**CERCLA Financial Assurance Sample Corporate Guarantee for Use in Connection with Unilateral Administrative Orders**

**NOTE: A corporate gurantee, as specified in the relevant unilateral administrative order, 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 provisions in the order. 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/Respondent**] (“Respondent”) 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 CFR 264.141(h)”].

RECITALS

Whereas, under the Unilateral Administrative Order, dated [**insert date**], [**insert docket number**] (the “Order”), issued by the U.S. Environmental Protection Agency (EPA) under the authority vested in the United States of America by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9606(a), applying to and binding upon Respondent, and relating to the [**insert site name [operable unit]**] (the “Site”), Respondent is required to perform the “Work,” as defined in the Order, and to fulfill its other obligations as set forth therein.

Whereas, the Order requires Respondent to provide financial assurance to ensure completion of the Work at the Site.

Whereas, the Order requires Respondent to establish a standby trust fund when a guarantee is used to provide such financial assurance.

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

AGREEMENT

1. For value received from Respondent, Guarantor guarantees that, if Respondent and Guarantor are notified by EPA that Respondent has failed to perform the Work as required by the Order and Respondent fails to remedy to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of such notice within the period of time specified in the Order, then Guarantor, upon EPA’s direction in accordance with the Order, shall immediately perform the Work or fund the standby trust described above. If Guarantor elects to fund the Work, Guarantor shall fund the standby trust in an amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA, [**insert either:** “in accordance with payment instructions provided by the trustee of the standby trust fund” or, if available, “as follows: [**insert specific standby trust fund wiring instructions and information:** e.g., name of institution, ABA number, Attn: [**point of contact and title**], account number, reference number]”].

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 Order’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 Order’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 Order, Guarantor shall send, within 90 days, by certified mail, notice to EPA and to Respondent that Guarantor intends to provide alternative financial assurance as specified in the Order in the name of Respondent. Within 120 days after the end of such fiscal year, Guarantor shall establish such financial assurance unless Respondent 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 Order or that Guarantor is disallowed from continuing as a guarantor, Guarantor shall establish alternative financial assurance as specified in the Order, as applicable, in the name of Respondent unless Respondent has done so.

6. Guarantor agrees to remain bound under this Guarantee notwithstanding any or all of the following: amendment or modification of the Order 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 Order; or any other modification or alteration of an obligation of Respondent pursuant to the Order.

7. Guarantor agrees to remain bound under this guarantee for as long as Respondent must comply with the applicable financial assurance requirements of the Order, 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 Respondent, or (b) a firm whose parent corporation is also the parent corporation of Respondent:** Guarantor may terminate this Guarantee by sending notice, by certified mail, to EPA and to Respondent, provided that this Guarantee may not be terminated unless and until Respondent obtains, and EPA approves, alternative financial assurance as specified in the Order.]

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

9. Guarantor agrees that if Respondent fails to provide alternative financial assurance as specified in the Order 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 Respondent.

10. Guarantor expressly waives notice of acceptance of this Guarantee by EPA or by Respondent. Guarantor also expressly waives notice of amendments or modifications of the Order 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 Grantor: [**insert name(s), title(s), address(es), and contact information (phone number(s), email address(es), etc.)**];

If to Respondent: [**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) (e.g., Superfund Division Director, Remedial Project Manager or On Scene Coordinator, and/or Office of Regional Counsel contact), address(es), and contact information (phone number(s), email address(es), etc.)**] [with a copy to: **insert as appropriate**].

**[SIGNATURE ON FOLLOWING PAGE]**

**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/>.