

## PENALTY FOR FAILURE TO MEET EMPLOYMENT LEVELS

### DEFINITIONS:

“Company”	is the entity that applied for and received a benefit from the Agency.
“Agency”	is the Oneida County Industrial Development Agency.
“AER”	is the Company’s annual report of employment required to be provided to the Agency.
“Employment Obligation Term”	shall mean the longer of 1) the period during which the Company is receiving a benefit in the form of lower payment in lieu of taxes than their real estate taxes would be; or, 2) ten (10) years for Industrial and Manufacturing Projects; or, 3) five (5) years for Retail Projects, Commercial Projects, and other Non-Industrial Projects.
“Employment Obligation”	shall mean the number of FTEs selected by the Agency based on what the Company represents is the FTEs it will hire, or the number of FTEs retained, as set forth in its application for financial assistance.
“FTE”	shall mean a full time employee that has a minimum of thirty-five (35) scheduled hours per week, or such other number of hours per week (but not less than twenty-five (25) hours) as established by existing written policies of the Company, and whose workplace location is the project facility.
“Benefit”	shall mean the amount the Company saved by making payments in lieu of real property taxes in a particular year. For example, if a Company’s PILOT payment is equal to 75% of normal real property taxes, then the Company’s Benefit for that year would be an amount equal to 25% of normal real property taxes.
“Per Employee Amount”	shall mean an amount equal to the Benefit for the year after the year of the Shortfall divided by the “Employment Obligation”.
“Shortfall”	shall mean the difference between the Employment Obligation and the actual number of FTEs per the AER for the applicable year.
“Major Shortfall”	shall mean any number of FTEs that is less than 50% of the Employment Obligation.
“Initial Benefit”	shall be the amount of savings the Company received through the Agency, in the form of Mortgage Recording Tax and New York State Sales Tax.
“Cure Period”	shall mean the period ending June 30 <sup>th</sup> of the year following the Major Shortfall.

1. **Job Creation and Retention Obligations.**

After the expiration of the Employment Obligation Term, the Company shall have no further obligation with respect to the Employment Obligation and shall not be liable for any of the payments described below.

The failure of the Company to satisfy the Employment Obligation shall subject the Company to payments to the Agency. The Company shall be deemed to have failed to satisfy its Employment Obligation as of the beginning of the year subsequent to the year for which the Company files an AER; if the total number of FTEs shown on such report for the applicable year is less than 80% of the applicable Employment Obligation (payments are only required if the Shortfall is more than 20% of the Employment Obligation).

2. **Projects with less than Ten Years Employment Obligation Term.**

(a) **Initial Shortfall and Shortfall Payments.**

- (1) If, during the first three (3) years of the Employment Obligation Term, the number of actual FTEs for any calendar year shall be a Shortfall then the Company shall pay to the Agency an amount equal to (a) the Per Employee Amount multiplied by (b) the Shortfall and then multiplied by (c) 1.5 (such payment shall be referred to as the "Initial Shortfall Payment").
- (2) If, after the first (3) years, of the Employment Obligation Term, the number of actual FTEs for any calendar year shall be a Shortfall, then the Company shall pay to the Agency an amount equal to (a) the Per Employee Amount multiplied by (b) the Shortfall.

(b) **Major Shortfall Payment.**

- (1) If, during the Employment Obligation Term, the number of actual FTEs for any year shall be a Major Shortfall; then, the Company shall pay to the Agency, in addition to the payment referred to above, an amount equal to a percentage (as set forth in the schedule below) of the "Initial Benefit" (such payment shall be referred to as the "Major Shortfall Payment").

<b><u>Major Shortfall Occurs:</u></b>	<b><u>Percentage of Initial Benefit</u></b>
Year 1	100%
Year 2	80%
Year 3	60%
Year 4	40%
Any Subsequent Year	20%

- (2) Notwithstanding any of the foregoing, the Company shall not be liable for paying a Major Shortfall Payment unless the number of FTEs remains at less than 80% of the Employment Obligation after the expiration of a Cure Period.
- (3) Notwithstanding any of the foregoing, a Major Shortfall shall not apply where the Shortfall is a result of a major casualty to or condemnation of the facility. In the event of such major casualty or condemnation, the Company shall have no obligation to pay the Major Shortfall Payment.

3. **Projects with Ten Years or Longer Employment Obligation Term.**

(a) **Initial Shortfall and Shortfall Payments.**

- (1) If, during the first five (5) years of the Employment Obligation Term, the number of actual FTEs for any calendar year shall be a Shortfall, then the company shall pay to the Agency an amount equal to (a) the Per Employee Amount multiplied by (b) the Shortfall and then multiplied by (c) 1.5.
- (2) If, after the first five (5) years of the Employment Obligation Term, the number of actual FTEs for any calendar year shall be a Shortfall, then the Company shall pay to the Agency an amount equal to (a) the Per Employee Amount multiplied by (b) the Shortfall.

(b) **Major Shortfall Payment.**

- (1) If, during the Employment Obligation Term, the number of actual FTEs for any year shall be a Major Shortfall, then the Company shall pay to the Agency, in addition to the payment referred to above, an amount equal to a percentage (as set forth in the schedule below) of the "Initial Benefit".

<b><u>Major Shortfall Occurs:</u></b>	<b><u>Percentage of Initial Benefit</u></b>
Year 1	100%
Year 2	90%
Year 3	80%
Year 4	70%
Year 5	60%
Year 6	50%
Year 7	45%
Year 8	40%
Year 9	35%
Year 10	30%

- (2) Notwithstanding any of the foregoing, the Company shall not be liable for paying a Major Shortfall Payment unless the number of FTEs remains at less than 80% of the Employment Obligation after the expiration of a Cure Period.
- (3) Notwithstanding any of the foregoing, a Major Shortfall shall not apply where the Shortfall is as a result of a major casualty to or condemnation of the facility. In the event of such major casualty or condemnation, the Company shall have no obligation to pay the Major Shortfall Payment.

**The Agency shall have the right to reduce any payments required, under this policy, in extraordinary circumstances, in its sole discretion.**