**CERCLA Financial Assurance Sample Performance Bond for Use in Connection with Settlements**

**NOTE: A surety bond guaranteeing performance or payment, 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 bond relating to EPA’s ability to either demand performance or access funds guaranteed by the bond (*see, e.g.,* paragraphs 3 and 5 below) are consistent with relevant settlement provisions.**

**[Letterhead of Bond Issuer]**

**PERFORMANCE BOND**

Surety’s Performance Bond Number: [**insert number**]

Date of Execution of Performance Bond: [**insert date**]

Effective Date of Performance Bond: [**insert date**]

Total Dollar Amount of Performance Bond: $[**insert dollar amount**]

PRINCIPAL:

Legal Name: [**insert name of PRP/Settling Defendant**]

Address: [**insert address**]

Contact Person(s)/Information: [**insert name and contact information (phone, email)**]

SURETY:

Legal Name: [**insert name of surety providing the bond**]

Address: [**insert address**]

Contact Person(s)/Information: [**insert name and contact information (phone, email)**]

BENEFICIARY:

Legal Name: U.S. Environmental Protection Agency Region [**insert #**]

c/o [**insert appropriate Regional official** **such as “Superfund Division Director”**]

Address/Contact Information: [**insert address and contact information (phone, email)**]

SITE INFORMATION:

Name and Location of Site: [**insert site name [operable unit] and location**] (“Site”)

Site/Spill Identification Number: [**insert Site/Spill Identification Number**]

Agreement Governing Site Work: [That certain [**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], between the United States of America and [**insert settling parties**] (the “Agreement”)]

**KNOW ALL PERSONS BY THESE PRESENTS, THAT:**

**WHEREAS**, said Principal is required, under the Agreement entered pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675, to perform the “Work” as defined in such Agreement (hereinafter, the “Work”) and to fulfill its other obligations as set forth therein; and

**WHEREAS**, said Principal is required by the Agreement to provide financial assurance to ensure completion of the Work.

**NOW, THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Principal and Surety hereto are firmly bound to the United States Environmental Protection Agency (EPA or Beneficiary), in the above Total Dollar Amount of this Performance Bond, for the performance or payment of the Work, which we, the Principal and Surety, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, subject to and in accordance with the terms and conditions hereof.

2. The conditions of the Surety’s obligation hereunder are such that if the Principal shall promptly, faithfully, fully, and finally complete the Work in accordance with the terms of the Agreement, the Surety’s obligation hereunder shall be null and void; otherwise it is to remain in full force and effect.

3. Pursuant to and in accordance with the terms of the Agreement, and except as specifically provided in Paragraph 5 below, the Surety shall become liable on the obligation evidenced hereby only upon the Principal’s failure to perform all or any portion(s) of the Work, EPA’s subsequent notice of a Work Takeover, and the Principal’s failure to remedy to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of such notice. At any time and from time to time upon notification by EPA (as specified in the Agreement) that a Work Takeover has commenced, the Surety shall, up to the Total Dollar Amount of the Performance Bond, promptly (and in any event within 15 days after receiving such notification):

* + 1. Commence to complete the Work to be done under the Agreement in accordance with its terms and conditions; or
    2. Pay to EPA funds in such amounts and to such person(s), account(s), or otherwise as EPA may direct.

If the Surety does not render such performance or payment set forth above within the specified 15-day period, the Surety shall be deemed to be in default of this Performance Bond and EPA shall be entitled to enforce any remedy available to it at law, in equity, or otherwise; provided, however, that if such default is susceptible of cure but cannot reasonably be cured within such 15-day period and provided further that Surety shall have commenced to cure such default within such 15-day period and thereafter diligently proceeds to perform the same, such 15-day period shall be extended for such time as is reasonably necessary for Surety in the exercise of due diligence to cure such default, such additional period not to exceed 90 days.

4. The liability of the Surety shall not be discharged by any performance, payment, or succession of payments hereunder, unless and until such performance, payment, or payments shall amount in the aggregate to the Total Dollar Amount of this Performance Bond, but in no event shall the aggregate obligation of the Surety hereunder exceed the amount of said sum.

5. The Surety may cancel this Performance Bond only by sending notice of cancellation to the Principal and to the Beneficiary, provided, however, that no such cancellation shall be effective during the 120-day period beginning on the date of receipt of the notice of cancellation by both the Principal and the Beneficiary, as evidenced by return receipts. If after 90 days of such 120-day period, the Principal has failed to provide alternative financial assurance to EPA in accordance with the terms of the Agreement, EPA shall have the right to (up to the Total Dollar Amount of this Performance Bond) demand performance of the Work or draw on the guaranteed funds.

6. The Principal may terminate this Performance Bond only by sending written notice of termination to the Surety and to the Beneficiary, provided, however, that no such termination shall become effective unless and until the Surety receives written authorization for termination of this Performance Bond by the Beneficiary.

7. Any modification, revision, or amendment that may be made to the terms of the Agreement or to the Work to be done thereunder, or any extension of the Agreement, or other forbearance on the part of either the Principal or Beneficiary to the other, shall not in any way release the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors, or assigns from liability hereunder. The Surety hereby expressly waives notice of any change, revision, or amendment to the Agreement or to any related obligations between the Principal and the Beneficiary.

8. The Surety will immediately notify the Beneficiary of any of the following events: (a) the filing by the Surety of a petition seeking to take advantage of any laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts; (b) the Surety’s consent to (or failure to contest in a timely manner) any petition filed against it in an involuntary case under such bankruptcy or other laws; (c) the Surety’s application for (or consent to or failure to contest in a timely manner) the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of all or a substantial part of its assets; (d) the Surety’s making a general assignment for the benefit of creditors; or (e) the Surety’s taking any corporate action for the purpose of effecting any of the foregoing.

9. Any provision in this Performance Bond that conflicts with CERCLA or any other applicable statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or legal requirement shall be deemed incorporated herein.

10. All notices, elections, consents, approvals, demands, and requests required or permitted hereunder shall be given in writing to (unless updated from time to time) the addressees shown on the first page of this Performance Bond, identify the Site, and provide a contact person (and contact information). All such correspondence shall be: (a) effective for all purposes if hand delivered or sent by (i) certified or registered United States mail, postage prepaid, return receipt requested or (ii) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, to the relevant address shown on the first page of this Performance Bond; and (b) effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one business day after being deposited with a nationally recognized overnight courier service as required above, or (iii) three business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, consent, approval, demand, or request sent.

11. The Surety hereby agrees that the obligations of the Surety under this Performance Bond shall be in no way impaired or affected by any winding up, insolvency, bankruptcy, or reorganization of the Principal or by any other arrangement or rearrangement of the Principal for the benefit of creditors.

12. No right of action shall accrue on this Performance Bond to or for the use of any person other than the Beneficiary or the executors, administrators, successors, or assigns of the Beneficiary.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the Principal and Surety have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby represent, warrant, and certify that they are authorized to execute this Performance Bond on behalf of the Principal and Surety, respectively.

**FOR THE PRINCIPAL**:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_ By [signature]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

State of [**insert state**]

County of [**insert county**]

On this [**insert date**], before me personally came [**insert name of PRP/Settling Defendant’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 PRP/Settling Defendant**], the entity described in and which executed the above instrument; and that she/he signed her/his name thereto.

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

[Signature of Notary Public]

**FOR THE SURETY**:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_ By [signature]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

State of [**insert state**]

County of [**insert county**]

On this [**insert date**], before me personally came [**insert name of Surety’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 Surety**], the entity described in and which executed the above instrument; and that she/he signed her/his name thereto.

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

[Signature of Notary Public]