**CERCLA Financial Assurance Sample Corporate Guarantee for Use in Connection with Settlements**

**NOTE: A corporate gurantee, as specified in the relevant settlement agreement, may be worded as follows, except that instructions in brackets should be replaced with the relevant information and the brackets deleted. Case teams should make sure that provisions in the corporate guarantee and accompanying financial test submissions are consistent with relevant settlement provisions. For each site/facility covered by this guarantee, case teams should elicit the following information from the guarantor, both initially and over time: EPA or state site/facility/spill identification number, site or facility name, and address; and the basis for the liability or obligation (i.e., CERCLA; RCRA Subtitle C closure, post-closure, and/or corrective action; RCRA Subtitle D; etc.).**

**CORPORATE GUARANTEE FOR CERCLA WORK**

Guarantee made this [**insert date**] by [**insert name of guaranteeing entity**], a business corporation organized under the laws of the State of [**insert state**] (“Guarantor”). This Guarantee is made on behalf of [**insert name of PRP/Settling Defendant**] (“Settling Defendant”) of [**insert address**], which is [**insert one of the following**: ‘‘our subsidiary’’; ‘‘a subsidiary of [**insert name and address of common parent corporation**], of which Guarantor is a subsidiary’’; or ‘‘an entity with which Guarantor has a substantial business relationship, as defined in 40 C.F.R. § 264.141(h)”], to the United States Environmental Protection Agency (EPA).

**RECITALS**

Whereas, under a [**insert as appropriate:** “Consent Decree,” “Administrative Settlement Agreement and Order on Consent,” or “Settlement Agreement”] dated [**insert date**], [**insert as appropriate:** civil action number for consent decrees or EPA docket number for administrative agreements] (hereinafter, the “Settlement Agreement”), between Settling Defendant and EPA, relating to the [**insert site name [operable unit]**] (“Site”), entered pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675, Settling Defendant is required to perform the “Work” as defined in the Settlement Agreement (hereinafter, the “Work”) and to fulfill its other obligations as set forth therein.

Whereas, the Settlement Agreement requires Settling Defendant to provide financial assurance to EPA to ensure completion of the Work at the Site.

Whereas, in order to provide part or all of such financial assurance required by the Settlement Agreement, Settling Defendant has agreed to provide EPA with a guarantee, issued by Guarantor, of Settling Defendant’s obligations arising under the Settlement Agreement, all as set forth more fully in this Guarantee.

Whereas, Guarantor meets or exceeds the financial test criteria as specified in the Settlement Agreement and attached as Exhibits A and B and agrees to comply with the reporting and notification requirements for guarantors as specified in the Settlement Agreement and this Guarantee.

**AGREEMENT**

1. For value received from Settling Defendant, Guarantor guarantees to EPA that, in the event that Settling Defendant fails to pay for or perform the Work as required by the Settlement Agreement, Guarantor shall do so or immediately, upon written demand from EPA, deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

2. For so long as this Guarantee is in effect, within 90 days after the close of each fiscal year of Guarantor, Guarantor shall submit to EPA: (a) a letter signed by Guarantor’s chief financial officer certifying Guarantor’s compliance with the financial test criteria set forth in the Settlement Agreement’s financial assurance section; (b) a copy of Guarantor’s audited financial statements for its latest completed fiscal year, and a copy of Guarantor’s independent certified public accountant’s report on examination of such financial statements, which report on examination shall be unqualified or, if qualified, shall have been approved in writing by EPA; and (c) a special report from Guarantor’s independent certified public accountant to Guarantor attesting to Guarantor’s compliance with the financial test criteria set forth in the Settlement Agreement’s financial assurance section.

3. Guarantor agrees that if, at the end of any fiscal year before termination of this Guarantee, Guarantor fails to meet the financial test criteria set forth in the Settlement Agreement, Guarantor shall send, within 90 days, by certified mail, notice to EPA and to Settling Defendant that Guarantor intends to provide alternative financial assurance as specified in the Settlement Agreement in the name of Settling Defendant. Within 120 days after the end of such fiscal year, Guarantor shall establish such financial assurance unless Setting Defendant has done so.

4. Guarantor agrees to notify EPA, by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming Guarantor as debtor, within 10 days after commencement of the proceeding.

5. Guarantor agrees that, within 30 days after being notified by EPA of a determination that Guarantor no longer meets the financial test criteria set forth in the Settlement Agreement or that Guarantor is disallowed from continuing as a guarantor, Guarantor shall establish alternative financial assurance as specified in the Settlement Agreement, as applicable, in the name of Settling Defendant unless Settling Defendant has done so.

6. Guarantor agrees to remain bound under this Guarantee notwithstanding any or all of the following: amendment or modification of the Settlement Agreement or any documents, instruments or agreements executed in connection therewith, the extension or reduction of the time of performance of the Work required by the Settlement Agreement, or any other modification or alteration of an obligation of Settling Defendant pursuant to the Settlement Agreement.

7. Guarantor agrees to remain bound under this guarantee for as long as Settling Defendant must comply with the applicable financial assurance requirements of the Settlement Agreement, except as provided in paragraph 8 of this Guarantee.

8. [**Insert the following sentence if the Guarantor is (a) a direct or higher-tier corporate parent of the Settling Defendant, or (b) a firm whose parent corporation is also the parent corporation of the Settling Defendant**: Guarantor may terminate this Guarantee by sending notice, by certified mail, to EPA and to Settling Defendant, provided that this Guarantee may not be terminated unless and until Settling Defendant obtains, and EPA approves, alternative financial assurance as specified in the Settlement Agreement.]

[**Otherwise (i.e., if the Guarantor is a firm qualifying as a guarantor due to its ‘‘substantial business relationship’’ with the Settling Defendant), insert the following sentence**: Guarantor may terminate this Guarantee 120 days following the receipt of notification, through certified mail, by EPA and by Settling Defendant.]

9. Guarantor agrees that if Settling Defendant fails to provide alternative financial assurance as specified in the Settlement Agreement and obtain written approval of such assurance from EPA within 90 days after a notice of cancellation by Guarantor is received by EPA from Guarantor, Guarantor shall provide such alternative financial assurance in the name of Settling Defendant.

10. Guarantor expressly waives notice of acceptance of this Guarantee by EPA or by Settling Defendant. Guarantor also expressly waives notice of amendments or modifications of the Settlement Agreement or any documents, instruments or agreements executed in connection therewith.

11. All notices, elections, approvals, demands, and requests required or permitted hereunder shall be given in writing to (unless updated from time to time) the following:

If to Guarantor: [**insert name(s), title(s), address(es), and contact information (phone number(s), email address(es), etc.)**];

If to Settling Defendant: [**insert name(s), title(s), address(es), and contact information (phone number(s), email address(es), etc.)**]; and

If to EPA: [**insert name(s), title(s), address(es), and contact information (phone number(s), email address(es), etc.) of appropriate EPA official/staff (e.g., Superfund Division Director, Remedial Project Manager, and/or Office of Regional Counsel contact)**].

**IN WITNESS WHEREOF**, the parties hereto, by their authorized representatives duly authorized, intending to be legally bound, have caused this Guarantee to be duly executed and delivered as of the date first above written.

Name of Guarantor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized signature for guarantor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of person signing: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title of person signing: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact information for signatory: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

State of [**insert state**]

County of [**insert county**]

On this [**insert date**], before me personally came [**insert name of Guarantor’s signatory**] to me known, who, being by me duly sworn, did depose and say that she/he is [**insert title**] of [**insert name of Guarantor**], the entity described in and which executed the above instrument; and that she/he signed her/his name thereto.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Signature of Notary Public]

**EXHIBIT A (CFO Letter)**

Follow sample, available in the financial assurance category of the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

**EXHIBIT B (CPA Report)**

Follow sample, available in the financial assurance category of the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.