agreement. In particular and under certain circumstances, Contractor shall use its best efforts to identify Background Intellectual Property (including patents and data) and grant a nonexclusive license in certain Background Intellectual Property to the Parties to the ITER Agreement (Members) for commercial fusion use. However, in individual cases and for good cause shown in writing, the requirement for such a license may be waived by DOE.

(3) Further, in accordance with Annex, intellectual property generated by Contractor employees who are designated as seconded staff to the ITER organization shall be owned by the ITER Organization and the Contractor gets no rights to such intellectual property except those rights provided the Contractor by the Government as a result of the Government being a member of the ITER Organization. Contractor agrees that Contractor employee agreements will be suitably modified as necessary to effectuate this provision and that employees will be required to execute a separate secondment agreement with the ITER Organization.

(4) The Government may provide to each ITER Member, as defined in the ITER Agreement, the right, for non-commercial uses, to translate, reproduce, and publicly distribute data produced in the performance of this contract. Contractor will deliver, at a minimum, to DOE, copies of all ITER-related peer-reviewed manuscripts provided to scientific and technical journal publishers which may then be distributed to Members in accordance with the ITER Agreement. Contractor agrees that the ITER Organization may impose a different delivery requirement in order to be in compliance with this paragraph and that, if so, Contractor agrees that this paragraph may be suitably modified to be in accordance with the ITER Agreement.

(5) Contractor shall include the ITER patent and data rights clauses transmitted to the Contractor from the U.S. ITER Project Office, suitably modified to identify the parties, in all subcontracts related to ITER, at any tier, for experimental, developmental, demonstration or research work and in subcontracts in which technical data or computer software is expected to be produced or in subcontracts that contain a requirement for production or delivery of data.

H-37 PERFORMANCE OF WORK AT DOE YUCCA MOUNTAIN – COMPLIANCE WITH 10 CFR 21 (Added M298)

The Contractor shall promulgate programs and procedures for its Lead Lab work on the geologic repository at Yucca Mountain that conform to the requirements of 10 CFR Part 21 and any related Nuclear Regulatory Commission guidance or guidance deemed to be applicable by the Department of Energy. Such programs and procedures shall be effective and implemented on the date upon which a license application for authorization to construct a geologic repository at Yucca Mountain is submitted to the Nuclear Regulatory Commission.

H-38 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2008) (Added M316)

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H-39 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2009) (Added M344; Rev. M362)

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H-40 OPERATING REQUIREMENTS (Added M383, Rev. M388)

(a) The Contractor shall comply with the operating requirements listed in Appendix G of the Contract as stated in the Contract Clause entitled "DEAR 970.5204-2 Laws, Regulations and DOE Directives" and Appendix L, List of JORRB-Identified Deliverables.

(b) Definitions:

(A) Baseline: The baseline shall consist of the operating requirements in Appendix G. The Contractor shall maintain a record of the baseline in its Prime Contract, and changes thereto, in the Integrated Laboratory Management System.

(B) Change: Any directive, inspection, audit finding, informal or formal communication that if implemented by the Contractor would add or delete an element to the baseline or would alter, increase or decrease the contractor's work in compliance with the baseline.

(c) Industry Standard. The term industry standard encompasses national and international consensus standards and generally accepted industry standards.

(c) The Contractor shall benchmark with industry as appropriate to identify best-in-class commercial practices, industry standards, and best business practices that may, when substituted for existing contractual requirements, improve site operations and cost effective performance, while effectively managing business and operations. The Contractor will propose exemptions or equivalencies to existing contractual requirements, as determined appropriate, through the change control process described below. The Contractor is encouraged to incorporate best-in-class commercial practices, industry standards, and best business practices to improve site operations and cost effective performance, while effectively managing business and operations, even if exemptions or equivalencies to existing contractual requirements are not required.

(d) Operating Requirements Change Control

i) Joint Operating Requirements Review Board (JORRB) – The parties shall jointly develop and use the JORRB for evaluating and recommending baseline changes to the Sandia Site Office Manager. The JORRB shall not affect the application of otherwise applicable laws and regulations of the United States Government.

ii) Implementation: The Sandia Site Office Manager will notify the Contractor of the government's final decision on the recommendations resulting from the process. For change requests that have been initiated by the Sandia Site Office Manager, the Contractor will receive a comprehensive description of Contractor requirements necessitated by the change and a date for implementation.

iii) Documentation: The Contractor shall maintain a system for documenting all change requests, JORRB recommendations and decisions resulting from the process.

iv) Contract Modification: The Contractor shall be under no obligation to respond to orders for changes to the Baseline absent a modification to this Contract. Any change to operating requirements approved by the Contracting Officer under this clause shall be incorporated into the Contract under Section J Appendix G or Appendix L.

v) Baseline Changes: Ordinarily no change will be made to the Baseline without first following the JORRB process identified in this Section.

vi) Deficiency and Remedial Action: If, during performance of this Contract, NNSA determines that a previously approved change to a DOE Directive or DOE/NNSA requirement is not satisfactory, the Contracting Officer may require the Contractor to prepare a corrective action plan for NNSA approval. If NNSA is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate the reinstatement of the Directive or DOE/NNSA requirement pursuant to Clause I-72, "DEAR 970.5204-2, Laws, Regulations, and DOE Directives."

vii) JORRB-Identified Deliverables: As part of the JORRB process, specific contract deliverables that are not otherwise identified in an operating requirement listed in Appendix G will be identified for incorporation into the Contract under Section J Appendix L List of JORRB-Identified Deliverables will only include deliverables not identified elsewhere in the Contract.

H-41 DEFINITION OF UNUSUALLY HAZARDOUS OR NUCLEAR RISK AND OTHER TERMS FOR PURPOSES OF FAR CLAUSE 52.250-1, INDEMNIFICATION UNDER PUB.L. No. 85-804 (Added M473)

a. The term "a risk defined in this contract as unusually hazardous or nuclear" as used in FAR Clause 52.250-1 means the risk of legal liability to third parties (including legal costs as defined in paragraph jj of Section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2014 jj, notwithstanding the fact that the claim or suit may not arise under Section 170 of said Act), arising from actions or inactions in the course of the following performed by the Contractor, under this contract:

1. Participation in activities in support of a nonproliferation effort on behalf of the United States, outside the United States, as described in (i) through (iii):

i. Participation in DOE/NNSA's Nuclear Emergency Search Team ("NEST");

ii. Participation in DOE/NNSA's Accident Response Group ("ARG");

iii. Participation in DOE/NNSA's Joint Technical Operations Team ("JTOT");

to the extent participation in these foregoing activities described in subparagraphs (i.), (ii.), or (iii.) above encompass nuclear activities involving real or suspected nuclear weapons, nuclear weapons components, or nuclear materials which can be readily utilized either (A) for the production or fabrication of nuclear weapons without substantial effort; or (B) for intentional widespread contamination or dispersal of harmful nuclear materials, whether or not such real or suspected weapons, components, or harmful nuclear materials are owned by the United States; and

2. Maintenance and repair of United States-owned nuclear weapons, as requested by the Department of Defense under DOE's Stewardship role for the United States nuclear weapons stockpile; and

3. Activities on behalf of the DOE/NNSA or other United States sponsored high risk activities as described in (i.) through (iv.) in response to imminent terrorist threats:

i. Chem-Bio Decontamination Foam which was developed by Sandia for rendering inert both biological and chemical agents. These have been extensively tested in normal conditions and used to decontaminate facilities in the U.S., including the Senate Hart Office Building and may be slated for possible use outside the United States.

ii. Synthetic Aperture Radar Systems which were developed, miniaturized, and produced for use by the military to provide all-weather, high-resolution imagery. The military is increasingly relying on the resulting images for maps of operations.

iii. Monitors for Detecting Traces of Explosives which were developed by Sandia in both stationary and portable formats for screening personnel, cargo, small packages, and vehicles, and are being used by domestic and foreign governments at both public and private facilities.

iv. Chem-Bio Detectors which were developed by Sandia to provide early warning of the presence of agents in public areas; such as mass

transportation systems; some have been deployed in the Washington, D.C. Metro and elsewhere.

4. Activities directed or authorized by the DOE/NNSA, on or after April 24, 2010 in response to the Deepwater Horizon disaster, per the Secretarial Determination Authorizing Public Law 85-804 Indemnification for Contractors Engaged in Activities Responding to the Deepwater Horizon Disaster, dated 2 July 2010; and

5. Participation in tasks or activities by Sandia Corporation or its subcontractors on or after March 11, 2011 that is directed or authorized by the DOE/NNSA as an element of activities taken in response to the Japan earthquake and tsunami, including efforts to address and access damage to nuclear power plants and potential radioactive releases from these plants now and in the future; and

6. Other activities relating to non-proliferation, emergency response, anti-terrorism activities, or critical national security activities that involve the use, detection, identification, assessment, control, containment, dismantlement, characterization, packaging, transportation, movement, storage, or disposal of nuclear, radiological, chemical, biological, or explosive material, facilities, or devices, and nuclear weapons research, design, development, production, testing and maintenance, and development of technology as part of Government programs for nuclear weapons deployment, storage and stockpile stewardship, transportation, demilitarization, dismantlement or disposition, provided such activities are specifically requested or approved, in writing, by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or an Under Secretary, and further provided that the request or approval specifically identifies a particular project involving one of those activities and makes the indemnity provided by this clause applicable to that particular project under the contract.

b. The unusually hazardous or nuclear risks described above are indemnified only to the extent that they are not covered by the Price-Anderson Act, Section 170d of the Atomic Energy Act of 1954, as amended, (42 U.S.C. Section 2210d) or where the indemnification provided by the Price-Anderson Act is limited by the restriction on public Liability imposed by Section 170e of the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2210e) to an amount which is not sufficient to provide complete indemnification for the legal liability to which the contractor is exposed.

c. Additional Definitions of Terms

1. As used in this H-41 clause,

i. the term "nuclear materials" means source, special nuclear, or byproduct materials as those terms are defined in Section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2014.

2. As used in Section I Clause I-49 entitled FAR 52.250-1 INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984) (ALTERNATE I) (APR 1984),

   i. the term "Contractor" except as used in paragraphs (a) and (e) of I-49 FAR 52.250-1 means

      (A) Sandia Corporation,

      (B) Sandia Corporation's parent organization, Lockheed Martin Corporation, corporate successors of Lockheed Martin Corporation, and corporate affiliates of Lockheed Martin Corporation, and

      (C) Employees, officers and directors of (A) and/or (B) above named or threatened to be named as defendants in lawsuits or litigation threatened or initiated by third parties which seek to impose or establish, or which could result in, a risk which is defined in this contract as unusually hazardous or nuclear, on account of actions or inactions of Sandia Corporation, or on account of actions or inactions undertaken by the corporations or individuals identified in subparagraph (A) and/or (B) above for, on behalf of, or with respect to, Sandia Corporation under this contract; and

   ii. the term "Contractor" as used in paragraphs (a) and (e) of I-49 52.250-1 means Sandia Corporation;

   iii. the term "Contractor's business" means the management and operation of Sandia National Laboratories for DOE/NNSA under this contract;

   iv. the terms "Contractor's operations at any one plant or separate location in which this contract is being performed" and "a separate and complete major industrial operation in connection with the performance of this contract" mean the Sandia National Laboratories facilities located at Kirtland Air Force Base in Albuquerque, New Mexico and Livermore, California, and facilities in Tonopah, Nevada, and the Pacific Missile Range Facility in Barking Sands Hawaii (Kauai Test Facility);

   v. the term "agency head" means the Secretary of Energy; and

   vi. the term "corporate affiliates of Lockheed Martin Corporation" means

      (A) any company that, directly or indirectly, owns 50 percent or more of Lockheed Martin Corporation (including its corporate successors), or which otherwise controls Lockheed Martin Corporation, and

(B) companies, other than Sandia Corporation, that directly or indirectly, are 50 percent or more owned by Lockheed Martin Corporation or by any company referred to in paragraph (A) above, or which are otherwise controlled by Lockheed Martin Corporation, or by any such company.

H-42 CONFERENCE COSTS (Added M499)

(a) The Contractor shall follow the most current guidance issued by DOE/NNSA concerning reporting conference related activities and spending. The Contractor shall request, obtain approval, and report all conference activities through the Conference Management Reporting and Approval Tool on the DOE iPortal at https://iportal.doe.gov.

(b) While a conference may be approved by DOE/NNSA based on estimated cost and attendance to ensure federal funds are used for purposes that are appropriate, cost effective, and important to the core mission, only the Contracting Officer has authority to determine if the costs incurred by the Contractor are reasonable, allowable, and allocable to the contract.

(c) The Contractor shall ensure conference activities are included in the Contractor's annual audit plan required by paragraph (i) of the contract clause entitled "Accounts, Records, and Inspections," unless otherwise directed by the Contracting Officer.

H-43 LOBBYING RESTRICTIONS (CONSOLIDATED AND FURTHER CONTINUING APPROPRIATIONS ACT, 2013 (Added M505)

The Contractor agrees that none of the funds obligated on this award shall be expended directly or indirectly, to influence congressional action on any legislative or appropriation matters pending before Congress, other than to communicate to members of Congress a s described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute or regulation.

H-44 OFF SITE ASSIGNMENT OF EMPLOYEE (Added M0541)

Assignments of employees outside of their normal duty station exceeding 30 consecutive calendar days for which the NNSA/DOE will reimburse all or some of their compensation or other expenses shall be approved by the Contracting Officer prior to beginning the assignment. All reimbursement of allowances for these assignments shall be in accordance with DOE Acquisition Letter AL-2013-01 "Contractor Domestic Extended Personnel Assignments." Requests shall be submitted 30 days prior to the desired start date to ensure timely Contracting Officer approval. Off Site Assignment will include IPAs.

H-999 SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (APR 2009)

(Added M331, Replaced M343; Rev. M362)

Preamble:

Work performed under this contract will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available by it for activities that can be initiated not later than June 17, 2009.

Contractors should begin planning activities for their first tier subcontractors, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related Guidance. For projects funded by sources other than the Recovery Act, Contractors should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning the how and where for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor must comply with all requirements of the Act. If the contractor believes there is any inconsistency between ARRA requirements and current contract requirements, the issues will be referred to the Contracting Officer for reconciliation.

Be advised that special provisions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Protecting whistleblowers; and
- Requiring prompt referral of evidence of a false claim to the Inspector General.

Definitions:

For purposes of this clause, "Covered Funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as

Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

A. Flow Down Provision

This clause must be included in every first-tier subcontract.

B. Segregation and Payment of Costs

Contractor must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source to meet the reporting requirements of the Recovery Act and OMB Guidance.

Invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

For contractors currently using drawdown on a letter of credit, the current procedure remains in effect and is used for ARRA activity in lieu of invoicing.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Wage Rates

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See http://www.dol.gov/esa/whd/contracts/dbra.htm .

E. Publication

Information about this contract will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board (the Board). The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Registration requirements (Rev. M362)

Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the date the first report is due under FAR 52.204-11 American Recovery and Reinvestment Act – Reporting Requirements.

G. Utilization of Small Business

Contractor shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.

Include paragraph H in contracts that include 970.5232-3 Accounts, Records and Inspection.

H. Access by Comptroller General or Inspector General

The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—

(1) Examine any of the Contractor's or any subcontractor's records that pertain to and involve transactions relating to Recovery Act transactions under this contract or a subcontract hereunder; and

(2) Interview any officer or employee regarding such transactions.