

SUBAWARD AGREEMENT

between

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, NY

and

Orange and Rockland Utilities, Inc.

390 W. Route 59

Spring Valley, NY 10977

Consolidated Edison Subaward No. SA-SG008

TABLE OF CONTENTS

	<u>Page</u>
 SECTION I – ARTICLES	
1. CONTRACT TYPE	2
2. TERM	2
3. STATEMENT OF WORK	2
4. REIMBURSEMENT	2
5. PROGRAM RESPONSIBILITIES.....	3
6. CHANGES.....	6
7. DISCLOSURE OF CONFIDENTIAL OR PROPRIETARY INFORMATION.....	6
8. PROPRIETARY MARKINGS	6
9. ASSIGNMENT.....	6
10. COMPLIANCE WITH LAWS	6
11. INDEMNIFICATION.....	6
12. INDEPENDENT CONTRACTOR.....	7
13. NEWS RELEASES	7
14. CONFLICTS OF INTEREST.....	7
15. NOTICES.....	8
16. TERMINATION FOR CONVENIENCE.....	8
17. TERMINATION FOR DEFAULT	9
18. DISPUTES	9
19. KEY PERSONNEL	10
20. RIGHT TO DISAPPROVE/REMOVE STAFF	11
21. DOE DECISION AFFECTING SUBAWARD.....	11
22. FALSE CLAIMS	12
23. ANTI-KICKBACK INDEMNITY	12
24. GRATUITIES	12
25. SITE VISITS AND ACCESS.....	13
26. APPLICABLE SGDGRANT REQUIREMENTS.....	13
27. INSURANCE.....	13
28. INTERPRETATION AND CONSTRUCTION	14
1. FLOWDOWN CLAUSES	16

2.	FLOWDOWN CERTIFICATIONS AND REPRESENTATIONS.....	16
1.	TABLE OF ATTACHMENTS.....	17
	Attachment 1: Statement of Work	
	Attachment 2: Compensation Schedule – Not required	
	Attachment 3: Flowdown Clauses	
	Attachment 4: Flowdown Certifications and Representations	

AGREEMENT

This Subaward Agreement (the “Subaward”), dated as of the 30th day of March, 2011, but effective as of the effective date of the SGD Grant (as such term is defined below) (the “Effective Date”), between Consolidated Edison Company of New York, Inc., a New York corporation, (hereinafter referred to as the “Prime Awardee”) and Orange and Rockland Utilities, Inc., a New York corporation located at 390 W. Route 59, Spring Valley, NY 10977 (hereinafter referred to as the “Subrecipient”). (The Prime Awardee and the Subrecipient are each a “Party” and together are the “Parties”).

WHEREAS, the Prime Awardee intends to enter into a Cooperative Assistance Agreement for Award No. DE-OE0000197 (the “SGDG Grant”) with the U.S. Department of Energy (the “DOE”); and,

WHEREAS, the SGD Grant was based on the Prime Awardee’s proposal (the “Proposal”); and,

WHEREAS, the Subrecipient and the Prime Awardee are parties to a teaming agreement dated as of June 1, 2010 by and among Orange and Rockland Utilities, Inc.; The Boeing Company acting through its Advanced Global Services and Support Organization; The Trustees of Columbia University in the City of New York, on behalf of Columbia Technology Ventures; The Prosser Group, LLC; CALM Energy Inc.; Viridity Energy, Inc.; Rudin Management Company, Inc.; Verizon Communication, Inc.; Polytechnic Institutes of NYU; New York Independent System Operator; and New York City Economic Development Corporation (as amended, supplemented, modified or assigned from time to time, the “Teaming Agreement”); and

WHEREAS, the Prime Awardee desires to contract with the Subrecipient so that the Subrecipient can support the performance of the SGD Grant as proposed; and

WHEREAS, the Subrecipient is willing and able to provide support in the performance of the SGD Grant to the Prime Awardee in accordance with the terms and conditions set forth in this Subaward.

NOW, THEREFORE, the Parties agree as follows:

This Subaward is composed of the following Sections. All Sections are required in order to have a complete contract.

Section I – Articles

Section II – SGD Grant Flowdowns

Section III – Table of Attachments

SECTION I – ARTICLES

1. CONTRACT TYPE

This Subaward is a cost type payment agreement. The Subrecipient has waived any fee on this project. All costs including overheads are subject to audit to ensure the Subrecipient has not received payments in excess of costs including all allowable overheads. This contract is subject to cancellation, termination, or modification as defined herein.

2. TERM

The term of this Subaward is from the Effective Date through December 31, 2013, unless sooner terminated in accordance with the provisions of the Termination for Convenience or Termination for Default clauses, or Termination by mutual agreement of the parties. The term of the Subaward may be extended if the term of the SGD Grant is extended, if the SGD Grant requires the Parties to provide data to the DOE beyond the period of performance, or by exercising any options authorized under this Subaward, including any clauses of the SGD Grant providing for the exercise of options, which clauses are hereby incorporated herein by reference in the manner prescribed in Section II of this Subaward.

3. STATEMENT OF WORK

The Subrecipient shall perform, using its best efforts, the services and provide the materials and other items (hereinafter, the “Work”) set forth in Section III, Attachment 1, the “Statement of Work” (“SOW”), and under the written direction of the Contracting Officer who from time to time will be designated by the Prime Awardee. The initial Prime Awardee Contracting Officer shall be Troy De Vries. The Subrecipient shall not begin Work without written notification from the Prime Awardee Contracting Officer. After initial project kickoff, the Subrecipient shall perform according to the agreed upon list of deliverables and project schedule, unless otherwise instructed in writing by the Prime Awardee Contracting Officer.

4. REIMBURSEMENT

The maximum reimbursement under this agreement is \$930,000; provided, however, that, at all times, such reimbursement shall be conditioned upon, and the Prime Awardee shall not be liable to the Subrecipient for any Work performed under the Subaward until, a determination by the DOE that the project costs claimed by the Subrecipient are allowable pursuant to FAR Part 31 “Contract Costs Principles and Procedures”. In consideration of performance of the Work under the Subaward to support performance of the program contemplated in the SGD Grant, and acceptance thereof by the Prime Awardee, the Subrecipient shall be reimbursed as stated above. The Subrecipient must submit monthly invoices for costs associated with Work completed including hours worked and other direct costs and overheads. The following minimum fields shall be

provided on each invoice for the current month and cumulative: labor hours, travel, other direct costs and cost match. If the Subrecipient submits its invoices to the Prime Awardee by the fifth day of each month, the Prime Awardee shall submit such invoices to the DOE and reimburse the Subrecipient for such amounts set forth on such invoices, in each case, on or before the tenth day of that month. Invoices submitted after the fifth day of a month may be submitted in the following month's invoice cycle. In any case, the Prime Awardee agrees to reimburse the Subrecipient within ten (10) days of receipt of proper invoices for Work provided by the Subrecipient. The Subrecipient will submit their costs on a one month lag. The Subrecipient shall provide to the Prime Awardee or the DOE, as applicable, all information and documentation necessary, or reasonably requested by the Prime Awardee or the DOE, to support a determination by the DOE that the project costs claimed by the Subrecipient as its cost matching are allowable pursuant to FAR Part 31 "Contract Costs Principles and Procedures". In the event of a dispute that delays the DOE's recognition of invoiced expenses as allowable cost matching for more than sixty (60) days from the date of the Prime Awardee's submission of an invoice to the DOE, either the Prime Awardee or the Subrecipient may suspend performance under this Subaward without liability to the other.

5. PROGRAM RESPONSIBILITIES

- A. Program Implementation. The Prime Awardee shall assume responsibility for the overall Program Management Organization ("PMO"), including the establishment of processes, tools, procedures, principles and best practices used to manage the Program (as defined in the Teaming Agreement), including, but not limited to, Program planning, Program risk, issue and opportunity management, Program health, financial health and management decisions related to the Program. Subject to Confidential Information processes established by the Parties under PIA-SG001 (as defined in the Teaming Agreement), the Prime Awardee may employ outside advisors or consultants or any other person or entity to offer advice and assistance with respect to the PMO ("PMO Advisors") and such PMO Advisors may exercise oversight activities as the Prime Awardee deems necessary and the Prime Awardee may delegate tasks related to the PMO and to the PMO Advisors.
- B. Information Sharing. Subject to the terms of PIA-SG001, the Subrecipient agrees to use good faith efforts to provide information relating to the Program to the subrecipients who request information on a need to know basis for purposes of effectuating the Program within a reasonable time. Pursuant to the terms of PIA-SG001, the Subrecipient agrees to cooperate in the preparation and presentation of Program information to the DOE, as may be required by applicable law or regulations, and to other subrecipients and any third parties that are bound by the PIA and have a need to know for purposes of effectuating the Program.
 - 1. The Subrecipient's Technical Focal Point, which the Subrecipient may change from time to time upon written notice to the Prime Awardee to this Agreement, is Charles Scirbona.

2. The Subrecipient agrees to produce a reasonably detailed presentation updating the Prime Awardee and other subrecipients on its respective Program accomplishments and status, with such presentations occurring either during a conference call or in a technical interchange meeting. Such presentations shall be held at least quarterly, in person or otherwise as directed by the Prime Awardee.
3. Sharing Documentation. The Subrecipient shall maintain and share certain documentation associated with each of its Program deliverables on a secure Sharepoint website, or other program readily accessible to the Prime Awardee and the other subrecipients that are party to PIA-SG001 (the "Platform"). The Subrecipient and the Prime Awardee acknowledge that because the sharing of proprietary data is governed by a "need to know" basis as defined in PIA-SG001, and/or certain deliverables are managed in accordance with 10 CFR 600.325 Appendix A, and/or may contain information that is subject to restrictions pursuant to the International Traffic in Arms Regulations, Export Administration Regulations, or other requirements imposed by the U.S. government, affected data and deliverables will be selectively shared among the Prime Awardee and subrecipients via the Platform and in compliance with these requirements. The Platform will result in the sharing of all non-proprietary programmatic data and select proprietary and/or unrestricted data and deliverables.
 - a) No later than one month following the beginning of the Program, as indicated either by a signed agreement between the Prime Awardee and the DOE or the commencement of performance authorized by the PMO, the Prime Awardee shall develop the Platform and maintain it through the term of the Program.
 - b) Any significant changes to the Platform, including, but not limited to, software or hardware changes, shall be communicated to the Subrecipient's Technical Focal Point by the Prime Awardee within fourteen (14) days of such change.
 - c) Subject to the requirements set forth above, the Subrecipient agrees to update the Platform with respect to that information required by this Subaward ("Program Deliverable Information") within fourteen (14) days of completing the deliverable. The Subrecipient agrees to maintain a detailed list of Program risks and issues, including, but not limited to mitigation methods, responsible party identification and deliverable status on the Platform within three (3) days after learning of such risks and issues.
4. The Subrecipient shall respond, within a reasonable period of time, to any requests for Program information from the DOE that are required to be made under contract or applicable law or regulation. Responses to such

requests shall be submitted by the Prime Awardee's Technical Focal Point (as set forth in the Teaming Agreement) unless otherwise directed by the Prime Awardee. The Subrecipient reserves the right to provide sensitive cost, financial, or trade secret information directly to the DOE. However, the Subrecipient may not provide any Confidential Information to the Sponsoring Agency without providing written notification to the Prime Awardee. All disclosures covered by this Subsection shall proceed in accordance with the requirements of PIA-SG001.

- C. Stakeholder Committee. Subrecipient agrees to participate in a Program stakeholder committee (the "Program Stakeholder Committee") to best effectuate the purposes of this Subaward and the Teaming Agreement. The Subrecipient may appoint one representative to the Program Stakeholder Committee.
1. The Prime Awardee's representative shall serve as the Program Stakeholder Committee Chairperson.
 2. The Program Stakeholder Committee may meet from time to time, but shall meet at least once per quarter.
 3. The Program Stakeholder Committee shall provide guidance to the Prime Awardee regarding internal dispute resolution and change management under this Agreement.
- D. Technical Cooperation. The Prime Awardee, from time to time, may create Integrated Project Teams (the "IPTs") as it deems necessary. The Subrecipient agrees to participate in IPTs to implement and coordinate Program responsibilities. Each IPT shall have a written charter approved by the Prime Awardee.
1. Each IPT shall provide weekly progress reports detailing Program progress to the other IPTs. The Prime Awardee shall provide a format for the progress reports for each IPT.
 2. Each IPT shall conduct conference calls as provided in the IPT's charter.
 3. Technical interchange meetings may be arranged pursuant to mutual agreement among the subrecipients and the Prime Awardee to facilitate formal coordination between the subrecipients and the Prime Awardee to accomplish Program goals.
- E. Audit Rights. The Prime Awardee shall have the right to audit the Subrecipient to verify the Subrecipient is in compliance with the SOW and with applicable DOE requirements. The Subrecipient shall bear all costs and expenses of any audit or site visit conducted pursuant to this Subaward. This provision in no way limits the right of the Subrecipient to restrict access to records that are exempt from disclosure under applicable laws or regulations.

6. CHANGES

The Prime Awardee may, at any time, by a written order make changes within the general scope of this Subaward. Nothing in this clause excuses the Subrecipient from proceeding with this Subaward as changed. Further, at any time the Prime Awardee may, in writing, order the Subrecipient to stop all Work (the “Stop Work Order”). Upon receipt of the Stop Work Order, the Subrecipient shall immediately stop all Work. The Prime Awardee shall not be liable to the Subrecipient for any Work performed, or any other costs or expenses incurred, by the Subrecipient after its receipt of the Stop Work Order.

7. DISCLOSURE OF CONFIDENTIAL OR PROPRIETARY INFORMATION

A. Disclosure of all Proprietary Information (as defined in the Teaming Agreement) shall be governed by the terms of the PIA-SG001.

B. This Article shall survive the expiration or termination of this Subaward.

8. PROPRIETARY MARKINGS

Neither Party shall remove or destroy any proprietary markings nor proprietary legends placed upon or made part of hardware, software, or documents received by a Party to this Subaward without that Party's written permission. This Article shall survive the expiration or termination of this Subaward.

9. ASSIGNMENT

The Subrecipient shall not assign to any third party this Subaward without the written permission of the Prime Awardee and, if applicable, the DOE.

10. COMPLIANCE WITH LAWS

The Subrecipient agrees to comply with the terms of the SGD Grant and all laws, including but not limited to federal, state, and local laws, and statutes, regulations, ordinances, and license requirements.

11. INDEMNIFICATION

A. In the event any act or omission of the Subrecipient or its officers, employees, servants, agents, representatives, or affiliates (other than the Prime Awardee) arising from the performance of this Subaward causes or results in (1) any injury, damage, exposure, claims against, or potential liability of the Prime Awardee or others; or (2) loss, damage to, or destruction of, real or tangible property, or death or injury to persons; or (3) in the event there is an allegation, claim, liability, or damage based on the alleged or actual infringement of any intellectual property rights from intellectual property provided by the Subrecipient under this Subaward, then the Subrecipient shall indemnify, defend, and hold the Prime Awardee harmless from and against any and all claims, demands, actions, suits, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and

expenses, resulting therefrom. The Subrecipient shall pay or reimburse the Prime Awardee for all such costs, expenses, losses, damages, destruction, death, or injury.

- B. This Article shall survive the expiration or termination of this Subaward.

12. INDEPENDENT CONTRACTOR

- A. For purposes of this Subaward and the Work performed hereunder, the Subrecipient shall be deemed to be an independent contractor and the employees, agents, representatives, or affiliates (other than the Prime Awardee) of the Subrecipient shall be deemed not to be employees, agents, representatives, or affiliates of the Prime Awardee for any purpose, including, but not limited to federal, state, and local tax obligations, unemployment and workers' compensation obligations, social security, or any and all other benefits.
- B. The Subrecipient will not represent itself as an agent of the Prime Awardee and will not take any action that implies, suggests, or otherwise appears to commit or obligate the Prime Awardee in any way to third parties. The Subrecipient also agrees not to act in any manner that implies the Prime Awardee's endorsement of any service.

13. NEWS RELEASES

Except for any announcement intended solely for internal distribution or to the extent that any disclosure is required by legal, accounting, or regulatory requirements beyond the reasonable control of the Subrecipient (in which case the Subrecipient shall advise the Prime Awardee prior to making such disclosure and shall provide the Prime Awardee with a reasonable period to review and comment on the content of the disclosure), neither the Subrecipient nor its employees, agents, representatives, contractors, subcontractors or affiliates (other than the Prime Awardee), shall issue any media releases, public announcements, or public disclosures of any kind (including, but not limited to, promotional or marketing material) relating to this Subaward or its subject matter, including the name of the Prime Awardee without the prior written consent of the Prime Awardee. This Article shall survive the expiration or termination of this Subaward.

14. CONFLICTS OF INTEREST

A. GENERAL

During the term of this Subaward the Subrecipient shall not enter into other contracts or arrangements or otherwise engage in work that will conflict with the relationship of trust and cooperation created hereby or that may otherwise conflict with the Subrecipient's obligations under this Subaward. The Subrecipient will promptly notify the Prime Awardee in writing of and at such time(s) as any such conflict arises, is discovered or reasonably should have been discovered.

B. ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

The Subrecipient, to include any lower tier Subrecipients or consultants, must certify that they are in compliance with FAR Part 9.5, "Organization and Consultant Conflicts of Interest" by having a duly authorized official of the Subrecipient sign this Subaward such required certification is provided.

15. NOTICES

All notices under this Subaward shall be in writing and shall be sent by United States Postal Service, Certified Mail, Return Receipt Requested or any overnight delivery service such as FEDEX or UPS, postage prepaid and addressed as follows:

A. Contractual and legal notices should be sent to:

Consolidated Edison Company of New York, Inc.

General Counsel
4 Irving Place
New York, NY

Orange and Rockland Utilities, Inc.

General Counsel
390 W. Route 59
Spring Valley, NY 10977

B. Technical notices should be sent to:

Consolidated Edison Company of New York, Inc.

Troy De Vries
4 Irving Place
New York, NY

Orange and Rockland Utilities, Inc.

Charles Scirbona
390 W. Route 59
Spring Valley, NY 10977

16. TERMINATION FOR CONVENIENCE

A. The Prime Awardee may terminate this Subaward, in whole or in part at any time for its convenience.

B. In the event of a termination for convenience of this Subaward or portion thereof, the Prime Awardee shall be liable to the Subrecipient only for such sums as are

due and unpaid to the Subrecipient for Work performed, properly invoiced and recognized as allowable cost matching by the DOE (in each case, pursuant to Article 4 above) up to the effective date of termination. The Subrecipient shall submit its termination settlement proposal within thirty (30) days of the date of the written notice of termination.

17. TERMINATION FOR DEFAULT

- A. The Prime Awardee may terminate performance of work under this Subaward in whole or part if the Subrecipient defaults in performance of this Subaward and fails to cure such default within ten (10) calendar days after the Prime Awardee's delivery of written notice of such default, provided that if such default is not capable of being cured during such ten (10) calendar day period, or upon demand of the DOE, the Prime Awardee may terminate the Subrecipient immediately. "Default" in performance of this Subaward shall include, but is not limited to: (1) failure to fulfill any obligation of this Subaward or of the SGD Grant concerning the Subrecipient's work or responsibilities; (2) unavailability for any reason of Key Personnel listed in Article 19 herein; (3) failure to comply with the SGD Grant, applicable federal, state, and local laws and rules and regulation issued pursuant thereto; (4) unauthorized interference with the work by others for any reason; or (5) a determination by the DOE that some or all of the project costs claimed by the Subrecipient as its cost matching are not acceptable and/or allowable. The Subrecipient shall be liable for all excess procurement costs incurred by the Prime Awardee resulting from the Subrecipient's default. The Subrecipient shall not be entitled to any anticipated profits, liquidated damages, or any costs over and beyond those associated with services and invoices accepted by the Prime Awardee.
- B. If the Subrecipient defaults in performance of this Subaward, the Prime Awardee may immediately terminate the Subaward.

18. DISPUTES

- A. The Parties shall exercise reasonable efforts to settle all disputes by agreement. If the Parties are unable to reach an agreement despite their reasonable efforts to do so, then the Parties shall follow the dispute resolution provisions of subparagraph B or C below, as appropriate.
- B. With respect to any claim made by the Subrecipient for which the DOE is or may be liable, the Subrecipient agrees that it will prepare its claim and will timely present it to the Prime Awardee for Submission to the DOE in accordance with any dispute resolution provision contained in the SGD Grant. The Prime Awardee agrees that it will cooperate with the Subrecipient in presenting such claim to the DOE and will execute all documents which are necessary in order to pursue such claim on behalf of the Subrecipient and will pay to the Subrecipient any amounts recovered on the Subrecipient's claim, less any expenses incurred by the Prime Awardee in prosecuting the Subrecipient's claim. The Prime Awardee

shall not have any obligation, however, to prosecute a claim by the Subrecipient that the Prime Awardee does not in good faith believe meets all applicable requirements pertaining to the submission of claims to the DOE. The Subrecipient agrees that it will bear all the costs, including legal fees, necessary to pursue such a claim against the DOE, and that the remedy set forth in this subparagraph B shall be the Subrecipient's sole and exclusive remedy in lieu of any other claim against the Prime Awardee or any surety thereof.

C. In the event a dispute arises between the Parties relating to or arising out of this Subaward, and such dispute is not subject to the provisions of subparagraph B above, the dispute will be submitted for arbitration, and Parties will be bound by the result.

1. The Subrecipient understands and acknowledges that, by agreeing to binding arbitration, the Subrecipient waives the right to submit the dispute for determination by a court and thereby also waives the right to a jury trial. The Subrecipient acknowledges that it has been informed that the grounds for appeal of an arbitration award are very limited compared to court judgment or jury verdict.

2. It is further agreed and understood that initial resort to the courts by either Party shall not be considered a waiver of that Party's right to compel binding arbitration under this provision. Each Party will select a party arbitrator who, in turn, shall select a neutral arbitrator unless the amount in controversy is less than \$25,000, in which case the matter will be decided by a single neutral arbitrator as selected by the Prime Awardee. Parties agree that the project services primarily will be directed from, and rendered at, the office of the Prime Awardee in New York, New York, which shall be a proper venue for any legal proceedings hereunder, including arbitration.

3. No litigation or arbitration concerning a dispute arising under or relating to this Subaward may be commenced by the Subrecipient more than one (1) year after: (1) the last delivery or furnishing of services or materials by the Subrecipient that is the subject matter of the dispute, including any changes thereto; or (2) such shorter period of time as may be necessary to allow the Prime Awardee to exercise its rights against the DOE under the SGD Grant with respect to the claim of the Subrecipient.

D. The Subrecipient shall proceed diligently with performance of this Subaward pending final resolution of any dispute under this Article.

19. KEY PERSONNEL

A. The Subrecipient agrees not to withdraw the services or limit the availability of any person designated as "Key Personnel" during the performance of this Subaward, without the prior written consent of the Prime Awardee. The Key

Personnel for this Subaward are Charlie Scirbona, Keith Brideweser and David Work.

- B. In cases where a change in Key Personnel is required, the Subrecipient shall provide the Prime Awardee at least thirty (30) days advance written notice. The Subrecipient shall demonstrate to the satisfaction of the Prime Awardee that the qualifications of the proposed substitute person (the “Substitute Personnel”) are equal or better than the qualifications of the person being replaced and shall be subject to the approval of the Prime Awardee. Notification of personnel substitution shall include:

1. An explanation of the circumstances of the substitution;
2. A complete resume of the Substitute Personnel; and
3. Any other information requested by the Prime Awardee or the DOE to enable them to judge whether or not the Subrecipient is maintaining the same high quality of personnel that provided the partial basis for the Subaward and SGD Grant.

20. RIGHT TO DISAPPROVE/REMOVE STAFF

- A. The Prime Awardee reserves the sole right to disapprove the assignment or continuing assignment of any Subrecipient personnel to this Subaward if it is determined that the service of any such person would compromise the integrity of the SGD Grant or for any other reason that would be in the best interest of the Prime Awardee or the DOE.
- B. At any time and for any reason, the Prime Awardee may require the Subrecipient to withdraw the services of any person and will request that the Subrecipient promptly provide replacements for such persons satisfactory to the Prime Awardee within fifteen (15) days after the request for withdrawal. In addition to the other indemnification provisions within this Subaward, the Subrecipient specifically agrees to indemnify and hold harmless the Prime Awardee from and against any liabilities, claims, charges or suits for alleged losses, costs, damages, or expenses arising from the Prime Awardee’s exercise of its rights under this Article.

21. DOE DECISION AFFECTING SUBAWARD

Notwithstanding any other provision hereof, any decision of the DOE under the SGD Grant which binds the Prime Awardee shall, upon being communicated to the Subrecipient in writing, bind the Subrecipient to the extent that it relates to this Subaward.

22. FALSE CLAIMS

- A. The Subrecipient shall indemnify the Prime Awardee for all costs, penalties, or other monies for which the Prime Awardee may be held liable and for all costs, including legal fees and expenses, incurred by the Prime Awardee in defense of civil, administrative or criminal actions initiated by the Government as a result of the preparation and/or submission of a false claim and/or a false statement to the Government, but indemnification shall be limited by the extent that such false claim or false statement is based upon invoices and/or other data submitted to the Prime Awardee by the Subrecipient.
- B. The Subrecipient shall immediately notify the Prime Awardee, in writing, at any time that it becomes aware of any known or suspected Government investigation or allegations of a false claim, false statement, misrepresentation of fact, or fraud of any kind involving this Subaward or any subawards or subcontracts awarded by the Subrecipient.

23. ANTI-KICKBACK INDEMNITY

The Subrecipient shall indemnify the Prime Awardee for the total amount of any monies withheld by or penalty assessed by the U.S. Government and for which the Prime Awardee is held liable, or for which the Prime Awardee is assessed, and for all costs and fees incurred in defense of an allegation, or as a result of a finding by the Government that the Subrecipient and/or any Subrecipient employee or Subrecipient vendor violated the provisions of FAR 52.203-7.

24. GRATUITIES

- A. The Prime Awardee may, by written notice to the Subrecipient, terminate the right of the Subrecipient to proceed under this Subaward if, after notice and hearing, it is found that gratuities, including entertainment, gifts, or otherwise, were offered or given by the Subrecipient, or any agent or representative of the Subrecipient to any officer, official, employee, or agent of the Government or the Prime Awardee with a view toward securing this Subaward or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Subaward.
- B. In the event this Subaward is terminated as provided in subparagraph A above, the Prime Awardee shall be entitled to pursue the same remedies against the Subrecipient as it could pursue in the event of a breach of the Subaward by the Subrecipient.
- C. The Subrecipient agrees to indemnify the Prime Awardee for all costs, fees, or penalties levied by the Government or incurred by the Prime Awardee as a result of the Subrecipient's acts prohibited under this Article. This indemnification includes all reasonable legal fees and expenses in defense of any Government action originating as a result of the Subrecipient's acts.

- D. The rights and remedies of the Prime Awardee provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Subaward.

25. SITE VISITS AND ACCESS

The DOE, the New York Department of Public Service, and the Prime Awardee's authorized representatives have the right to make site visits at reasonable times to review project accomplishments, testing and management control systems and to provide technical assistance, if required. The Subrecipient must provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the Prime Awardee's 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. The Prime Awardee will be provided reasonable access to the Subrecipients' facilities to verify the installation, configuration, and operational status of the components, devices, facilities, and systems being installed under this Subaward. The Prime Awardee shall request access reasonably in advance and shall be accompanied by representative(s) of the Subrecipient. Only persons having FERC training/qualifications, as the same may be changed from time to time, and meeting any other requirements as imposed hereafter by any governmental agency with cognizance of the subject matter, will be allowed to enter Con Edison Distribution Control Centers. Only persons having both FERC and NERC training/qualifications, as the same may be changed from time to time, and meeting any other requirements as imposed hereafter by any governmental agency with cognizance of the subject matter, may enter Con Edison Transmission Control Centers.

26. APPLICABLE SGDGRANT REQUIREMENTS

Notwithstanding any other provision to the contrary in the Subrecipient's proposal or other submission heretofore provided to the Prime Awardee or any other third party by the Subrecipient, all Work shall be produced and performed strictly in accordance with the SOW and SGDGRANT. The Subrecipient shall take all reasonable and necessary steps and best efforts to enable the Prime Awardee to comply with the SGDGRANT.

27. INSURANCE

At all time during the term of this Subaward, the Subrecipient shall maintain insurance coverage rated for the following risks in at least the following minimum amounts:

Comprehensive General Liability Insurance: \$7.5 million aggregate; \$1 million per occurrence, including \$1 million personal injury; and

Workers' Compensation: as required by statute.

Upon the written request of the Prime Awardee, the Subrecipient shall provide the Prime Awardee with a certificate evidencing the above insurance coverage.

28. INTERPRETATION AND CONSTRUCTION

- A. Entire Agreement. Except to the extent that the Teaming Agreement between the Parties applies, these terms and conditions including the Attachments hereto constitute the entire agreement between the Parties relating to the Subrecipient's role in supporting the DOE under the SGD Grant and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof. No representations or statements of any kind made by any representative of the Prime Awardee which are not stated herein shall be binding on the Prime Awardee.
- B. Order of Precedence. This Subaward shall be interpreted as a unified contractual document with the Sections and the Attachments having equal effect, except that in the event of any inconsistency between them, first the Articles in Section I will apply, then the SOW, then the provisions incorporated by reference in Section II, and then the remainder of the Attachments in Section III.
- C. Headings. The title designations of the numbered Articles or clauses to this Subaward are for convenience only and shall not affect the interpretation or construction of this Subaward.
- D. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of New York, without regard to rules on conflicts of laws. The Parties agree to submit to the exclusive jurisdiction of the State and Federal Courts located in the Southern District of New York.
- E. Cumulative Rights. Every right or remedy conferred by this Subaward upon or reserved to the Parties shall be cumulative and shall be in addition to every right or remedy now or hereafter existing at law or in equity, and the pursuit of any right or remedy shall not be construed as an election.
- F. No Waiver. The failure of a Party to insist upon the performance of any provision of this Subaward or to exercise any right granted hereunder shall not be construed as waiving any such provision, and the same shall continue in force.
- G. Survival. The rights and obligations of this Subaward which by their terms or nature extend beyond its expiration or termination shall remain in full force and effect and shall bind the Parties and their legal representatives, successors, heirs, and assigns.
- H. Severability. The invalidity of any part of this Subaward shall not render invalid the remainder of this Subaward. If any provision of this Subaward or the Teaming Agreement incorporated herein by reference between the Parties is determined to be unenforceable, this Subaward shall be reformed and construed so as to be valid, operative, and enforceable to the maximum extent permitted by law or equity while preserving its original intent.

- I. Definitions. As used in this Subaward, the word “including” means “including but not limited to.”
- J. This Article shall survive the expiration or termination of this Subaward.

SECTION II – SGD G GRANT FLOWDOWNS

1. FLOWDOWN CLAUSES

A. Those SGD G Grant clauses identified in Section III, Attachment 3, “Flowdown Clauses,” are hereby incorporated by reference. Furthermore, at a minimum, this Subaward hereby incorporates by reference any clauses that are required to be included in any subaward by the SGD G Grant even if not identified in Section III, Attachment 3, “Flowdown Clauses.”

B. The “Flowdown Clauses” shall apply whenever this form is incorporated by reference into any subaward, order, subcontract, Purchase Order (“PO”), agreement, other contractual document, or any quotation or solicitation (hereinafter referred to as “RFQ/RFP”) entered into or issued by the Prime Awardee.

C. As used in the SGD G Grant clauses that are incorporated herein by reference, the term “contract” or “award” shall mean this Subaward, the terms “Government,” “Contracting Officer,” and the like shall mean the Prime Awardee, the term “Contractor” shall mean the Subrecipient, and the term “COTR” or “COR” shall mean the Prime Awardee’s technical point of contact listed in the “Notices” Article of Section I, except that the terms “Government,” “Contracting Officer,” and the like do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government; or, (2) when access to proprietary financial information data is required.

D. When any of the clauses incorporated herein by reference include a requirement for the settlement of disputes between the Parties in accordance with the “Disputes” clause, the dispute shall be disposed of in accordance with the Disputes provision of this Subaward.

E. When any of the clauses incorporated herein by reference specify a period of time within which the Prime Awardee is to provide any notice, information, or document to the Government, the Subrecipient must provide any such notice, information, or document to the Prime Awardee within a sufficiently shorter time in order to provide the Prime Awardee a reasonable opportunity to consider the Subrecipient’s material and prepare its own submission before the SGD G Grant deadline.

F. The Subrecipient shall insert the provisions of table 3 in Attachment III in lower tier subcontracts or subawards, either verbatim or in substance, and by incorporation-by-reference or otherwise as appropriate.

G. Wherever multiple clauses cover a subject area (e.g., Changes - Cost Reimbursement, Changes - Fixed-Price), the clause which most appropriately governs the subaward, subcontract, P.O. or agreement applies.

2. FLOWDOWN CERTIFICATIONS AND REPRESENTATIONS

The Subrecipient certifies to those same Certifications and Representations as were set forth in the DOE’s solicitation and/or are included as Section III, Attachment 4,

“Flowdown Certifications and Representations” to this Subaward and are incorporated herein by reference.

SECTION III – TABLE OF ATTACHMENTS

1. **TABLE OF ATTACHMENTS**

The following attachments are appended to this Subaward:

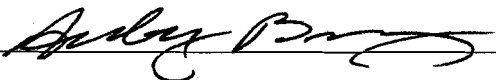
1. Statement of Work
2. Compensation Schedule – Not Required
3. Flowdown Clauses
4. Flowdown Certifications and Representations

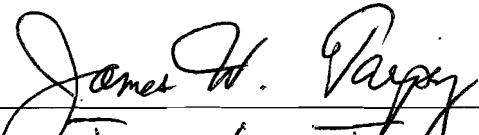
IN WITNESS WHEREOF, the persons signing below warrant that they are duly authorized to sign for and on behalf of, the respective Parties. This Subaward may be executed in duplicate originals, each of which will have the same effect as if it were the sole original.

AGREED AND ACCEPTED AS ABOVE:

Consolidated Edison of New York, Inc.

Orange and Rockland Utilities, Inc.

By: 
Name: AUBREY BRAZ
Title: VICE PRESIDENT
Date: 4/8/11

By: 
Name: JAMES W. TARPY
Title: Vice President, Operations
Date: 4/19/11

Attachment 1

Statement of Work

O&R Smart Grid Demonstration Project Objectives and Demonstration Scenarios

Table of Contents

<u>I.</u>	<u>Introduction</u>	2
<u>II.</u>	<u>Key Objectives of O&R Smart Grid Demonstration</u>	2
<u>III.</u>	<u>Alignment of O&R Smart Grid Demonstration Objectives with CECONY Grant Submission and DOE Objectives</u>	3
<u>IV.</u>	<u>Technology Implementation to support O&R Smart Grid Objectives</u>	4
<u>V.</u>	<u>Key Tasks for O&R Smart Grid Demonstration</u>	7
<u>VI.</u>	<u>Benefits that will be Measured</u>	7
<u>VII.</u>	<u>Smart Grid Demonstration Scenarios</u>	7

Attachment 1
Statement of Work

• Introduction

CECONY & O&R were awarded Smart Grid Demonstration Grant funding in response to Grant request submitted in August 2009. The *Energy Independence and Security Act of 2007* (EISA) described the “Smart Grid” as : *a modernization of the Nation’s electricity transmission and distribution system to maintain a reliable and secure electricity infrastructure that can meet future demand growth. Specifically, CECONY & O&R stated the objective of the Smart Grid Demonstration Project at CECONY & O&R is to demonstrate that the reliability of the grid can be improved through a combination of enhanced monitoring and control capabilities along with intelligent analysis tools. This approach leverages the existing field assets and associated monitoring capabilities in addition to demonstrating how renewables and storage technologies will contribute to enhancing reliability and utilizing grid capacity more efficiently. The most cost-effective way to accomplish this objective is to build upon the existing infrastructure assets via a scalable Smart Grid prototype based on open standards that integrate cyber security. This will be accomplished through a series of demonstrations across a number of Con Edison control centers in and around New York City.*

• Key Objectives of O&R Smart Grid Demonstration

O&R will utilize Smart Grid Demonstration Grant funding to show that the reliability of the grid can be improved through a combination of enhanced monitoring and control capabilities along with intelligent analysis tools in the following areas:

- Intelligent Storm Impact Analysis
- System Interoperability
- Cyber Security
- Integration of additional intelligent devices into the Distribution SCADA system

Attachment 1
Statement of Work

- Intelligent Storm Impact Analysis

Weather data and OMS incidents will be monitored and a trigger developed to alert the operators that they are in storm mode. Once in storm mode receipt of incidents in real time will be used to predict the total number of incidents that the storm will produce. This prediction will continuously be updated in real time over the duration of the storm.

- System Interoperability

NRG, DEW, OMS and the storm system application will be shown individually. The Intelligent Storm Impact Analysis demonstration will visually show how the systems interoperate and share information in a secure manner.

- Cyber Security

Cyber security will be demonstrated showing interoperability between systems on multiple levels of security, from the transmission of outage information in OMS to securitizing real time SCADA systems.

- Integration of additional intelligent devices into the Distribution SCADA system

Switches installed from the Smart Grid Investment Project will be shown on the Distribution SCADA system

- **Alignment of O&R Smart Grid Demonstration Objectives with CECONY Grant Submission and DOE Objectives**

CECONY Smart Grid Demonstration Grant Submission listed the following specific objectives:

1. Deliver intelligent, autonomous, adaptive, stochastic control capabilities for distributed operations to minimize peak load growth and drive energy efficiency savings throughout the electrical grid.
2. Provide world-class cyber security for the Smart Grid.
3. Demonstrate open standards and interoperability scalable to vendors of commercially available products in the relevant markets, and to customers and suppliers.
4. Maintain electrical system reliability while increasing the utilization of existing equipment.
5. The Team will monitor, measure, and verify actual costs versus benefits throughout the demonstration.
6. Quantify the cost to access the economic viability and business case of the Smart Grid.
7. Be the national blueprint for urban underground network Smart Grid deployment
8. Proactively gain public acceptance and educate a new generation of Smart Grid operators, engineers, and managers while executing the project on time, on budget, and with the promised results.

Attachment 1
Statement of Work

The Smart Grid Demonstration Grants are funded by the American Recovery and Reinvestment Act of 2009 which provided funds to the Department of Energy, Office of Electricity Delivery and Energy Reliability (OE) for Smart Grid Demonstrations.

The DOE directed that the Smart Grid Demonstration projects include regionally unique demonstrations to:

- verify smart grid technology viability,
 - quantify smart grid costs and benefits, and
 - validate new smart grid business models
- at a scale that can be readily adapted and replicated around the country.

In addition, the goals of the project include demonstration of technologies that will integrate information and system components to enable customers, distributors, and generators to change their behavior in a way that reduces system demands and costs, increases energy efficiency, optimally allocates and matches demand and resources to meet that demand, and increases the reliability of the grid.

O&R Smart Grid Demonstration Objectives align directly with the Grant Submission and DOE goals

- Intelligent Storm Impact Analysis – establishing smart grid analysis tools to operate more efficiently and increase reliability
- System Interoperability – integrate information and systems to provide optimal operations
- Cyber Security – address cyber risks through infrastructure enhancements and enable secure communications between operational and corporate systems

- **Technology Implementation to support O&R Smart Grid Objectives**

Smart grid goals include the use of advanced, information-based technologies to increase power grid efficiency, reliability, and flexibility, and to reduce the rate at which additional electric utility infrastructure needs to be built.

The DOE identified five fundamental technologies that will drive the Smart Grid:

- ***Integrated communications***, connecting components to open architecture for real-time information and control, allowing every part of the grid to both ‘talk’ and ‘listen’
- ***Sensing and measurement technologies***, to support faster and more accurate response such as remote monitoring, time-of-use pricing and demand-side management
- ***Advanced components***, to apply the latest research in superconductivity, storage, power electronics and diagnostics
- ***Advanced control methods***, to monitor essential components, enabling rapid diagnosis and precise solutions appropriate to any event

Attachment 1
Statement of Work

- **Improved interfaces and decision support**, to amplify human decision-making, transforming grid operators and managers quite literally into visionaries when it come to seeing into their systems

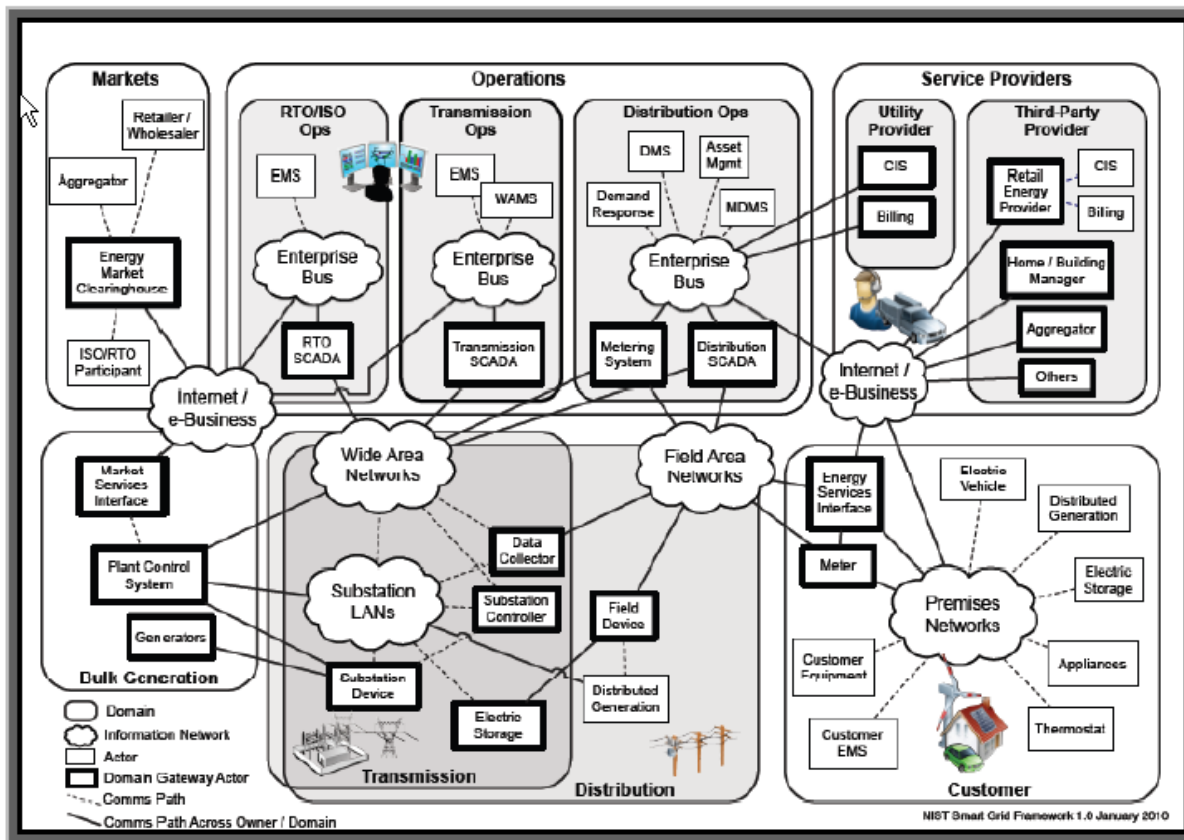
These five fundamental technologies are key drivers of the O&R Smart Grid Demonstration:

- **Integrated communications** – systems will be connected through an open architecture for real-time information and control
- **Sensing and measurement technologies** - additional remote monitoring will be integrated into the distribution management system at O&R
- **Advanced components**, - O&R will apply the latest research in weather to system analysis
- **Advanced control methods** - the integration will rapidly diagnose storm events
- **Improved interfaces and decision support** - additional interfaces will be implemented for decision support

Furthermore, in January 2010, NIST published the *NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 1.0* to support interoperability of Smart Grid devices and systems in January 2010. The Smart Grid implementation at O&R aligns itself with implementing a Framework to support Smart Grid System connectivity and operations.

Attachment 1
Statement of Work

Figure 3-2. Generic Conceptual Reference Diagram for Smart Grid Information



“The Smart Grid consists of many different types of networks, not all of which are shown in the diagram. The networks include: the Enterprise Bus that connects control center applications to markets, generators, and with each other; Wide Area Networks that connect geographically distant sites; Field Area Networks that connect devices, such as Intelligent Electronic Devices (IEDs) that control circuit breakers and transformers; and Premises Networks that include customer networks as well as utility networks within the customer domain.”

The Enterprise Bus Service will be enabled through Middleware Solutions. Middleware solutions support data or process sharing between systems have been an integral component within Enterprise infrastructures since the 1980s). Middleware services were developed to support inter system data sharing and transaction processing using remote procedure calls (RPC), Object Request Brokers (ORB), Message Oriented Middleware (MOM) and Transaction Processing Monitors (TPM). In some cases, companies integrated common middleware services (e.g MQ, CORBA) as an extension to their applications, and in many cases enterprises deploy a Commercial Off The Shelf (COTS) middleware solution to support standard middleware service capability. Middleware services have been implemented as an integral component of the enterprise architectures for many industries (e.g. the financial services with financial system and standard middleware service bus; manufacturing industries, etc

Attachment 1
Statement of Work

- **Key Tasks for O&R Smart Grid Demonstration**

NRG enhancements

DEW enhancements

Distribution Operations Data Bus Service for open interfacing (middleware)

Weather

Storm Prediction System Development

Securing communications between NRG and DEW

- **Benefits**

Greater efficiencies from storm management

Reduction in restoration time of customers affected byStorm events

Integration of Distribution Management System with Outage Management System

Reliability

- **Smart Grid Demonstration Scenarios**

Simulate prediction of total number of trouble incidents for a storm based on rate of receipt of trouble incidents compared to empirical storm data to be shown in a visualization in NRG/OMS

Simulate interruption prediction updates in real time

Attachment 2
Compensation Schedule

Not Required

Attachment 3

Flowdown Clauses

NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (August 2008)

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting. The applicable terms are those found here on the date of award:
http://management.energy.gov/business_doe/1374.htm.

I. Nondiscrimination Policies

You must comply with applicable provisions of the following national policies prohibiting discrimination:

- 1 On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by DOE regulations at 10 CFR part 1040;
- 2 On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042;
- 3 On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE regulations at 10 CFR part 1040;
- 4 On the basis of disability, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041;
- 5 On the basis of race, color, national origin, religion, disability, familial status, and sex under Title VIII of the Civil Rights Act (42 U.S.C. 3601 et seq.) as implemented by the Department of Housing and Urban Development at 24 CFR part 100; and
- 6 On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) for the design, construction, and alteration of buildings and facilities financed with Federal funds.

II. Environmental Policies

You must:

- 1 Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency rules at 40 CFR part 32, Subpart J.
- 2 Immediately identify to us, as the awarding agency, any potential impact that you find this award may have on:
 - a. The quality of the human environment, including wetlands, and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et. seq.) and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until we provide written notification of Federal compliance with NEPA, as implemented by DOE at 10 CFR part 1021.

Attachment 3
Flowdown Clauses

b. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), which require flood insurance, when available, for Federally assisted

construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.

c. Use of land and water resources of coastal zones, and provide any help we may need to comply with the Coastal Zone Management Act of 1972(16 U.S.C. 1451, et. seq.).

d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide help we may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et. seq.), concerning preservation of barrier resources.

e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act(42 U.S.C. 300h-3).

3 Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance.

4 Comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962), and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which require the purchase of recycled products by States or political subdivision of States.

III. Live Organisms

1 Human research subjects. You must protect the rights and welfare of individuals that participate as human subjects in research under this award in accordance with the Common Federal Policy for the Protection of Human Subjects (45 CFR part 46), as implemented by DOE at 10 CFR part 745.

2 Animals and plants.

a. You must comply with applicable provisions of Department of Agriculture rules at 9 CFR parts 1-4 that implement the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156) and provide for humane transportation, handling, care, and treatment of animals used in research, experimentation, or testing under this award.

b. You must follow the guidelines in the National Academy of Sciences(NAS) Publication "Guide for the Care and Use of Laboratory Animals"(1996, which may be found currently at <http://www.nap.edu/readingroom/books/labrats/>) and comply with the Public Health Service Policy and Government principles Regarding the Care and use of animals (included as Appendix D to the NAS Guide).

c. You must immediately identify to us, as the awarding agency, any potential impact that you find this award may have on endangered species, as defined by the Endangered Species Act of 1973, as amended ("the Act," 16 U.S.C. 1531-1543), and implementing regulations of the

Attachment 3
Flowdown Clauses

Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). You also must provide any help we may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities you have to comply with

provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

IV. Other National Policies

1 Debarment and suspension. You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.

2 Drug-free workplace. You must comply with drug-free workplace requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

3 Lobbying.

a. You must comply with the restrictions on lobbying in 31 U.S.C.1352, as implemented by DOE at 10 CFR part 601, and submit all disclosures required by that statute and regulation.

b. If you are a nonprofit organization described in section 501(c)(4) of title 26, United States Code (the Internal Revenue Code of 1968), you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions. By submitting an application and accepting funds under this agreement, you assure that you are not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of 1995 (2 U.S.C. 1611).

c. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

4. Officials not to benefit. You must comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.

5 Hatch Act. If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7326), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

6 Native American graves protection and repatriation. If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

7 Fly America Act. You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the “Fly America

Attachment 3
Flowdown Clauses

Act,” and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or

within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.

8. Use of United States-flag vessels.

a. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 9.a of this section shall be furnished to both our award administrator (through you in the case of your contractor’s bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9 Research misconduct. You must comply with the government-wide policy on research misconduct issued by the Office of Science and Technology Policy (available in the Federal Register at 65 FR 76260, December 6,2000, or on the Internet at www.ostp.gov), as implemented by DOE at 10 CFR part 733 and 10 CFR 600.31.

10 Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC).

a. As a condition for receiving funds under an award by the National Nuclear Security Administration of the Department of Energy, you agree that you are not an institution of higher education that has a policy or practice placing any of the restrictions specified in 10 U.S.C. 983. as implemented by 32 CFR part 216, on:

i. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units; or

ii. Military recruiters’ access to campuses, students on campuses, or information about students.

b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:

i. Will cease all payments to you of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and

Attachment D

ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. Historic preservation. You must identify to us any:

a. Any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966

(16 U.S.C. 470f), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, “Identification and Protection of Historic Properties,” [3 CFR, 1971-1975 Comp., p. 559].

Attachment 3
Flowdown Clauses

b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with

respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C.469a-1, et seq.).

12 Relocation and real property acquisition. You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970(42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

13 Confidentiality of patient records. You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

14 Constitution Day. You must comply with Public Law 108-447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

15 Trafficking in Persons

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

ii. Procure a commercial sex act during the period of time that the award is in effect; or

iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –

i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 901.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

Attachment 3
Flowdown Clauses

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR part 901.
- c. Provisions applicable to any recipient.
 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 2. Our right to terminate unilaterally that is described in paragraph a.2 or b. of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- d. Definitions. For purposes of this award term:
 1. “Employee” means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 3. “Private entity”:
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
 4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

Attachment 3
Flowdown Clauses

V. National Policy Requirements for Subawards.

Recipient responsibility. You must include in any subaward you make under this award the requirements of the national policy requirements in Sections I through IV of this document that apply, based on the type of subawardee organization and situation.

(1) SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (Mar 2009)

(2)

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

Attachment 3
Flowdown Clauses

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

Attachment 3
Flowdown Clauses

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 that relate 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

Attachment 3
Flowdown Clauses

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 mismanagement 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.).

Attachment 3
Flowdown Clauses

G. 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 Support 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.

(3) REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

(4)

(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.

(5)

Attachment 3
Flowdown Clauses

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

Attachment 3
Flowdown Clauses

(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:

_____None_____

(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--

Attachment 3
Flowdown Clauses

(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.

Attachment 3
Flowdown Clauses

(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)*

Item 1:

Foreign steel, iron, or manufactured good	_____	_____	_____
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Domestic steel, iron, or manufactured good	_____	_____	_____
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Item 2:

Foreign steel, iron, or manufactured good	_____	_____	_____
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Domestic steel, iron, or manufactured good	_____	_____	_____
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[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.]

(6)

(7) WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

(8)

(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

Attachment 3
Flowdown Clauses

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.

(9) RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS

(10)

(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

Attachment 3
Flowdown Clauses

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 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

Attachment 3
Flowdown Clauses

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

Attachment 3
Flowdown Clauses

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.

Attachment 3
Flowdown Clauses

(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

Attachment 3
Flowdown Clauses

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

Attachment 3
Flowdown Clauses

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

Attachment 3
Flowdown Clauses

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.

Attachment 3
Flowdown Clauses

(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.

Attachment 3
Flowdown Clauses

(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 therefore 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

Attachment 3
Flowdown Clauses

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.

SITE VISITS

The Department of Energy's (DOE) 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. Subawardees must 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. The DOE will be provided reasonable access to Subawardees' facilities to verify the installation, configuration, and operational status of the components, devices, facilities, and systems being installed under this award.

The DOE shall request access reasonably in advance and shall be accompanied by representative(s) of the Recipient.

FEDERAL ACQUISITION REGULATIONS (FAR) AND CODE OF FEDERAL REGULATIONS APPLICABLE TO SMART GRID DEMONSTRATION PROJECT DE-OE0000197

FAR or CFR Citation	Title
FAR 52.227-1	Authorization and Consent (JUL 1995) – Alternate 1 (APR 1984)
FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)
10 CFR 600.325 Appendix A	Rights in Data – Programs Covered Under Special Data Statutes (OCT 2003)
FAR 52.227-23	Rights to Proposed Data (Technical) (JUN 1987)
FAR 52.242-15	Stop-Work Order
10 CFR 600.325 Appendix A	Patent Rights – (Large Business Firms – No Waiver) (OCT 2003)*
10 CFR 600.325 Appendix A	Protected Data

Note: In all clauses listed herein, the terms “government,” “contracting officer,” “contractor” and “contract” shall be revised to suitably identify this document and the contracting parties herein and effect the proper intent of the provision.

Attachment 3
Flowdown Clauses

* If a waiver of patent rights is granted, then provisions approved by the DOE patent counsel, in accordance with 10 CFR 784, will be substituted for this Patent Rights provision.

[WAGE DETERMINATION TO BE INCLUDED]

Attachment 4

Flowdown Certifications and Representations

CERTIFICATIONS:

The Offeror, by signing its Subaward, hereby certifies compliance with the following clauses and is, therefore, eligible for award.

A. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions 52.203-11

B. Certification Regarding Responsibility Matters 52.209-5

C. Previous Contracts and Compliance Reports 52.222-22

D. Certification of Toxic Chemical Release Reporting (over \$100,000) 52.223-1