

APPENDIX A
AGREEMENT

[Insert taxpayer's name, address, and identifying number] ("Taxpayer") and the Commissioner of Internal Revenue ("Commissioner") make the following agreement:

WHEREAS:

1. On or before [insert date and year], Taxpayer submitted to the Internal Revenue Service ("IRS"), an application for certification under the § 48C Phase II program described in Notice 2013-12 ("Application for § 48C Certification");

2. Taxpayer's Application for § 48C Certification is for the qualifying advanced energy project (the "Project") described below--

(1) The name of the Project is [insert name as provided in Taxpayer's application];

(2) The Project will be located in or near [insert city and state];

(3) The Project [insert either: "re-equips"; "expands"; or "establishes"] a manufacturing facility for the production of [insert type of property as described in § 48C(c)(1)(A)(i)(I) – (VII)].

(4) On [insert date of acceptance letter issued under section 4.02(7) of Notice 2013-12], the IRS accepted Taxpayer's Application for § 48C Certification for the Project and allocated a qualifying advanced energy project credit under § 48C in the amount of \$[insert number] to the Project.

NOW IT IS HEREBY DETERMINED AND AGREED FOR FEDERAL INCOME TAX PURPOSES THAT:

1. The total amount of the § 48C Phase II credit to be claimed for the Project under § 48C(a) must not exceed the amount allocated to the Project as specified in WHEREAS clause 2(4).

2. If Taxpayer fails to satisfy the certification requirements under section 6.02 of Notice 2013-12 within the time specified in § 48C(d)(2)(B) (1 year from the date the IRS accepted the Taxpayer's Application for § 48C Certification for the Project as specified in WHEREAS clause 2(4)), or if the IRS does not issue a certification for the Project under Notice 2013-12, the § 48C Phase II credit in the amount allocated to the Project as specified in WHEREAS clause 2(4) is fully forfeited.

3. Taxpayer will notify the IRS in writing at the address listed in section 6.02 of Notice 2013-12 when the Project is placed in service. This notification must be sent within 30 days of the date the Project is placed in service.

4. If the Project is not placed in service by Taxpayer within 3 years of the date of issuance of the certification as determined under section 6.03 of Notice 2013-12, the § 48C Phase II credit in the amount allocated to the Project as specified in WHEREAS clause 2(4) is fully forfeited.

5. If the plans for the Project change in any significant respect from the plans set forth in the application for DOE recommendation (as defined in section 4.01 of Notice 2013-12) and the Application for § 48C Certification and, under section 7.03 of Notice

2013-12, the acceptance of Taxpayer's Application for § 48C Certification on the date the IRS accepted the Taxpayer's Application for § 48C Certification for the Project as specified in WHEREAS clause 2(4) is void, then the § 48C Phase II credit in the amount allocated to the Project as specified in WHEREAS clause 2(4) is fully forfeited.

6. Taxpayer will not claim the qualifying advanced energy project credit under § 48C for any qualified investment for which a credit is allowed under §§ 48, 48A, or 48B or for which a payment is received under § 1603 of the American Recovery and Reinvestment Act of 2009, Division B of Pub. L. 111-5, 123 Stat 115.

7. If Taxpayer elects to claim the qualifying advanced energy project credit for the qualified progress expenditures paid or incurred by Taxpayer during the taxable year(s) during which the Project is under construction and the Project ceases to be a qualifying advanced energy project (whether before, at the time, or after the Project is placed in service), rules similar to the recapture rules in § 50(a)(2)(A) through (D) apply.

8. Taxpayer reasserts that the following information is trade secret or proprietary information: [Insert "All information identified as trade secret or proprietary in Taxpayer's application for DOE recommendation" or list the specific information in Taxpayer's application for DOE recommendation to which the reassertion applies.]

9. This agreement applies only to Taxpayer. Taxpayer must notify the IRS within 90 days of the acquisition of the Project by any other person (a successor in interest). A successor in interest that plans to claim the § 48C credit allocated to the Project must request permission to execute a new agreement with the IRS. If the request is granted, the new agreement must be executed no later than the due date (including extensions)

of the successor in interest's Federal income tax return for the taxable year in which the transfer occurs. If the interest is acquired at or before the time the Project is placed in service and the successor in interest fails to execute a new agreement, the qualifying advanced energy project credit in the amount allocated to the Project, as specified in the WHEREAS clause 2(4), is fully forfeited. If the interest is acquired after the time the Project is placed in service and the successor in interest fails to execute a new agreement, the Project ceases to be investment credit property, and the recapture rules of § 50(a) apply.

THIS AGREEMENT IS FINAL AND CONCLUSIVE EXCEPT:

1. The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;
2. It is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions notwithstanding any law or rule of law; and
3. If it relates to a tax period ending after the date of this Agreement, it is subject to any law enacted after such date, which applies to the tax period.

By signing, the parties certify that they have read and agreed to the terms of this Agreement.

Taxpayer: [insert name and identifying number]

By: _____ **Date Signed:** _____
[insert name]

Title: [insert title]
[insert taxpayer's name]

Commissioner of Internal Revenue

By: _____ **Date Signed:** _____
[insert name]

Title: Industry Director, Natural Resources & Construction