

**Payments for Specified Energy Property In Lieu of Tax Credits  
under the  
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

**TERMS AND CONDITIONS**

**1. Authority**

Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 (Section 1603) authorizes the United States Department of the Treasury (Treasury) to make payments to persons who place in service specified energy property provided certain conditions are met.

**2. Eligibility**

a. The applicant is the owner or lessee of specified energy property that qualifies for funds under Section 1603 and is the original user of the property.

b. Where the applicant is the lessee of the specified energy property, the owner of the specified energy property has agreed, in writing, to the lessee being the recipient of the Section 1603 payment and has waived, in writing, its right to receive any payment under Section 1603 as well as its right to claim a tax credit under section 45 and 48 of the Internal Revenue Code (IRC) with respect to the property.

c. The applicant is not a federal, state or local government, or any political subdivision, agency or instrumentality thereof; an organization that is described in section 501(c) of the IRC and is exempt from tax under section 501(a) of the IRC; or an entity referred to in section 54(j)(4) of the IRC.

d. The applicant is not a partnership or pass-thru entity that has a person described in section 2.c above as a direct or indirect partner (or other holder of an equity or profits interest) unless this person only owns an indirect interest in the applicant through a taxable C corporation.

e. The applicant is not a foreign person or entity unless it is a foreign person or entity that qualifies for the exception in section 168(h)(2)(B) of the IRC.

**3. Ongoing Representations and Obligations**

a. The applicant understands that Treasury is relying on the accuracy of the information contained in the application in making determinations with respect to the applicant's eligibility for a Section 1603 payment. If the applicant determines that any information included on or with the application was materially inaccurate or incorrect, the applicant must immediately inform Treasury. If Treasury determines, as a result of this information, that the applicant does not qualify for funds or that the applicant received funds in excess of the amount to which the applicant was entitled, the applicant must immediately return the funds to Treasury.

b. The applicant understands that none of the applicant's obligations herein terminate upon the sale or other disposition of the property to an eligible entity.

**4. Production and Investment Tax Credit**

a. The applicant will not claim a tax credit under section 45 or section 48 of the IRC with respect to the property described in the application.

## **5. Reporting**

a. The applicant shall provide periodic reports as required by Treasury. A project performance report is required on an annual basis for a period of five years after the property was placed in service. Annual performance reports are due no later than 21 days following the end of the reporting period. The first reporting period begins on the date the property is placed in service.

b. On an annual basis, the applicant must provide a project performance report including the following elements:

- Name of applicant
- Current owner of property
- Treasury application number
- Name of project
- Location of project: city/county, State, zip code
- Number of jobs retained
- Annual production (in kilowatt hours, MMBTUs, or horsepower as applicable)
- Installed nameplate capacity (in kilowatts, MMBTUs, or horsepower as applicable)

c. The applicant shall submit any other reports that Treasury deems necessary to comply with American Recovery and Reinvestment Act guidance.

## **6. Recapture**

a. The applicant shall certify to Treasury on an annual basis for a period of five years from the date the property was placed in service that the property has not been disposed of to a disqualified person and that the property continues to qualify as specified energy property (as that term is used in Section 1603). Annual certifications shall be submitted at the same time as the performance report described in Section 5 above.

b. If the property is disposed of to a disqualified person and/or ceases to qualify as a specified energy property (hereinafter “disqualifying event”) within five years from the date the property is placed in service the applicant must repay funds to the Treasury as follows: 100% of the funds must be repaid if the disqualifying event takes place within one year from the date the property is placed in service; 80% of the funds must be repaid if the disqualifying event takes place after one year but before two years from the date the property is placed in service; 60% of the funds must be repaid if the disqualifying event takes place after two years but before three years from the date the property is placed in service; 40% of the funds must be repaid if the disqualifying event takes place after three years but before four years from the date the property is placed in service; and 20% of the funds must be repaid if the disqualifying event takes place after four years but before five years from the date the property is placed in service.

c. Any amount subject to recapture becomes a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means including enforcement by the United States Department of Justice against any assets of the applicant entity. Debts arising under these rules are not considered tax liabilities.

## **7. Maintenance of and Access to Records**

a. The applicant must maintain project, financial, and accounting records sufficient to demonstrate that Section 1603 funds were properly obtained in accordance with the Section 1603 program and these Terms and Conditions. The Treasury, as the awarding office, the cognizant Treasury inspector general, and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of physical access to the applicant’s facilities and

to any pertinent books, documents, papers, or other records (electronic and otherwise) of the applicant and each partnership and pass-thru entity that directly or indirectly owns an interest in the applicant which are pertinent to the Section 1603 payment, in order to conduct audits, examinations, and evaluations.

**8. Disallowance**

a. If the applicant materially fails to comply with any term of the award, whether stated in a Federal statute or regulation, program guidance, these Terms and Conditions, or a notice of award, Treasury may take any remedial action that is legally available including disallowing all or a part of the Section 1603 payment. Any payment that is disallowed must be returned to the Treasury.

b. In taking an enforcement action, Treasury will provide the applicant with the opportunity for a hearing, appeal, or other administrative proceeding to which the applicant is entitled under any statute or regulation applicable to the action involved.

c. The applicant must immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to Section 1603 funds to Treasury and the cognizant Treasury inspector general.

**9. Information Sharing**

a. The applicant agrees that any information provided to the Treasury in the application, attachments, supporting documents, reports or otherwise in connection with its application under Section 1603 may be shared with other federal agencies, including the Internal Revenue Service, as needed by those agencies to conduct official agency business. Notwithstanding the foregoing, bank account information and proprietary information will not be shared unless required by law.

b. The applicant acknowledges that Treasury may publicly release the name of the applicant; the type, location, and description of the property that is the subject of the application; and the amount of funding provided.

**Signature**

Under penalties of perjury, I declare that I have examined these Terms and Conditions, agree to them, and will ensure that they will be followed. I declare that I am an authorized official of the applicant entity and am authorized to bind the applicant to these Terms and Conditions.

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|-----------|--|-------------|--|
| Name      |  | Title       |  |
| Phone     |  | Email       |  |
| Signature |  | Date signed |  |