

**STATE ENERGY PROGRAM
LOAN AGREEMENT
BETWEEN THE
WISCONSIN ECONOMIC DEVELOPMENT CORPORATION
AND
ONEIDA ENERGY INC.**

This Agreement is entered into by and between the Wisconsin Economic Development Corporation ("WEDC") and Oneida Energy Inc. ("Borrower").

WITNESSETH

WHEREAS, the WEDC is authorized to award loan funds, for the purpose of economic development pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5 and;

WHEREAS, the WEDC, relying upon representations in the Borrower's Application, agreed to lend up to Two Million and 00/100 Dollars (\$2,000,000.00) to the Borrower to be utilized in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for valid consideration, the receipt of which is hereby acknowledged, and in consideration for the promises and covenants in this Agreement, the WEDC and Borrower agree as follows:

1. **DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the meanings set forth below:
 - a) "Agreement" means this agreement and the attached Exhibits between the WEDC and the Borrower, together with any future amendments thereto.
 - b) "Application" means the prospect data sheet and other materials submitted by the Borrower for this award.
 - c) "Borrower" or "Sub-recipient" means Oneida Energy Inc., together with its lawful successors and assigns.
 - d) "Collateral" means the property described in Exhibit A.
 - e) "WEDC" means the Wisconsin Economic Development Corporation, together with its lawful successors and assigns.
 - f) "Effective Date" means the date this Agreement is executed by the WEDC.

- g) "Eligible Project Costs" means the costs and expenditures incurred by the Borrower in connection with the Project, as more fully described in Exhibit A.
 - h) "Existing Full-Time Positions" means the currently existing Full-Time Positions that will be retained by the Borrower in Wisconsin in connection with the Project.
 - i) "Full-Time Position" means any permanent position where an employee is required, as a condition of employment, to work at least 40 hours per week and 2,080 hours per year including paid leave and holidays.
 - j) "Guaranty" means the Unlimited Guaranty attached as Exhibit E.
 - k) "Loan" means the WEDC's loan to the Borrower under this Agreement.
 - l) "Project" means the activities described in Exhibit A.
 - m) "Promissory Note" means the Promissory Note attached as Exhibit D.
 - n) "Term of This Agreement" means until the Borrower's obligations hereunder are fully satisfied.
2. **DISBURSEMENT OF LOAN PROCEEDS.** Loan disbursements to the Borrower hereunder for Eligible Project Costs shall be made on a periodic basis upon the WEDC's receipt and approval of a completed Request for Disbursement Form (attached as Exhibit C) and required supporting documentation.
- a) Prior to the disbursement of any Loan funds, the Borrower shall execute and deliver to the WEDC:
 - (i) A borrowing resolution.
 - (ii) A subordinate position Selective Business Security Agreement, on all assets now owned or hereinafter acquired.
 - (iii) All other documents that reasonably may be required by the WEDC to effect the terms and conditions of this Agreement.
 - b) The Borrower shall work with the DOA to deliver a written Affirmative Action Plan if requested.
3. **BORROWER'S LOAN PAYMENTS.** This Loan shall be repaid in accordance with the terms of the Promissory Note.
4. **TAXES AND FEES.** Except as otherwise provided in this Agreement, the Borrower shall keep the Collateral free and clear of all judgments, levies, liens, security interests and encumbrances and shall pay all federal, state and local fees, assessments and taxes which may be assessed upon the ownership, possession or use of the Collateral.
5. **INSURANCE.** The Borrower covenants that it will maintain insurance in such amounts and against such liabilities and hazards as customarily is maintained by other companies operating similar businesses.

6. **"EVENT OF DEFAULT" DEFINED.** The occurrence of any one or more of the following events shall constitute an "Event of Default" for the purposes of this Agreement:
- a) The Borrower's failure to pay, within ten (10) calendar days of the due date, any of the principal payments or interest due under the Promissory Note;
 - b) The Borrower's failure to comply, within five (5) calendar days of the due date, any of the reporting requirements required under section 3 in Exhibit B;
 - c) The Borrower's failure to comply with or perform any of its obligations under this Agreement; provided that the Borrower's failure to comply with the terms and conditions of Exhibit A, Section 3. a) and b) hereunder shall not be considered an "Event of Default".
 - d) Any assignment for the benefit of the Borrower's creditors or commission of any other act amounting to a business failure;
 - e) The filing, by or against the Borrower, of a petition under any chapter of the U.S. Bankruptcy Code or for the appointment of a receiver;
 - f) Any default or breach of the Borrower's obligations under the terms and conditions of its loan agreements, leases, or financing arrangements with other creditors;
 - g) Any material misrepresentation with respect to the Borrower's warranties and representations under this Agreement or the Application; or

7. **REMEDIES IN EVENT OF DEFAULT.**

- a) Subject to the terms of any effective subordination agreement between Harris Bank and WEDC, upon the occurrence of any Event of Default, WEDC shall send a written notice of default to the Borrower, setting forth with reasonable specificity the nature of the default. If the Borrower fails to cure the default to the reasonable satisfaction of the WEDC within ten (10) calendar days, the WEDC may, without further written notice to the Borrower, declare the Borrower in default, terminate this Agreement effective immediately, and accelerate the principal balance, accrued interest, and other amounts owed by the Borrower hereunder.
- b) Upon the termination of this Agreement:
 - (i) The Borrower shall be liable for the full unpaid principal balance together with interest at the annual rate of twelve (12) percent from the date of the Event of Default to the date the Borrower's obligations hereunder are paid in full.
 - (ii) Subject to the rights of other creditors, the WEDC shall be entitled to exercise any and all remedies available to the WEDC under this Agreement, related loan documents, and applicable laws.
- c) In addition to the rights and remedies available to the WEDC at law, in equity, or in bankruptcy, the WEDC shall be entitled to recover from the Borrower an amount equal to the sum of:

- (i) The unpaid principal balance, accrued interest, and other amounts owed by the Borrower hereunder;
- (ii) All court costs and reasonable attorney's fees incurred by the WEDC in the enforcement of its rights and remedies under this Agreement, including all costs incurred in foreclosing upon, repossessing, storing, repairing, selling, leasing or otherwise disposing of the Collateral; and
- (iii) Any other damages arising from the Borrower's default.
- d) The WEDC's foreclosure upon, repossession of, and subsequent sale, lease, or disposition of the Collateral shall not affect the WEDC's right to recover from the Borrower any and all damages caused by the Borrower's breach of this Agreement. The WEDC's rights and remedies hereunder shall be cumulative, not exclusive, and shall be in addition to all other rights and remedies available at law, in equity or in bankruptcy.

8. BORROWER'S WARRANTIES AND REPRESENTATIONS. To induce the WEDC to enter into this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Borrower hereby warrants and represents that:

- a) The Borrower is duly organized, validly existing, and authorized to engage in business in the State of Wisconsin;
- b) The Borrower is qualified to engage in business in every jurisdiction where the nature of its business makes such qualification necessary;
- c) The Borrower is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it, the violation of which would have a material and adverse effect on the Borrower's financial ability to comply with this Agreement;
- d) The Borrower is unaware of any conditions which could subject it to any damages, penalties or clean-up costs under any federal or state environmental laws which would have a material and adverse effect on the Borrower's financial ability to comply with this Agreement;
- e) This Agreement is valid and enforceable in accordance with its terms against the Borrower, subject only to applicable bankruptcy, insolvency, reorganization or other similar laws affecting generally the enforceability of the rights of creditors;
- f) The Borrower is financially solvent and able to comply with all of the terms and conditions set forth in the Agreement and is not in default under the terms and conditions of any loan agreements, leases, or financing arrangements with the Borrower's other creditors;
- g) The financial statements and other information provided by the Borrower to the WEDC are complete and accurate in accordance with Generally Accepted Accounting Principles, and may be relied upon by the WEDC in deciding whether to enter into this Agreement with the Borrower;
- h) The Borrower has secured Project funds as identified in Exhibit A to fund all other costs relating to the Project;

- i) In making these warranties and representations, the Borrower has not relied upon any information furnished by the WEDC;
- j) The Borrower's warranties and representations herein are true and accurate as of the date of this Agreement, and shall survive the execution thereof.

9. BORROWER COVENANTS.

- a) **Deliverables.** The Borrower shall comply with the terms and conditions of this Agreement including those set forth in Exhibit A Section 3. of this Agreement.
- b) **Penalties.** Should the Borrower fail to meet the terms and conditions set forth in Exhibit A and Exhibit B it shall be subject to penalties outlined in Exhibit A.
- c) **Reporting.** The Borrower shall provide the WEDC with reports, utilizing forms provided by the WEDC, as well as interim and/or annual reports in accordance with Exhibit B.
- d) **Inspection.**
 - (i) The WEDC and its respective agents, shall, at any reasonable time and upon 48 hours notice, have the right to enter upon the Borrower's premises to inspect the Project.
 - (ii) The Borrower shall produce for the WEDC's inspection, examination, auditing and copying, upon reasonable advance notice, any and all records which relate to this Agreement.
- e) **Nondiscrimination in Employment.** During the Term of this Agreement, the Borrower shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in sec. 51.01 (5) Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Borrower further agrees to take affirmative action to ensure equal employment opportunities. The Borrower agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
- f) **Notification of Position Openings.** In accordance with sec. 106.16, Stats., the Borrower shall, for a period of one year from the Effective Date, provide the Wisconsin Workforce Development, local Job Service offices, and the area Workforce Development Board with prior written notice of any new or vacant Full-Time Positions that are related to the Project.
- g) **Consolidation or Merger.** During the term of this Agreement, the Borrower shall not consolidate or merge with or into any other corporation or business entity without providing prior written notice to the WEDC.
- h) **Relocation of Operations.** In accordance with §660.075(2), the Borrower shall conduct the Project and related activities in Wisconsin, for a minimum of five years from the date of the award.

10. WISCONSIN OPEN RECORDS LAW AND CONFIDENTIAL DOCUMENTS

- a) The Recipient understands that this Agreement and other materials submitted to the

WEDC may constitute public records subject to disclosure under Wisconsin's Open Records Law, § 19.31 et seq.

- b) Except as otherwise required or provided by court order, legal process or applicable law including § 19.31 et seq., the Department shall not, without the Recipient's consent, reveal or disclose to any non-government person or entity financial or other information or materials provided by the Recipient if the Recipient has indicated that such information or materials are sensitive and should be kept confidential. The Recipient must indicate that such materials are to be protected under this paragraph by marking the documents "confidential."
- c) If the Recipient contends that any document provided to the Department is exempt from disclosure under Wisconsin's Open Records Law, for reasons including that the document qualifies as a trade secret under § 134.90, the Recipient shall:
 - (i) Clearly mark the document as not subject to disclosure under the Open Records Law. If the Recipient contends the document is a trade secret under § 134.90, the Recipient shall specifically mark the documents as "Confidential Trade Secrets."
 - (ii) Provide the Department with a concise, written explanation describing the basis for contending the document is not subject to the Open Records Law.
 - (iii) If applicable, provide the Department with two copies of the document the Recipient contends is exempt – a clean copy and a copy with the exempted information redacted.
 - (iv) Agree to hold the Department harmless and indemnify the Department against any and all claims, demands, losses, costs, damages or expenses suffered or incurred by the Department from or arising out of any such payment or other action related to the Department's reliance on the Recipient's designation under this paragraph in determining not to disclose such documents pursuant to an open records request. The Recipient agrees to indemnify the Department for all costs, including reasonable attorneys' fees and legal expenses.
- d) The Department agrees to notify the Recipient if it receives a request for information marked under paragraph c).

11. ENTIRE AGREEMENT. This Agreement and the accompanying loan documents, Promissory Note, Guaranties, and Exhibits contain the entire Agreement of the parties concerning the Borrower's obligations under the terms and conditions of this Agreement. This Agreement may not be amended, modified or altered except in writing signed by the Borrower and the WEDC.

12. CHOICE OF LAW. THIS AGREEMENT IS AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF WISCONSIN. If any provisions of the Agreement shall be prohibited by or invalid under Wisconsin law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without affecting the validity or enforceability of the remaining provisions thereof.

13. VENUE; JURISDICTION. Any judicial action relating to the construction, interpretation, or enforcement of this Agreement, or the recovery of any principal, accrued interest, court costs, attorney's fees and other amounts owed hereunder, shall be brought and venued in

the U.S. District Court for the Western District of Wisconsin or the Dane County Circuit Court in Madison, Wisconsin. THE BORROWER HEREBY CONSENTS TO PERSONAL JURISDICTION IN THOSE WISCONSIN COURTS, AND WAIVES ANY DEFENSES THAT THE BORROWER OTHERWISE MIGHT HAVE RELATING THERETO.

14. WAIVER OF RIGHT TO JURY TRIAL. The borrower hereby waives its right to a jury trial in connection with any judicial action or proceeding that may arise by and between the WEDC and the borrower concerning the construction, interpretation or enforcement of this agreement, or the recovery of any principal, accrued interest, court costs, attorney's fees and other amounts that may be owed by the borrower hereunder.

15. MISCELLANEOUS.

- a. Severability. The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions, which shall remain in full force and effect to govern the parties' relationship.
- b. WEDC Not A Joint Venturer Or Partner. The WEDC shall not, under any circumstances, be considered or represented to be a partner or joint venturer of the Borrower or any beneficiary thereof.
- c. Documents. All documents required to be delivered contemporaneously with the execution and delivery of this Agreement are expressly made a part of this Agreement as though completely herein, and all references to this Agreement herein shall be deemed to refer to and include all such documents.
- d. Agreement Controlling. In the event of any conflict or inconsistency between the Agreement and any prior agreement, the terms of this Agreement and any Amendments to the Agreement shall control.

16. CAPTIONS. The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.

17. AUTHORITY TO SIGN DOCUMENT. The person(s) signing this Agreement on behalf of the Borrower certifies and attests that the Borrower's respective Articles of Organization, Articles of Incorporation, By Laws, Member's Agreement, Charter, Partnership Agreement, Corporate or other Resolutions, and/or other related documents give full and complete authority to bind the Borrower, on whose behalf they are executing this document.

Borrower assumes full responsibility and holds the WEDC harmless for any and all payments made or any other actions taken by WEDC in reliance upon the above representation. Further, Borrower agrees to indemnify WEDC against any and all claims, demands, losses, costs, damages or expenses suffered or incurred by WEDC resulting from or arising out of any such payment or other action, including reasonable attorneys' fees and legal expenses. The Borrower has read, fully understands, and agrees to all of the terms and conditions in this Agreement and the related loan documents;

This agreement may be executed in counterparts. Copies, including facsimile transmittals, of this agreement shall be deemed originals

IN WITNESS WHEREOF, the WEDC and the Borrower have executed and delivered this Agreement effective the date set forth next to the WEDC's signature below.

WISCONSIN ECONOMIC DEVELOPMENT CORPORATION

By: _____

Paul Jadin, CEO

11-16-11
Date

ONEIDA ENERGY INC.

By: _____

Kevin Cornelius, Chief Executive Officer

11-16-11
Date

Notices to the Borrower hereunder shall be effective upon mailing by first class mail, postage prepaid, and addressed as follows or such other person and address as may be designated in writing:

Oneida Energy Inc.
Attn: Kevin Cornelius
1239 Flightway Drive
P.O. Box 257
Oneida, WI 54155

Notices to the WEDC hereunder shall be effective upon mailing by first class mail, postage prepaid, and addressed as follows:

Wisconsin Economic Development
Corporation
Attn: Contract #SEP FY10-20265
201 West Washington Avenue
PO Box 1687
Madison, WI 53701

EXHIBIT A
PROJECT DESCRIPTION/DELIVERABLES
ONEIDA ENERGY INC.
CONTRACT: # SEP FY10-20265

1. PROJECT SUMMARY:

The Onelda Seven Generations Corporation is seeking financial assistance on behalf of Onelda Energy Inc. from the State Energy Program (SEP). The funds will be used by the company for working capital. The total project cost is \$17,600,000 with matching funds being used for equipment and working capital. Onelda Energy Inc. has committed to create up to 22 new full-time positions in Green Bay, Wisconsin.

2. ELIGIBLE PROJECT COSTS:

Uses Summary Amounts in \$000	Source	Source	Source	Source	Source	Source	
	BIA Feasibility Grants	SEP Loan - WEDC	LEG-G - Commerce Grant	Equity ¹	1603 Grant Equity	M & I Loan BIA Guarantee ²	Total
Equipment		\$1,300	\$1,000		\$500	\$15,500	\$18,300
Building			700	\$235	\$2,700	\$1,765	\$5,400
Working Capital	\$586	\$700	\$300	\$5,000	2000	2335	\$10,921
Total	\$586	\$2,000	\$2,000	\$5,235	\$5,200	\$19,600	\$34,621

¹Includes intangible assets

²M&I will have \$26 million construction loan prior to permanent financing

BIA Grants and Commerce Grant Amounts include prior year funding sources and prior year uses.

3. DELIVERABLES:

The Borrower will be required to:

- a) Create up to Twenty-two (22) New Full-Time positions with an average wage of \$25.00 per hour in Green Bay, Wisconsin by December 31, 2014 and, thereafter, maintain each of these New Full-Time positions until December 31, 2016.
- b) For the term of this loan, the majority of jobs created as a result of the Project shall be located in Wisconsin and to the extent practicable, employ Wisconsin residents.

4. PENALTIES:

- a) Reporting. Should the Borrower fail to fulfill the reporting requirements within 5 days of the date due, as detailed under section 4 outlined in Exhibit B, the action may be considered an Event of Default. Incomplete reports and/or required attachments will be treated as a failure to fulfill reporting obligations. Penalties due may be referred to collection options available to the WEDC.

- b) Job Penalty (Interest Escalation). If the WEDC determine that the Borrower has failed to create and maintain 22 Full-Time Positions in accordance with Section 3 of Exhibit A of the Agreement, then for each Full-Time position less than 22 that the Borrower fails to create or maintain, whichever the case may be, the annual interest rate charged on the WEDC's loan hereunder shall be increased retroactive to the date of disbursement, 18.2 basis points within thirty (30) days of the WEDC's determination of nonperformance. For the purposes of this Agreement the term "basis point" shall mean one-hundredth of one percent. The maximum penalty under this section shall be four (4) percent.

5. COLLATERAL:

First position on a Cummins model C1750N6C engine generator with 4,160 VAC 3 phase, 4 wire, 60 hertz output for operation on low BTU gaseous fuel. Production Number A030V695.

EXHIBIT B
Term and Conditions
CONTRACT: SEP FY10-20265
DUNS NUMBER:

1. NOTICE OF ARRA FUNDING

This award requires Onelda Energy Inc., (Sub-recipient) to complete projects or activities funded under the American Recovery and Reinvestment Act of 2009 (ARRA) as administered by Wisconsin Economic Development Corporation (Wisconsin Economic Development Corporation). The Federal award number is [DOE – 0000163]. CFDA81.041.

2. OTHER STANDARD TERMS AND CONDITIONS

All other terms and conditions contained in applicable guidelines, regulations, administrative code and other legal requirements apply unless they conflict with or are superseded by the following supplemental terms and conditions implementing ARRA requirements.

3. REPORTING

REPORTING REQUIREMENTS (Quarterly reporting to take place through July 2012. Annual reporting requirement for 5 years—1st year example below)

<u>Type of Documentation</u>	<u>Reporting Frequency</u>	<u>Period Covered FY 2012</u>	<u>Due Date</u>
Jobs Created Jobs Retained Energy Metrics	Quarterly	January 1 – March 31 April 1– June 30 July 1 - September 30 October - December 31	April 15, 2012 July 15, 2012 October 15, 2012 January 15, 2013
Financial Statements UC 101 EEQ-1	Annually	January 1, 2012 – December 31, 2012	March 31, 2013

The American Recovery and Reinvestment Act require that the public be informed of how money is used for economic recovery. The law ensures accountability and transparency through a number of reporting requirements. Sub-recipients of ARRA funds must report on the use of the awarded funds, on the date and in the format required by the WEDC. Data to be reported shall include but may not be limited to the following information:

- a. Project Energy Metrics (when applicable)
 - Jobs Created
 - Jobs Retained
 - Energy Savings (MMBTUs)
 - Leverage Amount (\$000)
 - Green House Gas Reduction (000 lbs.)
 - Energy Cost Savings (\$000)
- b. Other Information Required (provided via disbursement requests)
 - Vendor Name and DUNS Number
 - Vendor Address
 - Invoice and Dollar Amount of Purchase

- c. Recipients must account for each ARRA award separately. Recipients 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.
- d. The names and total compensation of the five most highly compensated officers of the company, if it received 80% or more of its annual gross revenues in Federal awards and \$25 million or more in annual gross revenue from Federal awards (Exhibit F)

Reporting requirements detailed above are subject to changes throughout the period of agreement. The WEDC will ensure the funds are used appropriately as defined by law and on site inspections may occur. (ARRA sec. 1512, Federal Funding Accountability and Transparency Act of 2006, Public Law 109-282)

FINANCIAL RECORDS; All of the Sub-recipient's financial records shall be prepared, kept and maintained in accordance with Generally Accepted Accounting Principles. The Sub-recipient shall provide such records to the WEDC during the Term of the Agreement as required in the annual reports, or otherwise as requested by the WEDC or the U.S. Dept. of Energy. Such materials shall be retained by the Sub-recipient for a period of at least three (3) years after the Project End Date.

- a) The financial statements and other information provided by the Sub-recipient to the WEDC are complete and accurate in accordance with Generally Accepted Accounting Principles, and may be relied upon by the WEDC in deciding whether to enter into this Agreement with the Sub-recipient;

AUDIT REPORT; Within (90) days after the fiscal year close following the Project End Date, or upon the request of the WEDC or the Dept. of Energy, the Sub-recipient shall provide the WEDC with an audited financial report, in form and substance reasonably satisfactory to the WEDC or the Dept. of Energy, documenting that the Loan funds were expended in accordance with this Agreement.

VERIFIED STATEMENT; In accordance with Comm. 149.50 that states within 90 days after the final report is submitted or upon the request of the WEDC, the Borrower shall provide the WEDC with a verified statement including a report with an itemized description of the Eligible Project Costs, a detailed description of the deliverables and date that the deliverables have been met. This report shall be signed by the company's Director or Principal Officer attesting to the accuracy, completeness and validation of the submitted information. For loan amounts that total \$100,000 or more the report will also be signed by an independent CPA to the accuracy of the information.

4. JOB REPORTING

Sub-recipients of ARRA funds must report the number of jobs retained or created by the project. The State of Wisconsin shall make forms available for the collection of job reporting data to the sub-recipient. (ARRA Sec. 1512)

5. JOBCENTER OF WISCONSIN.COM

The sub-recipient shall post all Wisconsin job openings created by ARRA-funded state contracts on the JobCenterOfWisconsin.com website. (Executive Order #278)

6. WAGE RATE REQUIREMENTS

The Sub-recipient shall comply with and assure compliance of all Project contractors and

subcontractors with the Davis-Bacon Act, as amended 40 U.S.C. 276a-276a-5, the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327-333, other applicable Federal laws and regulations pertaining to labor standards, and the Labor Standards section of the Implementation Handbook.

7. TIME LIMITS ON USE OF FUNDS

The Sub-recipient shall comply with program schedule and performance objectives specified by the WEDC, in addition to the expected start and completion dates of projects funded by the ARRA. (ARRA Sec. 1602)

8. DISCLOSURE OF FRAUD OR MISCONDUCT

The Sub-recipient shall promptly identify or report any credible evidence that a principal, employee, agent, contractor, sub-sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds. (False Claims Act, 31 U.S.C. sec. 3729-3733)(ARRA Sec. 1553)

9. WHISTLEBLOWER PROTECTIONS

The Sub-recipient is prohibited from demoting, discharging, or otherwise discriminating against an employee as retaliation for disclosing what the employee reasonably believes to be gross mismanagement or misconduct of ARRA funds under the contract or subcontract to the appropriate Federal, State, or other supervisory authority. Any employer receiving covered funds shall post notice of the rights and remedies provided to employees under this section (ARRA Sec. 1553).

10. ACCESS TO RECORDS AND EMPLOYEES

The Sub-recipient shall provide the WEDC or WEDC's authorized representative with access to the Sub-recipient's records related to obligations and use of funds made available in this Act. The Sub-recipient shall also provide the WEDC or the WEDC's authorized representative with access to interview officers or employees of the Sub-recipient and any of its sub-contractors regarding such transactions.

11. CONTRACT PROVISION ON AUTHORITY OF THE U.S. COMPTROLLER GENERAL

The Sub-recipient shall include the following provision in any contracts awarded by the Sub-recipient using ARRA funds: The U.S. Comptroller General and his representatives are authorized:

- a) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
 - b) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.
- (ARRA Sec. 902).

12. AUTHORITY OF FEDERAL INSPECTOR GENERAL

The Sub-recipient shall allow any representatives of the Inspector General of a federal WEDC or agency to:

- a) Examine any records of the Sub-recipient, its subcontractors, or subloanees, that pertain to and involve transactions relating to the loan, subcontract, or subloan; and
- b) Interview any officer or employee of the Sub-recipient, subcontractor, or subloanee regarding such transactions.

Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector general. (ARRA Sec. 1515(b)).

13. LIMITATION ON USE OF FUNDS

No funds shall be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. [ARRA Sec. 1064].

14. EXCESSIVE FORCE

Any unit of general local government receiving CDBG-R funds shall certify adoption and enforcement of:

- a) a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations;
- b) a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

15. DEBARMENT AND SUSPENSION

The Sub-recipient shall not knowingly award a construction contract to a contractor which has been debarred or suspended by the federal government in accordance with 2 CFR part 180 as supplemented by 2 CFR Part 2424, Subpart C.

16. NONCOMPLIANCE

Sub-recipients of funds made available under the ARRA are subject to all of the terms and conditions of this addendum. If a Sub-recipient materially fails to comply with the terms and conditions of the award, the awarding agency may take appropriate action, which may result in the suspension or termination of both the agreement and recovery of the funds awarded, and any other remedies available at law.

17. WASTE STREAM REQUIREMENTS

The Sub-recipient will maintain a waste management plan addressing waste generated by their proposed actions. The plan will describe the Sub-recipient's plan to dispose of any sanitary or hazardous waste, e.g. construction and demolition debris, old light bulbs, lead ballasts, piping, roofing materials, discarded equipment, debris, asbestos, etc. generated as a result of the proposed project. The Sub-recipients must ensure that it will comply with all federal, state and local regulations for waste disposal.

18. NHPA REQUIREMENTS

The Sub-recipient will comply with Sec. 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA.

19. DAVIS BACON ACT

The Sub-recipient shall comply with and assure compliance of all Project contractors and subcontractors with the Davis-Bacon Act, as amended 40 U.S. C. 276a-276a-5, the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327-333, other applicable Federal laws and regulations pertaining to labor standards, and the Labor Standards section of the Implementation Handbook.

20. LOBBYING

The sub-recipient shall comply with Section 319 of Public Law 101-102.

EXHIBIT C
REQUEST FOR DISBURSEMENT

PO # _____
Wisconsin Economic Development
Corporation Initials: _____

Contract Number: SEP FY10-20265	Rep: CAM	Company Name : Onelda Energy Inc. Remittance Address: (must be on W9)
Wismart #: _____	Request Number: _____	

Budget Code	Description	ARRA Reimbursable	Company Match	Total
0240	Equipment			
	1) Vendor Name and DUNS:			
	Street Address:	\$	\$	\$
	City, State, Zip +4:			
	2) Vendor Name and DUNS:			
	Street Address:	\$	\$	\$
	City, State, Zip +4:			
	3) Vendor Name and DUNS:			
	Street Address:	\$	\$	\$
	City, State, Zip +4:			
0470	Working Capital			
		\$	\$	\$
If applicable, include vendor information.				
	1) Vendor Name and DUNS:			
	Street Address:	\$	\$	\$
	City, State, Zip +4:			
	2) Vendor Name and DUNS:			
	Street Address:	\$	\$	\$
	City, State, Zip +4:			
	3) Vendor Name and DUNS:			
	Street Address:	\$	\$	\$
	City, State, Zip +4:			
TOTALS OF EQUIPMENT AND WORKING CAPITAL		\$	\$	\$

Maximum Disbursements: three (3) during project period

Requests for Disbursement must include supporting documentation prior to approval by the WEDC. Please identify the documentation included with this request: The WEDC may withhold Loan disbursements if it determines that the Recipient has not provided adequate documentation of Eligible Project Costs, has failed to make adequate progress in the project, has failed to file required reports hereunder, has not provided the required dollar match or is otherwise in default under the terms of the Agreement.

The following documents must accompany the Request for Disbursement:

- Itemized Invoices for all Eligible Project Costs included in the Request for Disbursement Form that were paid to outside vendors.

- A report detailing the dollar amount and purpose of the Eligible Project Costs incurred this period included in the Request for Disbursement Form. This report should clearly describe how the Recipient derived the amounts included on the form.

I hereby certify that the expenses reported on this form are in accordance with the terms of the agreement and that complete and accurate records are being kept to substantiate such expenses.

Authorized Company Signature

~~Signature~~

This section is to be completed by the WEDC

Business Finance Specialist

Date

Account Specialist

Date

Retain a copy of the completed form for your records and email a copy to christine.mcfadzen@wedc.org

**EXHIBIT D
PROMISSORY NOTE**

Amount: \$2,000,000.00

FOR VALID CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, and in consideration for the terms and conditions set forth in the State Energy Program Agreement between the Wisconsin Economic Development Corporation ("WEDC") and Onelda Energy Inc ("Borrower") also identified as Contract # SEP FY10-20265, the Borrower promises to pay the WEDC the principal sum of Two Million and 00/100 Dollars (\$2,000,000.00), or so much thereof as may be advanced by the WEDC, together with interest, in accordance with the terms and conditions hereinafter set forth.

1. **DEFINITIONS.** Terms used in this Promissory Note shall have the same meanings as in the Agreement.
2. **INTEREST RATE.** Except as otherwise provided herein, this Promissory Note shall bear interest on the unpaid principal balance at the annual rate of Two (2) percent, six months from the date of actual disbursement of the funds, or any portion thereof, to the Borrower. Interest shall be computed based upon a 365-day year.
3. **TERM.** The term of this Note shall commence on the Effective Date with all principal, accrued interest and other amounts owed hereunder being due and payable not later than 04/01/2019.
4. **DEFERRAL PERIOD.** The Borrower's payments of principal and interest hereunder shall be deferred six months (draw down period). The Borrower's payments during the following 24 periods will consist of interest only. All interest from the date of the WEDC's first disbursement shall be paid in accordance with the terms of Paragraph 5.
5. **PAYMENT.** Commencing on May 1, 2012 and continuing on the first day of each consecutive month thereafter, the Borrower shall pay interest only payments of \$3,334.00. Commencing on May 1, 2012 the Borrower shall pay 59 equal monthly installments of \$34,998.00 each; followed by a final installment on April 1, 2019, which shall include all remaining principal, accrued interest and other amounts owed by the Borrower hereunder. Payments shall be applied first to interest accrued to date of receipt, and the balance, if any, to principal.
6. **TERMS OF PAYMENT.**
 - a) Time shall be of the essence as to the Borrower's payment of all principal, accrued interest, and other amounts owed hereunder, which shall be delivered to the WEDC at the following address, or such other place or places as the WEDC may designate, prior to the close of business on the due dates set forth above:

Wisconsin Economic Development Corporation
Attn: Administrative
P.O. Box 78257
Milwaukee, WI 53293-0257
Attn: Contract SEP FY10-20265
 - b) If the Borrower fails to pay any amounts owed within ten (10) calendar days of the date when due, then, from the date of default until such delinquent payment is paid in full, the Borrower shall pay the WEDC interest on the delinquent payment at an annual rate of twelve (12) percent. The accrual and collection of such interest shall be in addition to and not in lieu of any other rights and remedies that the WEDC

may have under the Agreement, the Promissory Note, other loan documents, and applicable federal and state laws.

- c) The Borrower shall bear the entire risk of loss, theft, damage, destruction, or seizure of the Collateral. The Borrower shall be obligated to pay the principal, interest, and other amounts owed hereunder even if the Borrower is unable to use the Collateral or any portion thereof, because of loss, theft, damage, destruction, seizure, non-repair, lack of maintenance, or any other reason.
- d) All principal payments, interest and other amounts owed hereunder shall be paid by the Borrower regardless of any set off, counterclaim, recoupment, defense, or other rights which the Borrower may have against the WEDC, the sellers of the Collateral, the contractors and subcontractors involved in making improvements to the Collateral, or any other party.

7. **"EVENT OF DEFAULT" DEFINED.** The term "Event of Default" shall have the meaning set forth in the Agreement.

8. **REMEDIES IN EVENT OF DEFAULT.** Upon the occurrence of an Event of Default, the WEDC shall have the remedies set forth in the Agreement.

9. **NO PREPAYMENT PENALTY.** The Borrower shall have the right to prepay this Promissory Note, in whole or in part, at any time without penalty.

10. **CHOICE OF LAW. THIS PROMISSORY NOTE IS AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF WISCONSIN.** If any provisions of this Promissory Note shall be prohibited by or invalid under Wisconsin law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without affecting the validity or enforceability of the remaining provisions thereof.

11. **VENUE; JURISDICTION.** Any judicial action relating to the construction, interpretation, or enforcement of this Promissory Note, or the recovery of any principal, accrued interest, court costs, attorney's fees and other amounts owed hereunder, shall be brought and venued in the U.S. District Court for the Western District of Wisconsin or the Dane County Circuit Court in Madison, Wisconsin. **THE BORROWER HEREBY CONSENTS TO PERSONAL JURISDICTION IN THOSE WISCONSIN COURTS, AND WAIVES ANY DEFENSES THAT MAKER OTHERWISE MIGHT HAVE RELATING THERETO.**

12. **CAPTIONS.** The captions in this Promissory Note are for convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.

13. **WAIVER.** The WEDC's failure to declare this Promissory Note in default or to otherwise enforce any of their respective rights or remedies shall not be deemed a waiver of its right to declare this Promissory Note in default and enforce its rights and remedies upon the occurrence of a future Event of Default. Nor shall the WEDC's receipt and acceptance of any payment on this Promissory Note after the occurrence of an Event of Default constitute or be construed as a waiver of the default or the WEDC's rights and remedies as a result of that default. No covenant, condition, or provision of this Promissory Note may be waived except with the WEDC's express written consent.

14. **AGREEMENT INCORPORATED BY REFERENCE.** This Promissory Note is subject to all of the terms, conditions, covenants and promises set forth in the Agreement which is hereby incorporated by reference as if fully set forth herein.

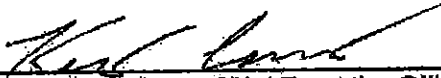
15. **AUTHORITY TO SIGN DOCUMENT.** The person(s) signing this Promissory Note on behalf of the Borrower certifies and attests that the Borrower's respective Articles of Organization, Articles of

Incorporation, By Laws, Member's Agreement, Charter, Partnership Agreement, Corporate or other Resolutions, and/or other related documents give full and complete authority to bind the Borrower, on whose behalf they are executing this document.

Borrower assumes full responsibility and holds the WEDC harmless for any and all payments made or any other actions taken by WEDC in reliance upon the above representation. Further, Borrower agrees to indemnify WEDC against any and all claims, demands, losses, costs, damages or expenses suffered or incurred by WEDC resulting from or arising out of any such payment or other action, including reasonable attorneys' fees and legal expenses.

IN WITNESS WHEREOF, the undersigned Borrower has executed and delivered this Promissory Note as of the dates set forth below.

ONEIDA ENERGY INC.

By: 
Kevin Cornelius, Chief Executive Officer

11-16-11
Date

**EXHIBIT E
UNLIMITED GUARANTY**

LENDER: Wisconsin Economic Development Corporation
201 West Washington Avenue
P.O. Box 1687
Madison, Wisconsin 53703

BORROWER: Oneida Energy Inc.
1239 Flightway Drive
DePere, WI 54115

CONTRACT NO: SEP FY10-20265

GUARANTOR: Oneida Seven Generations Corporation
1239 Flightway Drive
DePere, WI 54115

1. **CAPITALIZED TERMS.** Capitalized terms used in this Guaranty shall have the meanings ascribed to them in the Agreement.
2. **UNLIMITED, IRREVOCABLE GUARANTY.** To induce the WEDC to enter into the Agreement with the Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby unconditionally and, except as otherwise provided herein, irrevocably guarantees to the WEDC the prompt payment of the total amount of unpaid principal, accrued interest, court costs, attorney's fees and other amounts owed by the Borrower under the Agreement and the Promissory Note.
3. **ABSOLUTE, CONTINUING GUARANTY.** This Guaranty is absolute, continuing and independent and, shall not be affected, diminished or released for any reason whatsoever including but not limited to, the following:
 - a) Any invalidity of the Agreement, the Promissory Note, this Guaranty, or any portion thereof;
 - b) Any failure by the WEDC to pursue collection or enforcement of the Agreement or the Promissory Note against the Borrower;
 - c) Any renewal, extension, acceleration or change in the terms for payment of amounts owed under the Agreement and Promissory Note;
 - d) Any modification, amendment, waiver or other change of the terms of the Agreement and Promissory Note;
 - e) Any failure by the WEDC to perfect and maintain a valid and duly perfected security interest in, or to preserve its rights, title and interest in, the Collateral;
 - f) Any release or discharge, by operation of law or otherwise, of the WEDC's rights, title and security interest in the Collateral;

- g) Any judicial, administrative or governmental action or proceeding affecting the Borrower, the Collateral, the Agreement, the Promissory Note, or this Guaranty including, without limitation, the release or discharge of the Borrower's obligations and liabilities under the Agreement or the rejection or disaffirmance of the Agreement or any of the terms thereof;
- h) Any disability, defense or cessation of the liability of the Borrower;
- i) Any assignment or transfer of the WEDC's rights under the Agreement or the Promissory Note;
- j) Any disallowance of the WEDC's rights and claims against the Borrower under the United States Bankruptcy Code, as amended, or any other federal, state or local law, rule, regulation or ordinance; or
- k) Any other circumstance which might otherwise constitute a defense or a discharge of the Borrower or Guarantor.

4. WAIVERS. As a further Inducement to the WEDC and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor irrevocably:

- a) Waives, disclaims and relinquishes any and all claims, whether based in equity or law, whether by contract, statute or otherwise, that the Guarantor now or hereafter may have against the Borrower including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim or remedy of the WEDC against the Borrower or any collateral security that the WEDC now has or hereafter may acquire until the obligations of the Borrower have been paid in full; provided, however, that nothing herein shall be construed to waive, disclaim or relinquish any claims that the Guarantor now or hereafter may have against the Borrower for salary, bonuses and deferred compensation payable to the Guarantor in the capacity as an employee of the Borrower;
- b) Waives diligence, presentment, demand for payment, protest, and notice of any default or nonperformance by the Borrower;
- c) Waives any right the Guarantor otherwise might have to require the WEDC to proceed against and exhaust its remedies against the Borrower or any collateral or security for the payments and obligations guaranteed hereunder, or to pursue any other remedy that may be available to the WEDC;
- d) Waives any defenses arising from or relating to:
 - (i) Any disability or other affirmative defense of the Borrower or Guarantor;
 - (ii) Any lack of authority of the Borrower or Guarantor to enter into the Agreement, the Promissory Note, and this Guaranty; or
 - (iii) Any invalidity or illegality of the Agreement, the Promissory Note, or Guaranty;
- e) Waives any and all other affirmative defenses, offsets and counterclaims that the Borrower, or Guarantor now or hereafter may have against the WEDC; and
- f) Waives any failure by the WEDC to acquire title to, or perfect a valid, enforceable security interest in the Collateral.

5. **SUBORDINATION.** The Guarantor hereby subordinates any claims, demands and causes of action that the Guarantor now or hereafter may have against the Borrower to any claims, demands and causes of action that the WEDC now or hereafter may have against the Borrower for the payment of sums owed to the WEDC under the Agreement. Further, the Guarantor hereby agrees to assign to the WEDC, upon demand, any and all sums that now or hereafter may be owed to the Guarantor by the Borrower, and agrees to execute any further instruments that may be necessary to evidence such assignment.
6. **CONTINUING GUARANTY.** This is a continuing Guaranty and shall not be revoked or terminated by the Guarantor so long as any amount owed to the WEDC under the Agreement and Promissory Note remain unpaid. The Guarantor hereby acknowledges and agrees that this continuing Guaranty applies to and covers any and all future alterations, changes and modifications to the Agreement and Promissory Note that now or hereafter may be agreed to by the WEDC and the Borrower, regardless of whether such alterations, changes and modifications are agreed to by the Guarantor. This Guaranty shall be reinstated if and to the extent that, for any reason, any payment of amounts owed to the WEDC under the Agreement and Promissory Note is rescinded or must be otherwise restored, whether as a result of any proceedings in bankruptcy, a reorganization or otherwise.
7. **AUTHORITY TO CHANGE AND MODIFY AGREEMENT.** The Guarantor hereby authorizes the WEDC, without notice or demand to the Guarantors and without affecting the Guarantor's liability hereunder:
- a) To change the amount, timing or manner of payments under the Agreement and Promissory Note;
 - b) To change any of the terms and conditions of the Agreement and Promissory Note;
 - c) To assign to another party the Agreement, the Promissory Note, the amounts payable thereunder, or the WEDC's security interest in the Collateral; and
 - d) To receive and hold additional collateral or security for the Agreement, the Promissory Note, or this Guaranty, and to apply such collateral or security and to direct the order or manner of sale thereof.
8. **WARRANTIES AND REPRESENTATIONS BY GUARANTORS.** To induce the WEDC to accept this Guaranty and enter into this Agreement with the Borrower, the Guarantor hereby warrants and represents that:
- a) The Guarantor has read, fully understands, and agrees to all of the terms and conditions set forth in this Guaranty;
 - b) This Guaranty is valid and enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency, reorganization or other similar laws affecting generally the enforceability of the rights of creditors;
 - c) The Guarantor is financially solvent and able to comply with all the terms and conditions set forth in the Agreement and this Guaranty;
 - d) The Guarantor has fully investigated the Borrower's creditworthiness, and has determined that the Borrower is financially able to comply with all of the terms and conditions of the Agreement and Promissory Note;
 - e) In making those determinations, the Guarantor has not relied upon any information furnished by the WEDC;

- f) The financial statements and other information provided by the Guarantor and the Borrower to the WEDC are complete and accurate, and may be relied upon by the WEDC in deciding whether to accept this Guaranty and to enter into the Agreement with the Borrower;
- g) The warranties and representations set forth herein are complete and accurate as of the date of this Guaranty, and shall survive the execution of this Guaranty.
9. **COSTS, EXPENSES AND INTEREST.** The Guarantor agrees to pay all reasonable collection costs and expenses, including, without limitation, court costs, legal fees and expenses, that hereafter may be incurred by the WEDC in connection with its enforcement and collection of amounts owed under the Agreement, the Promissory Note, and this Guaranty.
10. **FINANCIAL REPORTS.** For so long as the Guarantor shall have any obligations or liability under the Agreement, the Promissory Note and this Guaranty, the Guarantor hereby agrees to deliver to the WEDC:
- a) Upon request the Guarantor shall provide personal financial statements, prepared in accordance with Generally Accepted Accounting Principles;
- b) Such other financial information concerning the Agreement, the Promissory Note, the Borrower, the Project and the Collateral as the WEDC may reasonably request.
11. **ENTIRE AGREEMENT.** This document contains the entire agreement of the parties concerning the Guarantor's personal Guaranty of the Borrower's payments and obligations under the Agreement and the Promissory Note. This Guaranty may not be amended, modified or altered except in writing signed by the Guarantor and the WEDC.
12. **CHOICE OF LAW. THIS GUARANTY IS AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF WISCONSIN.** If any provisions of this Guaranty shall be prohibited by or invalid under Wisconsin law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without affecting the validity or enforceability of the remaining provisions of this Guaranty.
13. **VENUE; JURISDICTION.** Any judicial action relating to the construction, interpretation, or enforcement of this Guaranty, or the recovery of any principal, accrued interest, court costs, attorney's fees and other amounts owed hereunder, shall be brought and venued in the U.S. District Court for the Western District of Wisconsin or the Dane County Circuit Court in Madison, Wisconsin. **THE GUARANTOR HEREBY CONSENTS TO PERSONAL JURISDICTION IN THOSE WISCONSIN COURTS AND WAIVES ANY DEFENSES THAT THE GUARANTOR OTHERWISE MIGHT HAVE RELATING THERETO.**
14. **WAIVER OF RIGHT TO JURY TRIAL. THE GUARANTOR HEREBY WAIVES THE GUARANTOR'S RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY JUDICIAL ACTION OR PROCEEDING THAT MAY ARISE BY AND BETWEEN THE WEDC AND THE GUARANTOR CONCERNING THE CONSTRUCTION, INTERPRETATION OR ENFORCEMENT OF THIS GUARANTY, OR THE RECOVERY OF ANY PRINCIPAL, ACCRUED INTEREST, COURT COSTS, ATTORNEY'S FEES AND OTHER AMOUNTS THAT MAY BE OWED BY THE GUARANTOR HEREUNDER.**
15. **CAPTIONS.** The captions in this Guaranty are for convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.

IN WITNESS WHEREOF the undersigned Guarantor has executed this Guaranty.

By:


William Cornelius, Chairman

Date

11/16/2011



EXHIBIT F
ATTESTATION OF APPLICABILITY OF
SUB RECIPIENT REPORTING HIGHLY COMPENSATED OFFICERS

On May 19, 2010, sub-recipient Onelda Energy Inc. was awarded \$2,000,000.00 in American Recovery and Reinvestment Act of 2009 (ARRA) funds under contract SEP FY10-20265 with Wisconsin Economic Development Corporation.

As a condition to receive an award funded by ARRA; each sub recipient is required to report the names and total compensation of its five most highly compensated officers for the calendar year in which the award is awarded under the following conditions.

In its preceding fiscal year, is each of the following true for Onelda Energy Inc.

Yes No

- | | | |
|-------------------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 80 percent or more of annual gross revenues were received from Federal contracts (and subcontracts), loans, grants (and sub-grants), and cooperative agreements. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | \$25,000,000 or more in annual gross revenues were received from Federal contracts (and subcontracts), loans, grants (and sub-grants), and cooperative agreements. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. |

If you answered **Yes to all three** conditions, you **MUST** complete SIDE 2 of this form.

If you answered **No to any** of the above conditions, you **ARE NOT REQUIRED** to complete SIDE 2 of this form.

The responses on this form are true to the best of my knowledge and ability.


Kevin Cornelius, Chief Executive Officer

11-16-11
Date



**SUB RECIPIENT REPORTING OF
HIGHLY COMPENSATED OFFICERS**

Only complete this form if required according to the instructions on SIDE 1 of this form.

Sub recipient: Onelda Energy Inc.

Contract Number: SEP FY10-20265

For the five most highly compensated officers of the sub recipient, "Total compensation" for grants and loans means the cash and noncash dollar value earned by the executive during the sub recipient's past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

- (i) Salary and bonus.
- (ii) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R.
- (iii) Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (v) Above-market earnings on deferred compensation which are not tax-qualified.
- (vi) Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

List of Five Most Highly Compensated Officers' Compensation

Name	Compensation

The responses on this form are true to the best of my knowledge and ability.

Kevin Cornelius, Chief Executive Officer

Date

Exhibit G
State Energy Program ARRA Flow Down Requirements

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SPECIAL TERMS AND CONDITIONS FOR USE IN MOST GRANTS AND COOPERATIVE AGREEMENTS

RESOLUTION OF CONFLICTING CONDITIONS --

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

STATEMENT OF FEDERAL STEWARDSHIP --

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

SITE VISITS --

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

REPORTING REQUIREMENTS --

a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F-4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

b. Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data, or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database (www.osti.gov/energy/citations).

c. Restrictions. Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

PUBLICATIONS --

a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

b. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number DE-EE0000095"

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the

United States Government or any agency thereof."

FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS --

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

a. The Intellectual property provisions applicable to this award are provided as an attachment to this award or are referenced on the Agreement Face Page. A list of all intellectual property provisions may be found at http://www.gc.doe.gov/financial_assistance_awards.htm.

b. Questions regarding Intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at [http://www.gc.doe.gov/documents/Intellectual_Property_\(IP\)_Service_Providers_for_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf)

LOBBYING RESTRICTIONS --

By accepting funds under this award, you agree that none of the funds obligated on the 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.

NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS --

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS --

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the recipient's facilities, or (ii) any costs which may be incurred by the recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

HISTORIC PRESERVATION --

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>.

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, 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 must 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 specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

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 grant, cooperative agreement or TIA 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, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient 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.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

Recipients 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.

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 used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate Inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized –

- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions relation to, the subcontract, subcontract, grant, or subgrant; and
- (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency 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. Protecting State and Local Government and Contractor Whistleblowers

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an Inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct, a court or grand jury, the

head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an Inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. Request for Reimbursement (this version is included in WAP/SEP awards with states)

RESERVED

H. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in supporting of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds

Funds appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until September 30, 2015.

REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

- (a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.
- (b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.
- (c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.
- (d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS -- SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

- (a) Definitions. As used in this award term and condition--

(1) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been--

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference. (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111--5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

[Award official to list applicable excepted materials or indicate "none"]

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that--

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act . (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including--

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient

shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description (dollars)*	Unit of measure	Quantity	Cost
Item 1:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
Item 2:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS)—SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) *Definitions.* As used in this award term and condition—

Designated country—(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods—(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good—(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

(a) Section 1606 of the Recovery Act requires that 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 Recovery Act 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.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A--102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A--102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF--SAC) required by OMB Circular A--133. OMB Circular A--133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF--SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF--SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

DAVIS BACON ACT REQUIREMENTS

A. Definitions. For purposes of this term, the Contract Work Hours and Safety Standards Act term, and the Recipient Functions term, the following definitions are applicable:

(1) *Award* means the Award by the Department of Energy (DOE) to a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Subrecipients, Contractors and subcontractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act.

(2) *"Construction, alteration or repair"* means all types of work done by laborers and mechanics employed by the Subrecipient, construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

- (a) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
- (b) Painting and decorating; or
- (c) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work.

(3) *Contract* means a written procurement contract executed by a Subrecipient for the acquisition of property and services for construction, alteration, and repair under a Subaward. For purposes of these terms, a Contract shall include subcontracts and lower-tier subcontracts under the Contract.

(4) *Contracting Officer* means the DOE official authorized to execute awards on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(5) *Contractor* means an entity that enters into a Contract. For purposes of these terms, Contractor shall include subcontractors and lower-tier subcontractors.

(6) *Recipient* means any entity other than an individual that receives Recovery Act funds in the form of a grant directly from the Federal Government. The term includes the State that receives an Award from DOE and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(7) *"Site of the work"*—

(a) Means—

(i) The physical place or places where the construction called for in the Award, Subaward, or Contract will remain when work on it is completed; and

(ii) Any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the project;

(b) Except as provided in paragraph (c) of this definition, the site of the work includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(1) They are dedicated exclusively, or nearly so, to performance of the project; and

(2) They are adjacent or virtually adjacent to the site of the work as defined in paragraphs (7)(a)(i) or (7)(a)(ii) of this definition; and

(c) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular contract or Federal Award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the project site as defined in paragraphs (7)(a)(i) or (7)(a)(ii) of this definition, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of an Award, Subaward, or Contract.

(8) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term

Includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.

(9) *Subrecipient* means a non-Federal entity that expends Federal awards received from a pass-through entity [Recipient] to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. The term includes a Community Action Agency (CAA), local agency, or other entity to which a Subaward under the Award is made by a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the DBA work performed by all laborers and mechanics employed by contractors and subcontractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant of the Recovery Act.

B. Davis-Bacon Act

(1)(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached to the Subaward or Contract and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Recipient, a Subrecipient, or Contractor and such laborers and mechanics.

(i) *Applicable to Recipient Only:* Prior to the issuance of the Subaward or Contract, the Recipient shall notify the Contracting Officer of the site of the work in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

(ii) If the Subaward or Contract is or has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

(b) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the DBA on behalf of laborers or mechanics are considered wages paid to such laborers and mechanics, subject to the provisions of paragraph B(4) below; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(c) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the paragraph entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(d) The wage determination (including any additional classifications and wage rates conformed under paragraph B(2) of this term) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Subrecipient and Contractor at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2)(a) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Subaward or Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Subrecipient (and Contractor, when applicable) and the laborers and mechanics to be employed in the classification (if known), or their representatives agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of this agreement. If the Contracting Officer agrees with the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(c) In the event the Subrecipient (and Contractor, when applicable), and the laborers or mechanics to be employed in the classification, or their representatives, do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of the disagreement. The Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs B(2)(b) or B(2)(c) of this Term shall be paid to all workers performing work in the classification under the Award, Subaward, or Contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the Award, Subaward, or Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Subrecipient and Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Subrecipient or Contractor does not make payments to a trustee or other third person, the Subrecipient or Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Subrecipient or Contractor that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Subrecipient or Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

C. Rates of Wages

(1) The minimum wages to be paid laborers and mechanics under the Subaward or Contract involved in performance of work at the project site, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are included as an attachment to the Award, Subaward, or Contract.

(2) If the Subaward or Contract has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

D. Payrolls and Basic Records

(1) Payrolls and basic records relating thereto shall be maintained by the Recipient, Subrecipient and Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (4) of the provision entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Subrecipient or Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Subrecipient or Contractor employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2)(a) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Subrecipient. The Subrecipient shall submit weekly for each week in which any Subaward or Contract work is performed a copy of all payrolls to the Recipient. The Recipient shall submit weekly for each week in which any Subaward or Contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph D(1) of this Term, except that the full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

(b) The Recipient is responsible for ensuring that all Subrecipients and Contractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this Term. The Subrecipient is responsible for ensuring all Contractors, including lower tier subcontractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this term. Subrecipients and Contractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request for transmission to the Contracting Officer, the Recipient, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. The Recipient shall also obtain and provide the full social security number and current address of each covered worker upon request by the Contracting Officer or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Recipient to require a Subrecipient or Contractor to provide addresses and social security numbers to the Recipient for its own records, without weekly submission to the Contracting Officer.

(c) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Recipient, Subrecipient or Contractor or his or her agent who pays or supervises the payment of the persons employed under the Subaward or Contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph D(2)(a) of this Term, the appropriate information is being maintained under paragraph D(1) of this Term, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Subaward or Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Subaward or Contract.

(d) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph D(2)(c) of this Term.

(e) The falsification of any of the certifications in Paragraph D, Payrolls and Basic Records, of this Term may subject the Recipient, Subrecipient or Contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Recipient, Subrecipient, or Contractor shall make the records required under paragraph D(1) of this Term available for inspection, copying, or transcription by the Contracting Officer, authorized representatives of the Contracting Officer, or the Department of Labor. The Subrecipient or Contractor shall permit the Contracting Officer, authorized representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Recipient, Subrecipient, or Contractor fails to submit the required records or to make them available, the Contracting Officer may, after written notice to the Recipient, Subrecipient, or Contractor take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

E. Withholding of Funds

(1) The DOE Contracting Officer shall, upon his or her or its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Recipient or any other contract or Federal Award with the same Recipient, on this or any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Recipient so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subrecipient or a Contractor the full amount of wages required by the Award or Subaward or a Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Award or Subaward or a Contract, the Contracting Officer may, after written notice to the Recipient take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) The Recipient shall, upon its own action or upon written request of the DOE Contracting Officer or an authorized representative of the Department of Labor, withhold or cause to be withheld from any Subrecipient or Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subrecipient or Contractor the full amount of wages required by the Subaward or Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Subaward or Contract, the Recipient may, after written notice to the Subrecipient or Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased or the Government may cause the suspension of any further payment under any other contract or Federal award with the same Subrecipient or Contractor, on any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Subrecipient or Contractor.

F. Apprentices and Trainees

(1) Apprentices.

(a) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(b) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Subrecipient or Contractor as to the entire work force under the registered program.

(c) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph F(1) of this Term, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(d) Where a Subrecipient or Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Subrecipient's or Contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(e) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(f) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Subrecipient or Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) Trainees.

(a) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(b) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship/training program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(c) In the event OATELS withdraws approval of a training program, the Subrecipient or Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this Term shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

G. Compliance with Copeland Act Requirements

The Recipient, Subrecipient or Contractor shall comply with the requirements of 29 CFR Part 3 which are hereby incorporated by reference in the Award, Subaward or Contract.

H. Subawards and Contracts

(1) The Recipient, the Subrecipient and Contractor shall insert in the Subaward or any Contracts this Term entitled "Davis Bacon Act Requirements" and such other terms as the Contracting Officer may require. The Recipient shall be responsible for ensuring compliance by any Subrecipient or Contractor with all of the requirements contained in this Term. The Subrecipient shall be responsible for the compliance by Contractor with all of the requirements contained in this Term.

(2) Within 14 days after issuance of a Subaward, the Recipient shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each Subaward and Contract for construction within the United States, including the Subrecipient's and Contractor's signed and dated acknowledgment that this Term has been included in the Subaward and any Contracts. The SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413_e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413_e.pdf). Within 14 days after issuance of a Contract or lower-tier subcontract, the Subrecipient shall deliver to the Recipient a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each Contract and lower-tier subcontract for construction within the United States, including the Contractor and lower-tier subcontractor's signed and dated acknowledgment that this Term has been included in any Contract and lower-tier subcontracts. SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413_e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413_e.pdf). The Recipient shall immediately provide to the DOE Contracting Officer the completed Standard Forms (SF) 1413.

I. Contract Termination—Debarment

A breach of these provisions may be grounds for termination of the Award, Subaward, or Contract and for debarment as a Contractor or subcontractor as provided in 29 CFR 5.12.

J. Compliance with Davis-Bacon and Related Act Regulations

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in the Award, Subaward or Contract.

K. Disputes Concerning Labor Standards

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and shall not be subject to any other dispute provision that may be contained in the Award, Subaward, and Contract. Disputes within the meaning of this Term include disputes between the Recipient, Subrecipient (including any Contractor) and the Department of Energy, the U.S. Department of Labor, or the employees or their representatives.

L. Certification of Eligibility.

(1) By entering into this Award, Subaward, or Contract (as applicable), the Recipient, Subrecipient, or Contractor, respectively certifies that neither it (nor he or she) nor any person or firm who has an interest in the Recipient, Subrecipient, or Contractor's firm, is a person, entity, or firm ineligible to be awarded Government contracts or Government awards by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(2) No part of this Award, Subaward or Contract shall be subcontracted to any person or firm ineligible for award of a Government contract or Government award by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

M. Approval of Wage Rates

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under an Award, Subaward or Contract must be submitted for approval in writing by the head of the federal contracting activity or a

representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the Award, Subaward or Contract. Any amount paid by the Subrecipient or Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Subrecipient or Contractor and shall not be reimbursed by the Recipient or Subrecipient. If the Government refuses to authorize the use of the overtime, the Subrecipient or Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

Contract Work Hours and Safety Standards Act

This Term entitled "Contract Work Hours and Safety Standards Act (CWHSSA)" shall apply to any Subaward or Contract in an amount in excess of \$100,000. As used in this CWHSSA Term, the terms laborers and mechanics include watchmen and guards.

A. Overtime requirements. No Subrecipient or Contractor contracting for any part of the Subaward work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the term set forth in paragraph B herein, the Subrecipient or Contractor responsible therefor shall be liable for the unpaid wages. In addition, such Subrecipient or Contractor shall be liable to the United States (in the case of work done under a Subaward or Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provision set forth in CWHSSA paragraph A, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the term set forth in paragraph (A) of this section.

C. Withholding for unpaid wages and liquidated damages.

(1) The DOE Contracting Officer shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Recipient on this or any other Federal Award or Federal contract with the same Recipient on any other federally-assisted Award or contract subject to the CWHSSA, which is held by the same Recipient such sums as may be determined to be necessary to satisfy any liabilities of such Recipient for unpaid wages and liquidated damages as provided in the term set forth in CWHSSA, paragraph B of this Term.

(2) The Recipient shall, upon its own action or upon written request of the DOE Contracting Officer or an authorized representative of the Department of Labor, withhold or cause from any moneys payable on account of work performed by the Subrecipient or Contractor on this or any other federally assisted subaward or contract subject to the CWHSSA, which is held by the same Subrecipient or Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Subrecipient or Contractor for unpaid wages and liquidated damages as provided in term set forth in CWHSSA, paragraph B of this Term.

D. Subcontracts. The Subrecipient shall insert in a Contract and a Contractor shall insert in any lower tier subcontracts, the terms set forth in these CWHSSA paragraphs (A) through (D) and also a provision requiring the Contractors to include this CWHSSA Term in any lower tier subcontracts. The Recipient shall be responsible for compliance by any Subrecipient or Contractor, with the CWHSSA paragraphs A through D. The Subrecipient shall be responsible for compliance by any Contractor (including lower-tier subcontractors).

E. The Subrecipient or Contractor shall maintain payrolls and basic payrolls in accordance with Davis-Bacon Act Requirements term, for all laborers and mechanics, including guards and watchmen working on the Subaward or Contracts. These records are subject to the requirements set forth in the Davis Bacon Requirements term.

DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Definitions: For purposes of this article, Davis Bacon Act and Contract Work Hours and Safety Standards Act, the following definitions are applicable:

(1) "Award" means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors and subcontractors.

(2) "Contractor" means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients' or Subrecipients' contractors, subcontractors, and lower-tier subcontractors. "Contractor" does not mean a unit of State or local government where construction is performed by its own employees."

(3) "Contract" means a contract executed by a Recipient, Subrecipient, prime contractor or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. "Contract" does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.

(4) "Contracting Officer" means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(5) "Recipient" means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(6) "Subaward" means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.

(7) "Subrecipient" means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

(a) Davis Bacon Act

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) **Withholding:** The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records.**

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to

the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records; without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as

stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(II) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(III) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in (a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

From 10 CFR 600.236-Procurement

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and sub-grantees will follow paragraphs (b) through (l) in this section.

Note: 600.236 (l)-Contract provisions. A grantee's and sub-grantee's contracts MUST contain provisions in paragraph (l) of this section (1) through (13).

10 CFR 600.236 -- <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=1d87da29f6087f0251f78954c888ff1&rgn=div8&view=text&node=10:4.0.1.3.9.3.20.23&ldno=10>

From 10 CFR 600.237-Subgrants

Retention and Access Requirements for Records

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=4c22613d54c8ee557f9dc9d6015ec1c9&ldno=10;region=DIV1;q1=600.242;rgn=div8;view=text;node=10%3A4.0.1.3.9.3.20.27>

Conform any advances of grant funds to sub-grantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies (refer state to 10 CFR 600.221(c)).

10 CFR 60.221(c) Advances. Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

CORPORATE BORROWING RESOLUTION

By the Board of Directors of Onkda Energy, Inc.

whose principal place of business is located at 1239 Highway Drive DePue, WI 54116

RESOLVED, that any 1 of the officers of this Corporation from time to time holding the following offices of this Corporation:

(NO. REQUIRED)

(Check authorized offices) ☒ President ☐ Chief Executive Officer ☐ Secretary ☐ Treasurer ☐ Assistant Treasurer

☐ are authorized for and on behalf of this Corporation:

- (1) to arrange for the borrowing and to borrow from time to time money from Wisconsin Economic Development Corporation ("Lender"), and to give instructions to Lender regarding the same;
 - (2) to execute and deliver to Lender, from time to time, notes or loan agreements evidencing such debts in such amounts, with such maturities, at such rates of interest and upon such terms and conditions as the officers deem proper;
 - (3) to pledge, sign, mortgage or otherwise grant a security interest in any or all real property, fixtures, tangible or intangible personal property, or any other assets of this Corporation, to execute and deliver to Lender such security agreements, assignments, mortgages, financing statements, hypothecations, agreements not to encumber and other agreements as may be requested by Lender from time to time with such promises, warranties, representations and conditions as the officers deem proper and to guaranty and/or secure the obligations of others to Lender, and to perform such acts required of this Corporation in such agreements or otherwise to perfect such security interests, including the deposit of such property with Lender (and to withdraw and make substitutions of same from time to time);
 - (4) to endorse or assign with or without recourse and deliver to Lender for discount, deposit, application to loan balances or for collateral purposes notes, drafts, checks, certificates of deposit, acceptances, chattel paper, accounts, commercial and other business paper, now owned or hereafter acquired by this Corporation;
 - (5) to execute and deliver to Lender applications, agreements and other instruments for the issuance by Lender of letters of credit for the account of this Corporation;
 - (6) to execute and deliver subordinations, guaranties or other financial undertakings to Lender; and
 - (7) to do all other things necessary or appropriate to the authority granted by this Resolution;
- and the signature of any officer appearing on any of the foregoing shall be conclusive evidence of that officer's approval thereof.

FURTHER RESOLVED, that the custodian of the records of this Corporation be and hereby is authorized and directed to certify to Lender the foregoing Resolution and that the provisions thereof are in conformity with the Articles of Incorporation and Bylaws of this Corporation and to provide the names and to provide specimen or facsimile signatures if requested of the person(s) authorized therein and that the foregoing Resolution and the authority thereby conferred shall remain in full force and effect until this Corporation notifies Lender to the contrary in writing, and Lender may conclusively presume that such Resolutions and signatures are in effect and that the persons identified therein from time to time as officers of this Corporation have been duly elected or appointed to and continue to hold such offices. Receipt of any such notice shall not affect any action taken by Lender prior thereto.

FURTHER RESOLVED, that this Corporation assumes full responsibility and holds harmless Lender for any and all payments made or any other actions taken by Lender in reliance upon the signatures (whether original, facsimile, digital or electronic) of any person or persons holding the offices of this Corporation designated above regardless of whether or not the use of the signature was unlawful or unauthorized and regardless of by whom or by what means the purported signature or may have been affixed to any instrument, and for refusing to honor any signatures not provided to Lender, and that this Corporation agrees to indemnify Lender against any and all claims, demands, losses, costs, damages or expenses suffered or incurred by Lender resulting from or arising out of any such payment or other action, including reasonable attorneys' fees and legal expenses.

I certify that I am custodian of the records and the corporate seal (if any) of the above-named Corporation, a State of Wisconsin corporation; that the foregoing is a true and correct copy of resolutions duly adopted in accordance with law and the Articles of Incorporation and Bylaws of said Corporation by unanimous consent, or at a meeting of a quorum of its Board of Directors on November 18, 2011, and that said resolutions, not being in conflict with those Articles or Bylaws, are now in full force and



or ☒ THE CORPORATION HAS NO SEAL

Dated November 18, 2011

By Michael Malozan

Secretary
TITLE

CORPORATE CERTIFICATE

TO: Wisconsin Economic Development Corporation ("Lender")
(Name of Lender)

I hereby certify to Lender that I am the duly elected, qualified and acting Secretary
(Title)
of Onsida Energy, Inc. that following are all of the specimen or
(Name of Corporation)
facsimile signatures of the person(s) authorized by the borrowing resolution *(appearing on the reverse side) (dated November 16, 2011
) filed with Lender to act on behalf of this Corporation, that these person(s) have been duly elected or appointed to
the offices indicated and hold the offices at present and that I am the person authorized by this Corporation to so certify:

	<u>Name of Office</u>	<u>Specimen or Facsimile Signature</u>
[Indicate name of office, e.g., president, vice president, assistant vice president, etc.]	<u>President and Chairman</u>	<u>William Cornelius</u>
	<u>Secretary</u>	<u>Michael Meloxan</u>
	<u>Chief Executive Officer</u>	<u>Kevin Cornelius</u>
	<u>Director</u>	<u>Nathaniel King</u>
	<u>n/a</u>	<u>n/a</u>
	<u>n/a</u>	<u>n/a</u>

Dated November 16, 2011

*Strike if not applicable
**Type or print names signed above

Signature of Certifying Corporate Officer

SELECTIVE BUSINESS SECURITY AGREEMENT

Dated 11/16/2011

1. SECURITY INTEREST

In consideration of any financial accommodation at any time granted by Wisconsin Economic Development Corporation ("Lender") to Onkila Energy Inc. ("Borrower"), each of the undersigned ("Debtor," whether one or more) grants Lender a security interest in property, wherever located; checked in Section 2 ("Collateral") to secure all debts, obligations and liabilities to Lender arising out of credit previously granted, credit contemporaneously granted and credit granted in the future by Lender to any Debtor, or any Borrower, to any of them and another, or to another guaranteed or endorsed by any of them ("Obligations").

2. DESCRIPTION OF COLLATERAL

One or more boxes must be checked.

- (a) ☐ All Collateral. If checked here, all equipment, fixtures, inventory, documents, general intangibles, accounts, deposit accounts (unless a security interest would render a non-taxable account taxable), contract rights, chattel paper, patents, trademarks and copyrights (and the good will associated with and registrations and licenses of any of them), instruments, letter of credit rights and investment property, now owned or hereafter acquired by Debtor (or by Debtor with spouse);
- (b) ☐ Scheduled Collateral. If checked here, all inventory, accounts, contract rights, equipment, fixtures, general intangibles, instruments, deposit accounts (unless a security interest would render a non-taxable account taxable), letter of credit rights, commercial tort claims, investment property, documents and chattel paper described in the attached schedule and any additional schedules delivered by Debtor to Lender from time to time, now owned or hereafter acquired by Debtor (or by Debtor with spouse);
- (c) ☒ Specific Collateral. If checked here, the following described property now owned or hereafter acquired by Debtor (or by Debtor with spouse): Cummins model C1750N6C engine generator with 4,180 VAQ 3 phase, 4 wire, 60 hertz output for operation on low BTU gaseous fuel. Production Number A030V695.

- (d) ☐ All Inventory. If checked here, all inventory and documents relating to inventory now owned or hereafter acquired by Debtor (or by Debtor with spouse);
- (e) ☐ All Receivables. If checked here, all accounts, contract rights, chattel paper, letter of credit rights and instruments now owned or hereafter acquired by Debtor (or by Debtor with spouse);
- (f) ☐ All Equipment. If checked here, all equipment and fixtures now owned or hereafter acquired by Debtor (or by Debtor with spouse);
- (g) ☐ All General Intangibles. If checked here, all general intangibles now owned or hereafter acquired by Debtor (or by Debtor with spouse); and all additions and accessories to, all spare and repair parts, special tools, equipment and replacements for, software used in, all returned or repossessed goods the sale of which gave rise to, and all proceeds, supporting obligations and products of the foregoing.

3. DEBTOR'S WARRANTIES

Debtor warrants and agrees that while any of the Obligations are unpaid:

- (a) Ownership and use. Debtor owns (or with spouse owns) the Collateral free of all encumbrances and security interests (except Lender's security interest). Chattel paper constituting Collateral evidences a perfected security interest in the goods (including software used in the goods) covered by it, free from all other encumbrances and security interests, and no financing statement is on file or control agreement in existence (other than Lender's) covering the Collateral or any of it. Debtor, acting alone, may grant a security interest in the Collateral and agree to the terms of this Agreement. The Collateral is used or bought for use primarily for business purposes.
- (b) Sale of goods or services rendered. Each account and chattel paper constituting Collateral as of this date arose from the performance of services by Debtor or from a bona fide sale or lease of goods, which have been delivered or shipped to the account debtor and for which Debtor has genuine invoices, shipping documents or receipts.
- (c) Enforceability. Each account, contract right and chattel paper constituting Collateral as of this date is genuine and enforceable against the account debtor according to its terms. It and the transaction out of which it arose comply with all applicable laws and regulations. The amount represented by Debtor to Lender as owing by each account debtor is the amount actually owing and is not subject to setoff, credit, allowance or adjustment, except discount for prompt payment, nor has any account debtor returned the goods or disputed liability.
- (d) Due date. There has been no default according to the terms of any chattel paper or account constituting Collateral and no step has been taken to foreclose the security interest it evidences or otherwise enforce its payment.
- (e) Financial condition of account debtor. As of this date Debtor has no notice or knowledge of anything which might impair the credit standing of any account debtor and Debtor will advise Lender upon receipt of any such notice or knowledge affecting Collateral.
- (f) Valid organization. If a corporation, limited liability company or general or limited partnership, Debtor is duly organized, validly existing and in good standing under the laws of the state of organization and is authorized to do business in Wisconsin.
- (g) Other agreements. Debtor is not in default under any agreement for the payment of money.
- (h) Authority to contract. The execution and delivery of this Agreement and any instruments evidencing Obligations will not violate or constitute a breach of Debtor's articles of incorporation or organization, by-laws, partnership agreement, operating agreement or any other agreement or restriction to which Debtor is a party or is subject.
- (i) Accuracy of Information. All information, certificates or statements given to Lender pursuant to this Agreement shall be true and complete when given.
- (j) Name and address. Debtor's exact legal name is as set forth below Section 12. If Debtor is an individual, the address of Debtor's principal residence is as set forth below Section 12. If Debtor is an organization that has only one place of business, the address of Debtor's place of business, or if Debtor has more than one place of business, then the address of Debtor's chief executive office, is as set forth below Section 12.
- (k) Location. The address where the Collateral will be kept, if different from that appearing below Section 12, is 1630 HURLBUT ST. GREEN BAY WI 54303. Such location shall not be changed without the prior written consent of Lender. But the parties intend that the Collateral, wherever located, is covered by this Agreement.
- (l) Organization. If Debtor is an organization, the type of organization and the state under whose law it is organized are as set forth below Section 12.

(m) Environmental laws. (i) No substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about any real estate now or at any time owned or occupied by Debtor ("Property") during the period of Debtor's ownership or use of the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require clean-up, removal or some other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws"). (ii) Debtor has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner or person using the Property. (iii) without limiting the generality of the foregoing, Debtor has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components (PCBs) or underground storage tanks. (iv) there are no conditions existing currently or likely to exist during the term of this Agreement which would subject Debtor to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claim relating to any Hazardous Substance. (v) Debtor is not subject to any court or administrative proceeding, judgment, decree, order or citation relating to any Hazardous Substance, and (vi) Debtor in the past has been, at the present is, and in the future will remain in compliance with all Environmental Laws. Debtor shall indemnify and hold harmless Lender, its directors, officers, employees and agents from all loss, cost (including reasonable attorneys' fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of, or based upon (1) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, (2) the violation or alleged violation of any Environmental Law, permit, judgment or transportation of any Hazardous Substance to or from the Property, (3) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Debtor shall immediately notify Lender in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance described above on, in, under or about the Property.

(n) Employees. There are no unpaid wages due employees of Debtor and there are no outstanding liens against assets of Debtor for unpaid wages due employees of Debtor.

(o) Fixtures. If any of the Collateral is affixed to real estate, the legal description of the real estate set forth in the UCO Financing Statement signed or authorized by Debtor is true and correct.

4. SHIPPERS

Shippers authorized to draw drafts on Lender under section 7(c) are:

ADDITIONAL PROVISIONS

5. SALE AND COLLECTIONS

(a) Sale of inventory. So long as no default exists under any of the Obligations of this Agreement, Debtor may (a) sell inventory in the ordinary course of Debtor's business for cash or on terms customary in the trade, at prices not less than any minimum sale price shown on instruments evidencing Obligations and describing inventory, or (b) lease or license inventory on terms customary in the trade.

(b) Verification and notification. Debtor may verify Collateral in any manner, and Debtor shall assist Lender in so doing. Upon default Lender may at any time and Debtor shall, upon request of Lender, notify the account debtors or other persons obligated on the Collateral to make payment directly to Lender and Lender may enforce collection of, settle, compromise, extend or renew the indebtedness of such account debtors or other persons obligated on the Collateral. Until account debtors or other persons obligated on the Collateral are so notified, Debtor, as agent of Lender, shall make collections and receive payments on the Collateral.

(c) Deposit with Lender. At any time Lender may require that all proceeds of Collateral received by Debtor shall be held by Debtor upon an express trust for Lender, shall not be commingled with any other funds or property of Debtor and shall be turned over to Lender in precisely the form received (but endorsed by Debtor if necessary for collection) not later than the business day following the day of their receipt. Except as provided in Section 5(d) below, all proceeds of Collateral received by Lender directly or from Debtor shall be applied against the Obligations in such order and at such times as Lender shall determine.

(d) Accounting. If the extent to which Lender's security interest in the Collateral is a purchase money security interest depends on the application of a payment to a particular obligation of Debtor, the payment shall first be applied to obligations of Debtor for which Debtor did not create a security interest in the order in which those obligations were incurred and then to obligations of Debtor for which Debtor did create a security interest, including the Obligations secured by the Collateral, in the order in which those obligations were incurred; provided, however, that Lender shall retain its security interest in all Collateral regardless of the allocation of payments.

6. DEBTOR'S COVENANTS

(a) Maintenance of Collateral. Debtor shall maintain the Collateral in good condition and repair and not permit its value to be impaired; keep it free from all liens, encumbrances and security interests (other than Lender's security interest); defend it against all claims and legal proceedings by persons other than Lender; pay and discharge when due all taxes, license fees, and other charges upon it; not sell, lease, license or otherwise transfer or dispose of it or permit it to become a fixture or an accession to other goods, except for sales, leases or licenses of inventory as provided in this Agreement; not permit it to be used in violation of any applicable law, regulation or policy of insurance; and, as to Collateral consisting of instruments, chattel paper and letter of credit rights, preserve rights in it against prior parties. Loss of or damage to the Collateral shall not affect the liabilities of any Debtor or Borrower under this Agreement, the Obligations or other rights of Lender with respect to the Collateral.

(b) Insurance. Debtor shall keep the Collateral and Lender's interest in it insured under policies with such provisions, for such amounts and by such insurers as shall be satisfactory to Lender from time to time, and shall furnish evidence of such insurance satisfactory to Lender. Subject to Lender's satisfaction, Debtor is free to select the insurance agent or insurer through which the insurance is obtained. Debtor assigns (and directs any insurer to pay) to Lender the proceeds of all such insurance and any premium refund, and authorizes Lender to endorse in the name of Debtor any instruments for such proceeds or refunds and, at the option of Lender, to apply such proceeds and refunds to any unpaid balance of the Obligations, whether or not due, and/or to restoration of the Collateral, returning any excess to Debtor. Each insurance policy shall contain a standard lender's loss payable endorsement in favor of Lender and shall provide that the policy shall not be cancelled, and the coverage shall not be reduced, without at least 10 days' prior written notice by the insurer to Lender. Lender is authorized, in the name of Debtor or otherwise, to make, adjust and/or settle claims under any credit insurance financed by Lender or any insurance on the Collateral, or cancel the same after the occurrence of an event of default. If Debtor fails to keep any required insurance on the Collateral, Lender may purchase such insurance for Debtor, such insurance may be acquired by Lender solely to protect the interest of Lender (and will not cover Debtor's equity in the Collateral), and Debtor's obligation to repay Lender shall be in accordance with Section 7(a).

(c) Maintenance of security interest. Debtor shall pay all expenses and upon request, take any action reasonably deemed advisable by Lender to preserve the Collateral or to establish, evidence, determine and maintain priority of, perfect, continue perfected, terminate and/or enforce Lender's interest in it or rights under this Agreement. Debtor authorizes Lender to file Uniform Commercial Code financing statements describing the Collateral (including describing the Collateral as "all assets," "all personal property" or with words of similar effect if Section 2(a) is checked) and amendments and correction statements to such financing statements and ratifies any such financing statement or amendment filed prior to the date of this Agreement. Debtor will cooperate with Lender in obtaining control of Collateral and other security for the Obligations for which control may be required to perfect Lender's security interest under applicable law. If the Collateral is in possession of a third party, Debtor will join with Lender at its request in notifying the third party of Lender's security interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Lender.

(d) Taxes and other charges. Debtor shall pay and discharge all lawful taxes, assessments and government charges upon Debtor or against its properties prior to the date on which penalties attach, unless and to the extent only that such taxes, assessments and charges are contested in good faith and by appropriate proceedings by Debtor.

(e) Employees. Debtor shall pay all wages when due to employees of Debtor and shall not permit any lien to exist against the assets of Debtor for unpaid wages due employees of Debtor.

(f) Records and statements. Debtor shall furnish to Lender financial statements at least annually and such other financial information respecting Debtor at such times and in such form as Lender may request. Debtor shall keep accurate and complete records respecting the Collateral in such form as Lender may approve. At such times as Lender may require, Debtor shall furnish to Lender a statement certified by Debtor and in such form and containing such information as may be prescribed by Lender, showing the current status and value of the Collateral. Debtor shall furnish to Lender such reports regarding the payment of wages to employees of Debtor and the number of employees of Debtor as Lender may from time to time request, and without request shall furnish to Lender a written report immediately upon any material increase in the number of employees of Debtor, the failure of Debtor to pay any wages when due to employees of Debtor or the imposition of any lien against the assets of Debtor for unpaid wages due employees of Debtor.

(g) Inspection of Collateral. At reasonable times Lender may examine the Collateral and Debtor's records pertaining to it, wherever located, and make copies of records, and Debtor shall assist Lender in so doing.

(h) Service charge. In addition to the required payments under the Obligations and this Agreement, Debtor shall pay Lender's then current service charges for servicing and auditing in connection with this Agreement.

(i) Chattel paper. Lender may require that chattel paper constituting Collateral shall be on forms approved by Lender. Unless it consists of electronic paper, Debtor shall promptly mark all chattel paper constituting Collateral, and all copies, to indicate conspicuously Lender's interest and, upon request, deliver them to Lender. If it consists of electronic chattel paper, Debtor shall promptly notify Lender of the existence of the electronic chattel paper and, at the request of Lender, shall take such actions as Lender may reasonably request to vest in Lender control of such electronic chattel paper under applicable law.

(j) United States contracts. If any Collateral arose out of contracts with the United States or any of its departments, agencies or instrumentalities, Debtor will notify Lender and execute writings required by Lender in order that all money due or to become due under such contracts shall be assigned to Lender and proper notice of the assignment given under the Federal Assignment of Claims Act.

(k) Modifications. Without the prior written consent of Lender, Debtor shall not alter, modify, extend, renew or cancel any accounts, letter of credit rights or chattel paper constituting Collateral or any Collateral constituting part of the Debtor's borrowing base.

(l) Returns and reposessions. Debtor shall promptly notify Lender of the return to or repossession by Debtor of goods underlying any Collateral and Debtor shall hold and dispose of them only as Lender directs.

(m) Promissory Notes, Chattel Paper and Investment Property. If Debtor shall at any time hold or acquire Collateral consisting of promissory notes, chattel paper or certificated securities, Debtor shall endorse, assign and deliver the same to Lender accompanied by such instruments of transfer of assignment duly executed in blank as Lender may from time to time request.

(n) Change of name, address or organization. Debtor shall not change Debtor's legal name or address without providing at least 30 days' prior written notice of the change to Lender. Debtor if it is an organization shall not change its type of organization or state under whose law it is organized and shall preserve its organizational existence, and Debtor whether or not Debtor is an organization shall not, in one transaction or in a series of related transactions, merge into or consolidate with any other organization, change Debtor's legal structure or sell or transfer all or substantially all of Debtor's assets.

7. RIGHTS OF LENDER

(a) Authority to perform for Debtor. Upon the occurrence of an event of default or if Debtor fails to perform any of Debtor's duties set forth in this Agreement or in any evidence of or document relating to the Obligations, Lender is authorized, in Debtor's name or otherwise, to take any such action including without limitation signing Debtor's name or paying any amount so required, and the cost shall be one of the Obligations secured by this Agreement and shall be payable by Debtor upon demand with interest from the date of payment by Lender at the highest rate stated in any evidence of any Obligation but not in excess of the maximum rate permitted by law.

(b) Charging Debtor's credit balance. Unless a lien would be prohibited by law or would render a nonliable account taxable, Debtor grants Lender, as further security for the Obligations, a security interest and lien in any deposit account Debtor may at any time have with Lender and other money now or hereafter owed Debtor by Lender, and agrees that Lender may, at any time after the occurrence of an event of default, without prior notice or demand, set-off all or any part of the unpaid balance of the Obligations against any deposit balances or other money now or hereafter owed Debtor by Lender.

(c) Power of attorney. Debtor irrevocably appoints any officer of Lender as Debtor's attorney, with power after an event of default to receive, open and dispose of all mail addressed to Debtor (and Lender shall not be required as a condition to the exercise of this power to prove the occurrence of an event of default to the Post Office) to notify the Post Office authorities to change the address for delivery of all mail addressed to Debtor to such address as Lender may designate; to endorse the name of Debtor upon any instruments which may come into Lender's possession; and to sign and make draws under any letter of credit constituting Collateral on Debtor's behalf. Debtor agrees that Obligations may be created by drafts drawn on Lender by shippers of inventory named in Section 4. Debtor authorizes Lender to honor any such draft accompanied by invoices aggregating the amount of the draft and describing inventory to be shipped to Debtor and to pay any such invoices not accompanied by drafts. Debtor appoints any employee of Lender as

Debtor's attorney, with full power to sign Debtor's name on any instrument evidencing an Obligation, or any renewals or extensions, for the amount of such drafts honored by Lender and such instruments may be payable at fixed times or on demand, shall bear interest at the rate from time to time fixed by Lender and Debtor agrees, upon request of Lender, to execute any such instruments. This power of attorney to execute instruments may be revoked by Debtor only by written notice to Lender and no such revocation shall affect any instruments executed prior to the receipt by Lender of such notice. All acts of such attorney are ratified and approved and such attorney is not liable for any act or omission or for any error of judgment or mistake of fact or law. This power is a power coupled with an interest and is given as security for the Obligations, and the authority conferred by this power is and shall be irrevocable and shall remain in full force and effect until renounced by Lender except as otherwise expressly provided in this Section 7(c).

(d) Non-liability of Lender. Lender has no duty to determine the validity of any invoice, the authority of any shipper named in Section 4 to ship goods to Debtor or compliance with any order of Debtor. Lender has no duty to protect, insure, collect or realize upon the Collateral or preserve rights in it against prior parties. Debtor releases Lender from any liability for any act or omission relating to the Obligations, the Collateral or this Agreement, except Lender's willful misconduct.

8. DEFAULT

Upon the occurrence of one or more of the following events of default:

(a) Nonperformance. Any of the Obligations are not paid when due, or Borrower or Debtor, as applicable, fails to perform, or rectify breach of, any warranty or covenant or other undertaking in this Agreement or in any evidence of or document relating to the Obligations or an event of default occurs under any evidence of or document relating to any other obligation secured by the Collateral;

(b) Inability to Perform. Borrower, Borrower's spouse, Debtor or a guarantor or surety of any of the Obligations dies, ceases to exist, becomes insolvent or the subject of bankruptcy or insolvency proceedings or any guaranty of the Obligations is revoked or becomes unenforceable for any reason;

(c) Misrepresentation. Any representation or warranty made to induce Lender to extend credit to Debtor or Borrower, under this Agreement or otherwise, is false in any material respect when made; or

(d) Insecurity. At any time Lender believes in good faith that the prospect of payment or performance of any of the Obligations or performance under any agreement securing the Obligations is impaired;

all of the Obligations shall, at the option of Lender and without notice or demand, become immediately payable; and Lender shall have all rights and remedies for default provided by the Wisconsin Uniform Commercial Code and this Agreement, as well as any other applicable law, and under any evidence of or document relating to any Obligation, and all such rights and remedies are cumulative and may be exercised from time to time. With respect to such rights and remedies:

(e) Repossession. Lender may take possession of Collateral without notice or hearing, which Debtor waives;

(f) Assembling collateral. Lender may require Debtor to assemble the Collateral and to make it available to Lender at any place reasonably designated by Lender;

(g) Notice of disposition. Written notice, when required by law, sent to any address of Debtor in this Agreement at least 10 calendar days (counting the day of sending) before the date of a proposed disposition of the Collateral is reasonable notice;

(h) Expenses and application of proceeds. Debtor shall reimburse Lender for any expense incurred by Lender in protecting or enforcing its rights under this Agreement before and after judgment, including, without limitation, reasonable attorneys' fees and legal expenses (including those incurred in successful defense or settlement of any counterclaim brought by Debtor or incident to any action or proceeding involving Debtor brought pursuant to the United States Bankruptcy Code) and all expenses of taking possession, holding, preparing for disposition and disposing of Collateral (provided, however, Lender has no obligation to clean-up or otherwise prepare the Collateral for sale). After deduction of such expenses, Lender shall apply the proceeds of disposition to the extent actually received in cash to the Obligations in such order and amounts as it elects or as otherwise required by this Agreement. If Lender sells any Collateral on credit, Debtor will be credited only with payments that the purchaser actually makes and that Lender actually receives and applies to the unpaid balance of the purchase price of the Collateral; and

(i) Waiver. Lender may permit Debtor or Borrower to remedy any default without waiving the default so remedied, and Lender may waive any default without waiving any other subsequent or prior default by Borrower or Debtor. Lender shall continue to have all of its rights and remedies under this Agreement even if it does not fully and properly exercise them on all occasions.

9. WAIVER AND CONSENT

Each Debtor who is not also a Borrower expressly consents to and waives notice of the following by Lender without affecting the liability of any such Debtor: (a) the creation of any present or future Obligation, default under any Obligation, proceedings to collect from any Borrower or anyone else, (b) any surrender, release, impairment, sale or other disposition of any security or collateral for the Obligations, (c) any release or agreement not to sue any guarantor or surety of the Obligations, (d) any failure to perfect a security interest in or realize upon any security or collateral for the Obligations, (e) any failure to realize upon any of the Obligations or to proceed against any Borrower or any guarantor or surety, (f) any renewal or extension of the time of payment, (g) any allocation and application of payments and credits and acceptance of partial payments, (h) any application of the proceeds of disposition of any collateral for the Obligations to any obligation of any Debtor or Borrower secured by such collateral in such order and amounts as it elects, (i) any determination of what, if anything, may at any time be due with reference to any security or collateral, and (j) any settlement or compromise of the amount due or owing or claimed to be due or owing from any Borrower, guarantor or surety.

10. INTERPRETATION

The validity, construction and enforcement of this Agreement are governed by the internal laws of Wisconsin except to the extent such laws are preempted by federal law. All terms not otherwise defined have the meanings assigned to them by the Wisconsin Uniform Commercial Code, as amended from time to time, provided, however, that the term "instrument" shall be such term as defined in the Wisconsin Uniform Commercial Code-Secured Transactions Chapter 409. All references in this Agreement to sections of the Wisconsin Statutes are to those sections as they may be renumbered from time to time. Invalidity of any provision of this Agreement shall not affect the validity of any other provision. This Agreement is intended by Debtor and Lender as a final expression of this Agreement and as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Agreement. This Agreement may not be supplemented or modified except in writing.

11. PERSONS BOUND

Each person signing this Agreement is a Debtor. All Debtors are jointly and severally liable under this Agreement. This Agreement benefits Lender, its successors and assigns, and binds Debtor(s) and their respective heirs, personal representatives, successors and assigns and shall bind all persons and entities who become bound as a debtor to this Agreement. ☐ If checked here, this Agreement amends and replaces in their entirety the provisions of all existing Selective Business Security Agreements between Debtor and Lender; provided, however, that all security interests granted to Lender under those existing security agreements shall remain in full force and effect, subject to the provisions of this Agreement. Debtor acknowledges receipt of a completed copy of this Agreement.

12. OTHER PROVISIONS

(If none are stated below, there are no other provisions.)

Debtor (SEAL) By: WTL 76

Debtor (SEAL) (PRESIDENT)

Address: 1234 FLIGHTWAY DR., D6 PERC

See Section 3(d) and (f) WI 54116

By: [Signature]

(SECRETARY)

TYPE OF ORGANIZATION

STATE OF ORGANIZATION

Type or print name signed above. Page 3 of 3

