

DATED AS OF [____], 20[__]

AMONG

THE HOLDERS

IDENTIFIED HEREIN, THEIR SUCCESSORS AND PERMITTED ASSIGNS,

AND

THE UNITED STATES DEPARTMENT OF ENERGY,

AS GUARANTOR,

AND

[_____]

AS ADMINISTRATIVE AGENT

LOAN GUARANTEE AGREEMENT

DOE FIPP Guarantee No. [____]

CONTENTS

Clause	Page
Section 1. DEFINITIONS AND PRINCIPLES OF CONSTRUCTION.....	2
1.01 Defined Terms	2
1.02 Principles of Construction.....	3
Section 2. THE GUARANTEE	4
2.01 The Guarantee	4
2.02 Scope of the Guarantee	4
2.03 Revocation of Borrower's Payment	4
Section 3. CERTIFICATION	5
3.01 Certification	5
Section 4. GUARANTEE CLAIM PROCEDURES	5
4.01 Failure to Pay	5
4.02 Demand on DOE.....	5
4.03 Subrogation and Assignment to DOE.....	5
4.04 Conditions of Guarantee	6
4.05 Payment by DOE	6
4.06 DOE Payment Does Not Discharge Borrower.....	6
4.07 Indemnification	7
Section 5. TRANSFER OF THE LOAN AND GUARANTEE	7
5.01 Agent Transfer Restrictions	7
5.02 Holder Transfer Restrictions.....	7
5.03 Permitted Transfers.....	8
5.04 Holder Certifications.....	8
Section 6. MISCELLANEOUS	8
6.01 Governing Law	8
6.02 Notices	8
6.03 Benefit of Agreement.....	9
6.04 Entire Agreement	9
6.05 Amendment or Waiver.....	9
6.06 Counterparts	9
6.07 Severability	9

This **LOAN GUARANTEE AGREEMENT** dated as of [____], 20[___] (this "**Guarantee Agreement**") is made by and among each of (i) the lenders which are signatories hereto, together with their respective successors and permitted assigns ("**Holder**s"); (ii) the United States Department of Energy, acting through the Secretary of Energy (or any person to whom the Secretary shall have delegated appropriate authority) ("**DOE**"); and (iii) [____], as Administrative Agent.¹ Capitalized terms used but not otherwise defined in this paragraph or in the following recitals have the meanings given in Section 1 below.

WITNESSETH:

WHEREAS, pursuant to Section 1705 of Title XVII of the Energy Policy Act of 2005 (Pub. L. No. 109-58), as amended, including by Title IV of the American Recovery and Reinvestment Act of 2009 and the Energy and Water Development and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-85 ("**Title XVII**"), DOE is authorized to issue "guarantees" with respect to "obligations" financing "eligible projects," in each case as defined in Title XVII;

WHEREAS, pursuant to Section 1705 of Title XVII, a complete application, dated [____], 2011, was made for the issuance by DOE of a guarantee of a portion of the principal of and interest on a loan obligation of [____] (the "**Borrower**") to the Holders the proceeds of which will fund the Project;

WHEREAS, the Holders, the Borrower, DOE, the Administrative Agent and the other parties identified therein have entered into a loan agreement dated as of the date hereof (as the same may be amended, supplemented, restated or otherwise modified in accordance with its terms, the "**Loan Agreement**")² providing for the Holders to extend a loan in connection with the Project (the "**Guaranteed Obligation**") to the Borrower upon the terms and conditions specified therein in the aggregate principal amount, when fully drawn, of [____] Dollars (\$[____]);

WHEREAS, the Holders, the Borrower and the Administrative Agent have satisfied the conditions precedent to the issuance of this Guarantee Agreement by DOE set forth in the Loan Agreement;

WHEREAS, it is a condition precedent to the making of the Guaranteed Obligation that DOE execute and deliver this Guarantee Agreement to the Administrative Agent and the Holders; and

WHEREAS, subject to the terms and conditions of this Guarantee Agreement, DOE is willing to guarantee to the Administrative Agent for the benefit of the Holders, as specified herein, the payment of certain of the Borrower's obligations under the Loan Agreement.

¹ The Guarantee Agreement is to be executed by all Holders and the Administrative Agent.

² Include references to "Master Agreement", "Note Purchase Agreement", and "Intercreditor Agreement" if included in transaction, and conform references throughout as appropriate.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

Section 1. **DEFINITIONS AND PRINCIPLES OF CONSTRUCTION**

1.01 **Defined Terms.** For the purposes of this Guarantee Agreement, the following terms shall have the meanings specified below.

"**Administrative Agent**" means [_____] in its capacity as Administrative Agent under this Guarantee Agreement and under the Loan Documents, together with its successors and permitted assigns in such capacity.

"**Borrower**" has the meaning set forth in the recitals hereof.

"**Business Day**" means each day on which the Federal Reserve Bank of New York is open for business.

"**Default Interest**" means any amount of additional interest payable by Borrower under the Loan Agreement as the result and during the continuation of a Default or an Event of Default (in each case as defined in the Loan Agreement).

"**Demand**" has the meaning set forth in Section 4.01.

"**Demand Date**" has the meaning set forth in Section 4.02.

"**DOE**" has the meaning set forth in the introductory paragraph hereof.

"**Dollars**" or "\$" means the lawful currency of the United States of America.

"**Eligibility Certificate**" means a certificate in the form attached hereto as Annex A duly executed by a responsible officer of a Holder and delivered to DOE in accordance with the terms of this Guarantee Agreement.

"**Excluded Amounts**" has the meaning set forth in Section 2.02.

"**Guarantee**" means the guarantee of DOE set forth in Section 2.01.

"**Guarantee Agreement**" has the meaning set forth in the introductory paragraph hereof.

"**Guaranteed Amount**" has the meaning set forth in Section 2.01.

"**Guaranteed Interest Rate**" means the rate at which interest is payable by the Borrower on the Guaranteed Obligation under the terms of the Loan Agreement; provided, however, that the Guaranteed Interest Rate shall not include any amount of Default Interest.

"**Guaranteed Obligation**" has the meaning set forth in the recitals hereof. Each reference herein to the Guaranteed Obligation shall include reference to the rights associated with the Guaranteed Obligation under the Loan Documents.

"Guaranteed Percentage" means the percentage set out in Section 2.01(a).

"Holders" has the meaning set forth in the introductory paragraph hereof.

"Loan Agreement" has the meaning set forth in the recitals hereof.

"Loan Documents" means the Loan Agreement, the Notes, and all security agreements and other collateral documents, intercreditor agreements, other [Financing] Documents (as defined in the Loan Agreement), opinions, filings and certificates relating to the Guaranteed Obligation.

"Loan Payment Date" has the meaning set forth in Section 2.01(b).

"Note" means any promissory note of the Borrower evidencing the Guaranteed Obligation and issued to a Holder in accordance with the provisions of the Loan Agreement.

"Project" has the meaning set forth in the Loan Agreement.

"Title XVII" has the meaning set forth in the recitals hereof.

1.02 **Principles of Construction.**

(a) The meanings set forth for defined terms in Section 1.01 or elsewhere in this Guarantee Agreement shall be equally applicable to both the singular and plural forms of the terms defined.

(b) All references to "this Guarantee Agreement" or "hereof" and other like terms mean, unless the context requires otherwise, this Guarantee Agreement, including the Annexes hereto, as the same may be amended, modified or supplemented from time to time in accordance with the terms of this Guarantee Agreement.

(c) The headings of the Sections in this Guarantee Agreement are included for convenience only and shall not in any way affect the meaning or construction of any provision of this Guarantee Agreement.

(d) References in this Guarantee Agreement to Sections and Annexes, unless otherwise specified, are to Sections of and Annexes to this Guarantee Agreement.

(e) In the event of any inconsistency between the terms of this Guarantee Agreement and the other Loan Documents, the terms of this Guarantee Agreement shall govern.

(f) Any reference in this Guarantee Agreement to any Loan Document is a reference to that Loan Document as the same may be amended, modified or supplemented from time to time in accordance with the terms of the Loan Agreement and such Loan Document including, without limitation, any requirement that DOE's consent be obtained in connection therewith.

Section 2. **THE GUARANTEE**

2.01 **The Guarantee.** Subject to the terms and conditions set forth in this Section 2 and in Section 4, DOE hereby irrevocably and unconditionally guarantees to the Administrative Agent, as Administrative Agent on behalf of the Holders (the "**Guarantee**") payment of the following (each amount under (a), (b), (c) and (d) below, a "**Guaranteed Amount**"):

(a) [_____] percent ([_]%) (the "**Guaranteed Percentage**")³ of the outstanding and unpaid principal amount of the Guaranteed Obligation, the maximum aggregate outstanding principal amount of which Guaranteed Obligation shall not exceed [_____] Dollars (\$[_____]);

(b) outstanding and unpaid interest on the Guaranteed Amount specified in Section 2.01(a) accrued at the Guaranteed Interest Rate to but excluding the due date thereof specified under the terms of the Loan Agreement (the "**Loan Payment Date**");

(c) interest on the Guaranteed Amounts specified in Sections 2.01(a) and 2.01(b) accrued at the Guaranteed Interest Rate from and including the Loan Payment Date to but excluding the date of actual payment thereof by DOE to the Administrative Agent for the benefit of the Holders; and

(d) the amounts, if any, payable by DOE under Section 2.03.

2.02 **Scope of the Guarantee.** Pursuant to Section 1702(j) of Title XVII, the Guarantee is entitled to the full faith and credit of the United States of America. The Guarantee constitutes a guarantee of payment and not of collection. In no event shall the liability of DOE on the Guarantee extend to any amount which is not a Guaranteed Amount. For the avoidance of doubt, the Guarantee shall not extend to the repayment, in whole or in part, of any fees, costs, expenses, make-whole amounts, liquidation costs, prepayment premiums, breakage costs, indemnified liabilities, Default Interest or any other amounts (other than the Guaranteed Amounts) payable to the Holders under the Loan Agreement, any Note or any other Loan Document (collectively, "**Excluded Amounts**").

2.03 **Revocation of Borrower's Payment.** The Guarantee shall continue to be binding on DOE, or shall otherwise be reinstated, with respect to the Guaranteed Percentage of any payment, or any part of such a payment, of principal of or interest on the Guaranteed Obligation that is rescinded or must otherwise be returned by the Holders if such rescission or return of payment has been compelled by law as the result of the bankruptcy or insolvency of the Borrower, or if such rescission or return of payment is otherwise the result of any law, regulation or decree applicable to the Borrower, in each case as reflected by final order of a court of competent jurisdiction. The amount payable by DOE under this Section 2.03 shall include interest on the Guaranteed Percentage of the returned amount, accrued at the Guaranteed Interest Rate from the date returned to the Borrower to but excluding the date of actual payment thereof by DOE to the Administrative Agent for the benefit of the Holders.

³ Not to exceed eighty percent (80%).

Section 3. **CERTIFICATION**

3.01 **Certification.** Each Holder hereby represents and warrants to DOE that it has duly executed and delivered to DOE on the date hereof an Eligibility Certificate, and such Eligibility Certificate is true, correct and complete in all material respects as of the date hereof. The Administrative Agent hereby represents and warrants to DOE that it has duly executed and delivered to DOE on the date hereof a certificate in the form attached hereto as Annex B.

Section 4. **GUARANTEE CLAIM PROCEDURES**

4.01 **Failure to Pay.** In the event that the Borrower for any reason fails to pay in full when and as due under the Loan Agreement (other than in connection with any proposed voluntary prepayment) any principal amount of or interest on the Guaranteed Obligation, and such failure to pay continues unremedied past the period allowed for cure under the terms of the Loan Agreement plus five (5) additional Business Days, then the Administrative Agent, on behalf of the Holders, may make demand on DOE under this Guarantee Agreement (a "**Demand**") for payment of all Guaranteed Amounts pursuant to Section 4.05 (regardless of whether all such Guaranteed Amounts have then become due and owing from the Borrower by reason of acceleration of the Guaranteed Obligation or otherwise).

4.02 **Demand on DOE.** The Demand shall: (i) be in writing and delivered in accordance with Section 6.02 (the date of such delivery, or if not delivered on a Business Day the next succeeding Business Day, the "**Demand Date**"); (ii) be made by the Administrative Agent on behalf of all Holders; (iii) state the Loan Payment Date and past due Dollar amount of the principal and/or interest payment referred to in Section 4.01; (iv) state the aggregate Guaranteed Amount of principal claimed under Section 2.01(a) or (d); (v) state the Guaranteed Interest Rate and its basis for determination, and set out a calculation of each Guaranteed Amount of interest claimed under Section 2.01(b) and (c) as of the Demand Date; (vi) state the Guaranteed Interest Rate and its basis for determination, and set out a calculation of Guaranteed Amount of interest claimed under Section 2.01(c) from the Demand Date to but excluding the date of expected actual payment thereof by DOE (assuming such payment to occur on the last Business Day provided for under Section 4.05(a)(i)); (vii) certify that, on and as of the Demand Date, the Guaranteed Amounts claimed under (iv) and (v) above remain unpaid and the Borrower's payment default has remained unremedied past the period allowed for cure under the terms of the Loan Agreement plus five (5) Business Days; and (viii) identify the bank and account of the Administrative Agent located in the United States to which payment is to be made. The Administrative Agent shall thereafter promptly provide to DOE any further information, documentation or calculations relating to the Guaranteed Amounts as may be reasonably requested by DOE in writing.

4.03 **Subrogation and Assignment to DOE.** To the extent not otherwise owed to DOE under the terms of the Loan Documents, on and as of the Demand Date, DOE shall become subrogated to, and the Holders shall have assigned to DOE, without recourse and without need of any further action by any party, an undivided interest in all of the Holders' right, title and interest in, to and under (i) the principal and interest constituting the Guaranteed Amounts, (ii) any applicable Default Interest, make whole amount, liquidation cost or prepayment premium in respect of such Guaranteed Amounts and (iii) the Loan Documents in

respect of the Guaranteed Amounts (but, for the avoidance of doubt, not extending to any Excluded Amounts, other than any Default Interest, make whole amount, liquidation cost or prepayment premium) notwithstanding that, pursuant to Section 4.05(a), DOE shall not be obligated to make payment under the Guarantee for a period of sixty (60) days from the Demand Date. To the extent of such subrogation and assignment, DOE shall have the right to enforce or participate in any claim (including, without limitation, any claim in bankruptcy), right or remedy that the Holders may then have or thereafter acquire against the Borrower under the Loan Documents. The Administrative Agent and the Holders shall, upon request by DOE, promptly execute and deliver such documents and take such other actions as DOE may reasonably request to evidence or give effect to such subrogation and assignment, it being understood and agreed that the execution and delivery of any such document or the taking of any such action shall not be a condition to DOE's obligation to pay any Guaranteed Amount in accordance with this Section 4. The rights of DOE obtained by subrogation and assignment pursuant to the foregoing shall be in addition to, and not to the exclusion of or prejudice to, all other rights of DOE set out in any of the Loan Documents, which shall be exercisable by DOE without regard to or need of any Demand, subrogation or assignment under this Guarantee Agreement.

4.04 Conditions of Guarantee. DOE hereby waives diligence, presentment, protest, demand, notice and any requirement that the Administrative Agent or the Holders exhaust any right or remedy or take any action against or give notice to the Borrower or DOE, except for the written Demand for payment by the Administrative Agent on DOE required under Section 4.02. To the fullest extent permitted by applicable law, DOE waives and agrees that it will not assert against the Holders any defense to payment under the Guarantee (including, without limitation, fraud in the inducement) which it might otherwise have based solely upon the conduct of the Borrower.

4.05 Payment by DOE. (a) DOE shall pay to the Administrative Agent, by payment to the account designated in the Demand, for the benefit of the Holders, not later than the sixtieth (60th) day from the Demand Date (or if such sixtieth (60th) day is not a Business Day, then the next succeeding Business Day), the Guaranteed Amounts due under this Guarantee Agreement in a single payment calculated by DOE as of the date of actual payment thereof.

(b) All calculations of principal and interest made by DOE shall be conclusive absent manifest error. Payment shall be made in immediately available Dollars to the bank and account designated for such purpose by the Administrative Agent in the Demand. Payment by DOE of all Guaranteed Amounts due under this Guarantee Agreement shall be made by DOE to the Administrative Agent, for the benefit of the Holders, and such payment shall discharge fully and completely DOE's liability to the Holders under this Guarantee Agreement with respect to such Guaranteed Amounts. After the Demand Date, any funds received by the Administrative Agent, any Holder or DOE from or on behalf of the Borrower in respect of any of the Borrower's obligations under the Loan Documents shall be applied in accordance with the terms of the Loan Documents, giving effect to the subrogation and assignment provided for under Section 4.03.

4.06 DOE Payment Does Not Discharge Borrower. Any statute or judicial decision to the contrary notwithstanding, no payment by DOE to the Administrative Agent as Administrative Agent on behalf of the Holders under this Guarantee Agreement shall, or shall be

deemed to, reduce, discharge, satisfy or terminate any obligation of the Borrower or any other party under the Loan Documents.

4.07 **Indemnification.** The Administrative Agent shall indemnify DOE from and against any and all costs, losses, liabilities, claims, damages (other than consequential damages) or expenses which may be incurred by or asserted or awarded against DOE in any way relating to or arising out of any failure of the Administrative Agent to take any action required of it under the terms of this Guarantee Agreement. For the avoidance of doubt, it is understood and agreed that any liability of the Administrative Agent for actions or omissions with respect to its obligations under the Loan Agreement and the other Loan Documents (other than this Guarantee Agreement) shall be determined in accordance with the terms of the applicable Loan Document and not those of this Section 4.07.

Section 5. **TRANSFER OF THE LOAN AND GUARANTEE**

5.01 **Agent Transfer Restrictions.** The Administrative Agent shall not, without DOE's prior written consent or otherwise in accordance with the Loan Agreement, assign or otherwise transfer any of its rights, duties or responsibilities as Administrative Agent under this Guarantee Agreement, the Loan Agreement or any other Loan Document, or resign therefrom, except that the foregoing shall not restrict an assignment or transfer by operation of law; **provided, however,** that no assignment or transfer under this Section 5.01(a) shall be effective unless DOE shall have received from the relevant assignee or transferee a duly executed eligibility certificate in the form attached hereto as Annex B and such eligibility certificate is true, correct and complete in all material respects as of the date thereof.

5.02 **Holder Transfer Restrictions.** Subject to Section 5.04, each Holder shall be entitled, with the prior written consent of DOE which shall not be unreasonably withheld or delayed, to sell, assign, convey or otherwise transfer, on an undivided basis, its interests in the Guaranteed Obligation and the Guarantee, including its respective rights, interest and obligations under this Guarantee Agreement and the Loan Documents, to any entity capable of delivering an Eligibility Certificate; **provided, however,** that:

(a) the Guarantee shall not, at any time, be sold, assigned, conveyed or otherwise transferred in whole or in part separately from, or otherwise disproportionately to, the Guaranteed Obligation such that the Guarantee would effectively apply to a percentage of the transferee's interest in the Guaranteed Obligation which is greater than the Guaranteed Percentage; and

(b) for a period from the date hereof to the date on which the Project enters into commercial operation (as determined in accordance with the provisions of the Loan Agreement) plus two (2) years, each Holder's right to sell, assign, convey or otherwise transfer the Guaranteed Obligation and the Guarantee shall be subject to the prior written consent of DOE which may be withheld by DOE in its sole discretion for any reason or no reason; **provided, however,** that this clause (b) shall not apply to transfers to (i) another current Holder, (ii) an affiliate of the transferring Holder, or (iii) a special purpose entity wholly owned, controlled or the business of which is exclusively managed by the transferring Holder. For purposes hereof, "affiliate" means any other entity which, directly or indirectly, controls, is

controlled by or is under common control with the transferring Holder, where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

Any purported transfer of the Guarantee in violation of the foregoing provisions of this Section 5.02 shall be void *ab initio*.

5.03 Permitted Transfers. The provisions of Section 5.02 shall not apply to or prohibit any Holder from (i) conveying indirect interests in the Guaranteed Obligation and Guarantee by transferring economic or beneficial interests, but not legal rights, in the Guaranteed Obligation and Guarantee in any relative proportion where the transferring Holder continues to hold the Guaranteed Obligation and the Guarantee and remains solely in privity with DOE and the Administrative Agent under this Guarantee Agreement and with the Borrower, DOE and the Administrative Agent under the Loan Documents; (ii) issuing covered bonds, collateralized debt obligations or other similar instruments in connection with which the issuing Holder's interests in the Guaranteed Obligation and the Guarantee are pledged as collateral in any relative proportion; or (iii) pledging and/or assigning its interests in the Guaranteed Obligation and the Guarantee to any Federal Reserve Bank and, in such instances, the Federal Reserve Bank, as pledgee or assignee, shall have all such rights and interests, including in the Guarantee.

5.04 Holder Certifications. In connection with any transfer permitted under Section 5.02 (but not including transfers pursuant to Section 5.03 with respect to which a transferee need not qualify to be a Holder), the transferring Holder shall, as a condition precedent to the effectiveness of such transfer, obtain from each transferee Holder and deliver to DOE a duly executed Eligibility Certificate, and each such Eligibility Certificate shall be true, correct and complete in all material respects as of the date thereof.

Section 6. MISCELLANEOUS

6.01 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE FEDERAL LAW OF THE UNITED STATES. TO THE EXTENT THAT FEDERAL LAW DOES NOT SPECIFY THE APPROPRIATE RULE OF DECISION FOR A PARTICULAR MATTER AT ISSUE, IT IS THE INTENTION AND AGREEMENT OF THE PARTIES HERETO THAT THE SUBSTANTIVE LAW OF THE STATE OF NEW YORK SHALL BE ADOPTED AS THE GOVERNING FEDERAL RULE OF DECISION.

6.02 Notices. Except as otherwise specified, any notice or communication hereunder shall be in writing, and any such writing and all other documents required or permitted to be delivered hereunder shall include reference to DOE FIPP Guarantee No. [_____] and shall be delivered by mail, courier service, personal delivery or electronic mail (and if by electronic mail, promptly confirmed by mail, courier or personal delivery) and shall be deemed to be given for the purposes of this Guarantee Agreement on the day received by the intended recipient thereof. Unless otherwise specified in a notice delivered in accordance with this Section 6.02, all notices shall be delivered: (i) to the Administrative Agent or to DOE at the address specified

beneath its name on the signature page hereto; and (ii) to the Holders or any individual Holder, in care of the Administrative Agent at the Administrative Agent's address.

6.03 **Benefit of Agreement.** This Guarantee Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto.

6.04 **Entire Agreement.** This Guarantee Agreement contains the entire agreement among the parties hereto regarding the subject matter hereof. In the event that any term of any Loan Document conflicts with any term of this Guarantee Agreement, the terms and provisions of this Guarantee Agreement shall control to the extent of such conflict.

6.05 **Amendment or Waiver.** This Guarantee Agreement may not be changed, discharged or terminated without the written consent of the parties hereto, and no provision hereof may be waived without the written consent of the party to be bound thereby.

6.06 **Counterparts.** This Guarantee Agreement may be signed in separate counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

6.07 **Severability.** To the extent permitted by applicable law, the illegality or unenforceability of any provision of this Guarantee Agreement shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Guarantee Agreement.

[The Remainder of this Page is Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Guarantee Agreement to be duly executed, in duplicate, as of the date first above written.

[_____] as Holder
By: _____

Name: _____

Title: _____

Notice Address:
[*Address and Contact Information*]

[_____] as Administrative Agent
By: _____

Name: _____

Title: _____

Notice Address:
[*Address and Contact Information*]

UNITED STATES DEPARTMENT OF ENERGY, as Guarantor
By: _____

Name: _____

Title: _____

Notice Address:
United States Department of Energy
Loan Guarantee Program Office
1000 Independence Avenue, S.W.
Washington, D.C. 20585
Attention: Director, LGPO

With a copy to the same address:

Attention: Director, Portfolio Management
E-mail: lpo.portfolio@hq.doe.gov
Telephone: (202) 287-6738
Facsimile: (202) 287-5816

With a copy to Programmatic Counsel:

David Evans
Clifford Chance US LLP
2001 K Street NW
Washington, DC 20006
Email: david.evans@cliffordchance.com
Telephone: (202) 912-5062
Facsimile: (202) 912-6000

ANNEX A

Form of Eligibility Certificate

DOE FIPP Guarantee No. [_____]

ELIGIBILITY CERTIFICATION

The undersigned ("Holder") certifies that, as of the date hereof, it meets each of the following criteria:

1. It is not debarred or suspended from participation in a Federal government contract (under 48 CFR part 9.4) or participation in a non-procurement activity (under a set of uniform regulations implemented for numerous agencies, such as DOE, at 2 CFR Part 180);
2. It is not delinquent on any Federal debt or loan;
3. It is legally authorized to enter into loan guarantee transactions authorized by Title XVII and Attachment G to DOE Solicitation No. DE-FOA-0000166, as amended, and is in good standing with DOE and other Federal agency loan guarantee programs; and
4. [A. *For all Holders not qualifying under 4.C:* It has, or have access to, experience in participating in loans for commercial projects similar in size and scope to the Project. For this purpose, 'participating' means (a) being a lender in a capacity as a principal with investment at risk and (b) evaluating such loan investments primarily with regard to long-term credit risk [and as such concepts are further clarified in the attached Supplement]⁴.]

[B. *For Holders which also are Lead Lenders, in addition to 4.A:* It has experience or capability as the lead lender in or lead underwriter of the financing for large commercial projects or energy-related projects or other equivalent relevant experience.]

[C. *For Holders/Lead Lenders qualifying under clause (c) of Section 3 in Attachment J to the Solicitation, in place of 4.A and/or 4.B:* Pursuant to the terms of [insert reference to the applicable documents], it is owned, controlled or its business is exclusively managed by [the holders of its [trust certificates] which, as of the date hereof, are]: _____ . True and complete copies of each such entity's certification to DOE as to its relevant experience as a lender is attached hereto.]⁵

Holder further certifies that it has reviewed the General Certifications set out below, and the signature of its duly authorized officers represent its agreement to comply with the limitations outlined in the General Certifications set out below.

⁴ Include if appropriate.

⁵ The certifications of entities which own, control or manage the Holder/Lead Lender shall be in the form of this certification, including paragraph 4.A and/or 4.B, as applicable. Joint Arrangers to provide certifications in Section 2 of Attachment J to the Solicitation; others to provide certifications in Section 1 of Attachment J to the Solicitation.

Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years or both."

Holder's Name _____

Officer Signatures _____

*Title*_____

*Title*_____

*Date*_____

*Date*_____

*Contact Information: [Name and Title]
[Address]
[Phone, facsimile and e-mail]*

SUPPLEMENT

A commercial project is "similar in size and scope" to the Project if that commercial project (a) is (i) similar to the nature of the Project, (ii) an industrial facility for power generation, chemical refining, or manufacturing, (iii) a privately financed infrastructure project for transportation, social facilities or natural resource management, (iv) a commercial real estate project involving a construction phase or other aspect of the financing requiring technical or engineering evaluation, or (v) another similar large-scale project, and (b) involves capital expenditures of which at least \$100 million were commercially financed by the loans. In addition, "loans" (x) refers to non-recourse or limited recourse long-term senior secured indebtedness that is applied solely for the construction and implementation of the commercial project and which may include project finance debt, large commercial mortgages, and large-scale asset financing and (y) may be in the form of syndicated bank loans, private placements (including debt instruments issued under Section 4(2) of the Securities Act of 1933 by the relevant borrower), Rule 144(a) offerings or secured public bonds.

GENERAL CERTIFICATIONS

(1) RESTRICTIONS AND DISCLOSURE OF LOBBYING ACTIVITIES

Holder states, to the best of its knowledge and belief, that if any funds have been paid or will be paid, by it or on its behalf, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$11,000 and not more than \$110,000 for each such failure.

(2) CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 31 C.F.R. §19.510 Participants' responsibilities. The regulations were published as part 19 of 31 C.F.R. Copies of the regulations may be obtained by contacting DOE. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out on this form. The certification or explanation will be considered in connection with DOE's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The certification in this clause is a material representation of fact upon which reliance will be placed when DOE determines to enter into this transaction.

The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

The prospective primary participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into a lower tier covered transaction with a person who is debarred, suspended, ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

The prospective primary participant further agrees by submitting this form that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tiered Transactions", provided by the department or agency entering into this

covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous.

A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(A) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(2) have not within the three-year period preceding the date hereof been convicted of or had a civil judgment rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction, violation of Federal, or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making a false statement, or receiving stolen property;

(3) are not presently indicted for or otherwise criminally or civilly charged by a Government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph A.2. of this certification; and

(4) have not within the three-year period preceding the date hereof had one or more public transactions (Federal, State, or local) terminated for cause or default.

(B) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this certification.

ANNEX B

Form of Administrative Agent Certificate

DOE FIPP Guarantee No. [_____] ⁶

ADMINISTRATIVE AGENT CERTIFICATION

The undersigned ("Agent") certifies that, as of the date hereof, it meets each of the following criteria:

1. It is not debarred or suspended from participation in a Federal government contract (under 48 CFR part 9.4) or participation in a non-procurement activity (under a set of uniform regulations implemented for numerous agencies, such as DOE, at 2 CFR Part 180);
2. It is not delinquent on any Federal debt or loan; and
3. It is legally authorized to enter into loan guarantee transactions authorized by Title XVII and Attachment G to DOE Solicitation No. DE-FOA-0000166, as amended, and is in good standing with DOE and other Federal agency loan guarantee programs.

Agent further certifies that it has reviewed the General Certifications set out below, and the signature of its duly authorized officers represent its agreement to comply with the limitations outlined in the General Certifications set out below.

Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years or both."

Agent's Name _____

Officer Signatures _____

Title _____ Title _____

Date _____ Date _____

*Contact Information: [Name and Title]
[Address]
[Phone, facsimile and e-mail]*

⁶ May reference multiple guarantees.

GENERAL CERTIFICATIONS

(1) RESTRICTIONS AND DISCLOSURE OF LOBBYING ACTIVITIES

Agent states, to the best of its knowledge and belief, that if any funds have been paid or will be paid, by it or on its behalf, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$11,000 and not more than \$110,000 for each such failure.

(2) CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 31 C.F.R. §19.510 Participants' responsibilities. The regulations were published as part 19 of 31 C.F.R. Copies of the regulations may be obtained by contacting DOE. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out on this form. The certification or explanation will be considered in connection with DOE's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The certification in this clause is a material representation of fact upon which reliance will be placed when DOE determines to enter into this transaction.

The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

The prospective primary participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into a lower tier covered transaction with a person who is debarred, suspended, ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

The prospective primary participant further agrees by submitting this form that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tiered Transactions", provided by the department or agency entering into this

covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous.

A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(A) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(2) have not within the three-year period preceding the date hereof been convicted of or had a civil judgment rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction, violation of Federal, or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making a false statement, or receiving stolen property;

(3) are not presently indicted for or otherwise criminally or civilly charged by a Government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph A.2. of this certification; and

(4) have not within the three-year period preceding the date hereof had one or more public transactions (Federal, State, or local) terminated for cause or default.

(B) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this certification.