



U.S. ENVIRONMENTAL PROTECTION AGENCY



U.S. DEPARTMENT OF JUSTICE

August 10, 2022

**MEMORANDUM**

**SUBJECT:** Issuance of the 2022 Model Administrative Settlement Agreement for Removal Action by Prospective Purchaser

**FROM:** Cynthia L. Mackey, Director  
Office of Site Remediation Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

Handwritten signature of Cynthia L. Mackey in blue ink.

Thomas A. Mariani, Jr., Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

Handwritten signature of Thomas A. Mariani, Jr. in blue ink.

**TO:** Regional Counsels, Regions 1-10  
Superfund National Program Managers, Regions 1-10  
U.S. Environmental Protection Agency

Deputy Chiefs, Assistant Chiefs, Environmental Enforcement Section  
Deputy Chiefs, Assistant Chiefs, Environmental Defense Section  
U.S. Department of Justice

**I. Introduction**

This memorandum transmits the revised Model Administrative Settlement Agreement for Removal Action by Prospective Purchaser ("Prospective Purchaser Agreement (PPA) Removal Model"). This PPA Removal Model is for use by the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Justice (DOJ) when negotiating agreements with prospective purchasers or lessees for the performance of removal actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund). The PPA Removal Model is available for use in Word format under the PPAs/BFPPAs category on OSRE's Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

## II. Explanation of Revisions

EPA's Office of Site Remediation Enforcement (OSRE) and DOJ's Environmental Enforcement Section updated the PPA Removal Model to encourage cleanup and reuse by prospective purchasers and lessees. The PPA Removal Model incorporates:

- Work provisions consistent, where appropriate, with other CERCLA model documents to ensure consistency in the implementation of response actions;
- Community involvement provisions in support of Administrator Regan's prioritization of the protection of communities disproportionately affected by environmental burdens; and
- Streamlined provisions adopted in other CERCLA model documents.

The new community involvement provisions are made in accordance with Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad: Securing Environmental Justice and Spurring Economic Opportunity," 86 Federal Register 7619 (Feb. 1, 2021), Section 219 (Policy) and Section 222(b)(ii) and (c)(ii) (Agency Obligations). These changes are anchored in the ideas outlined in OECA's July 1, 2021 memorandum titled "Strengthening Environmental Justice Through Cleanup Enforcement Actions."

## III. Use of the Model

EPA Regions should use the PPA Removal Model to negotiate a new agreement with any prospective purchaser or lessee. The PPA Removal Model is effective as of the date of this transmittal memorandum and should be used for all new negotiations. For negotiations that are already in progress, we recommend that EPA Regions consider whether any revisions are appropriate to reflect the updates in the PPA Removal Model. As EPA's model settlements are living documents, EPA and DOJ may make further revisions to the PPA Removal Model as appropriate, including those based on EPA priorities such as the Agency's efforts to address the impact of climate change on Superfund site cleanups.

The PPA Removal Model supersedes all previous versions of the PPA model. However, EPA Regions should continue to consult existing PPA policy and guidance documents prior to entering into discussions for an agreement with a prospective purchaser or lessee. These documents include the 1995 "Guidance on Agreements with Prospective Purchasers of Contaminated Property" and the 2001 "Support of Regional Efforts to Negotiate Prospective Purchaser Agreements (PPAs) at Superfund Sites and Clarification of PPA Guidance." PPA policy and guidance documents are available under the PPA category on EPA's Superfund Cleanup Policies and Guidance page at <https://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/>.

Before beginning negotiations for a site-specific agreement, EPA Regions should refer to the OSRE Roles Chart and the 2015 memorandum titled "Procedures for CERCLA Administrative Settlements and RCRA Prospective Purchaser Agreements that Require DOJ Approval or Signature" ("Settlement Procedures Guidance"). For all agreements, EPA Regions must consult with OSRE, which will include a discussion of the scope of the work to be performed and the inclusion of appropriate community involvement provisions. EPA Regions must also obtain prior written approval from OSRE before obtaining signature on any agreement that may significantly deviate from the PPA Removal Model. Because PPAs are entered into under the authority of the Attorney General, EPA Regions must involve DOJ as required by the Settlement Procedures Guidance, which clarifies the process for EPA Regions to

obtain prior written approval or signature, as needed, from DOJ when required for an administrative settlement. In particular, EPA Regions must consult with DOJ during the negotiations of a site-specific agreement, including discussing the settlement concepts before engaging in significant negotiations with the prospective purchaser or lessee and sharing the draft agreement with DOJ for review before it is sent to the prospective purchaser or lessee.

#### **IV. Contacts**

Please direct any questions about the PPA Removal Model to Hollis Luzecky, OSRE's Policy and Program Evaluation Division (202) 564-4217, [luzecky.hollis@epa.gov](mailto:luzecky.hollis@epa.gov), or Leslie Allen, DOJ's Environmental Enforcement Section (202) 514-4114, [leslie.allen@usdoj.gov](mailto:leslie.allen@usdoj.gov).

#### **V. Disclaimer**

This memorandum and the documents referenced herein are intended as guidance for EPA and DOJ employees. They are not rules and do not create any legal obligations. The extent to which EPA and DOJ applies them in a particular case will depend on the facts of the case.

Attachment

cc: Larry Starfield, Acting Assistant Administrator, Office of Enforcement and Compliance Assurance (OECA)  
Kathryn Caballero, Director, Federal Facilities Enforcement Office, OECA  
Carlton Waterhouse, Acting Assistant Administrator, Office of Land and Emergency Management (OLEM)  
Barry Breen, Principal Deputy Assistant Administrator, OLEM  
Larry Douchand, Director, Office of Site Remediation and Technology Innovation, OLEM  
Kathleen Salyer, Acting Director, Office of Emergency Management, OLEM  
David R. Lloyd, Office of Brownfields and Land Revitalization, OLEM  
Greg Gervais, Director, Federal Facilities Restoration and Reuse Office, OLEM  
Jeffrey Prieto, General Counsel, Office of General Counsel (OGC)  
Lorie Schmidt, Associate General Counsel, Solid Waste and Emergency Law Office, OGC  
Jeanne Conklin, Controller, Office of the Comptroller, Office of the Chief Financial Officer (OC/OCFO)  
Meshell Jones-Peeler, Deputy Controller, OC/OCFO  
Greg Luebbering, Director, Cincinnati Finance Center, OC/OCFO  
Superfund Regional Counsel Branch Chiefs, Regions 1-10  
Superfund Remedial Branch Chiefs, Regions 1-10  
Superfund Removal Branch Chiefs, Regions 1-10

**MODEL ADMINISTRATIVE SETTLEMENT AGREEMENT  
FOR REMOVAL ACTION BY PROSPECTIVE PURCHASER**

August 10, 2022

- This model document is suitable for removal actions under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”).
- The EPA Region should review the “OECA/OSRE CERCLA and RCRA/CWA/UST Roles Chart” (“Roles Chart”) for applicable consultations and prior written approval requirements and the “Procedures for CERCLA Administrative Settlements and RCRA Prospective Purchaser Agreements that Require DOJ Approval or Signature” (“Administrative Settlement Procedures”) prior to drafting or negotiating a settlement. In particular, under the Administrative Settlement Procedures, the EPA Region should consult with the U.S. Department of Justice during the negotiations of a settlement, including discussing the settlement concepts before engaging in significant settlement negotiations with the prospective purchaser and sharing the draft settlement for review before it is sent to the prospective purchaser.
- This document contains automatic Section and Paragraph numbers and cross references, and an automated Table of Contents. If you add or delete Sections or Paragraphs, please **do not** attempt to manually renumber any Sections, Paragraphs, or cross references. Please see instructions at the end of this document for more details.
- This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency and the U.S. Department of Justice. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.

UNITED STATES DEPARTMENT OF JUSTICE  
AND  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION \_\_\_\_

---

IN THE MATTER OF:

CERCLA Docket No. \_\_\_\_\_

**[Site name and Location]**

**[Purchaser name],**

Purchaser

---

ADMINISTRATIVE SETTLEMENT  
AGREEMENT FOR REMOVAL  
ACTION BY PROSPECTIVE  
PURCHASER

**Commented [A1]:** This caption is a table. To make it easier to navigate within it, turn on gridlines as follows: Click anywhere in the table. Under the "Table Tools" menu that appears in the upper ribbon, click the "Layout" button. In the layout ribbon that appears, on the far left, click the "View Gridlines" button.

SETTLEMENT COMMUNICATIONS:

EPA Region \_\_ Draft **[date]**: This settlement is subject to approval and signature by management at both the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of Justice. [The terms of this settlement expire [60] days after EPA sends the settlement to Purchaser for signature. This settlement was provided via email to Purchaser for signature on **[date]**.]

## TABLE OF CONTENTS

I.	GENERAL PROVISIONS .....	4
II.	PARTIES BOUND .....	4
III.	DEFINITIONS .....	5
IV.	STATEMENT OF FACTS .....	7
V.	DETERMINATIONS .....	7
VI.	COORDINATION AND SUPERVISION .....	8
VII.	REMOVAL ACTION TO BE PERFORMED .....	9
VIII.	PROPERTY REQUIREMENTS .....	15
IX.	FINANCIAL ASSURANCE .....	17
X.	INDEMNIFICATION AND INSURANCE .....	21
XI.	PAYMENT FOR RESPONSE COSTS .....	23
XII.	FORCE MAJEURE .....	23
XIII.	DISPUTE RESOLUTION .....	24
XIV.	STIPULATED PENALTIES .....	25
XV.	CERTIFICATION .....	27
XVI.	COVENANTS BY UNITED STATES .....	28
XVII.	COVENANTS BY PURCHASER .....	29
XVIII.	EFFECT OF SETTLEMENT; CONTRIBUTION .....	29
XIX.	[RELEASE AND WAIVER OF LIEN(S)] .....	30
XX.	RECORDS .....	30
XXI.	NOTICES AND SUBMISSIONS .....	32
XXII.	APPENDIXES .....	32
XXIII.	MODIFICATIONS .....	33
XXIV.	SIGNATORIES .....	33
XXV.	DISCLAIMER .....	33
XXVI.	ENFORCEMENT .....	33
XXVII.	INTEGRATION.....	34
XXVIII.	PUBLIC COMMENT .....	34
XXIX.	EFFECTIVE DATE .....	34

## I. GENERAL PROVISIONS

1. This Administrative Settlement Agreement for Removal Action by Prospective Purchaser (“Settlement”) is entered into voluntarily by the United States of America (“United States”) on behalf of the United States Environmental Protection Agency (“EPA”) and the prospective purchaser, [Purchaser name] (“Purchaser”). This Settlement provides for the performance of a removal action by Purchaser and the payment for certain response costs incurred by the United States at or in connection with the property located at [address or description of location] in [city], \_\_\_\_\_ County, [state] (the “Property”), [known as / which is part of] the \_\_\_\_\_ Superfund Site (“Site”).

2. This Settlement is entered into under the authority of the Attorney General to compromise and settle claims of the United States, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). EPA is proceeding under the CERCLA authority vested in the President of the United States and delegated to the Administrator of EPA and further delegated to the undersigned EPA Regional official.

3. EPA has notified the State of \_\_\_\_\_ (the “State”) of this action.

4. Purchaser agrees to undertake all actions required by this Settlement. In exchange for Purchaser’s performance of the Work and payment for certain response costs, this Settlement resolves Purchaser’s potential CERCLA liability in accordance with the covenants not to sue in Section XVI (Covenants by United States), subject to the reservations and limitations contained in Section XVI. This Settlement is fair, reasonable, in the public interest, and consistent with CERCLA.

5. The United States and Purchaser (collectively, the “Parties”) recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Purchaser in accordance with this Settlement do not constitute an admission of any liability. Purchaser does not admit and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement, the validity of the statement of facts and determinations in Sections IV (Statement of Facts) and V (Determinations). Purchaser agrees not to contest the basis or validity of this Settlement or its terms, or the United States’ right to enforce this Settlement.

## II. PARTIES BOUND

6. This Settlement is binding upon the United States and upon Purchaser and its successors [and heirs]. Unless the United States otherwise consents, any change in ownership or corporate or other legal status of Purchaser does not alter Purchaser’s responsibilities under this Settlement. Except as provided in ¶ 37, Transfer of the Property or any portion thereof does not alter any of Purchaser’s obligations under this Settlement. Purchaser’s responsibilities under this Settlement cannot be assigned except under a modification executed in accordance with ¶ 94.

**Commented [A2]:** Include “heirs” if Purchaser is both an individual and a prospective owner of the Property.

7. Purchaser shall provide notice of this Settlement to officers, directors, employees, agents, contractors, subcontractors, or any person representing Purchaser with respect to the

Property or the Work. Purchaser is responsible for ensuring that such persons act in accordance with the terms of this Settlement.

### III. DEFINITIONS

8. Terms not otherwise defined in this Settlement have the meanings assigned in CERCLA or in regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Settlement, the following definitions apply:

“Action Memorandum” means the EPA [insert either Action Memorandum or Action Memorandum/Enforcement] relating to the [Site/Property] signed on [date], by the Regional Administrator, EPA Region \_\_, or their delegatee, and all attachments thereto. The “Action Memorandum” is attached as Appendix A.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” means a calendar day. In computing any period under this Settlement, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“DOJ” means the United States Department of Justice.

“Effective Date” means the effective date of this Settlement as provided in Section XXIX.

“EPA” means the United States Environmental Protection Agency.

“Existing Contamination” means:

a. any hazardous substances, pollutants or contaminants present or existing on or under the Property prior to or as of the Effective Date;

b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and

c. any hazardous substances, pollutants or contaminants present or existing at the Site as of the Effective Date that migrate onto, under or from the Property after the Effective Date.

“Fund” means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 U.S.C. § 9507.

“Future Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States pays in supporting, developing, implementing, overseeing, or enforcing this Settlement, including: (a) in developing, reviewing and approving deliverables generated under this Settlement; (b) in overseeing Purchaser’s performance of the

**Commented [A3]:** If EPA is incurring costs that are not within this definition, then supplement the definition to reference such costs.



Work; **[insert as appropriate:** (c) in implementing community involvement activities;] (d) in taking a response action described in ¶ 78 because of Purchaser’s failure to take emergency action under ¶ 24; (e) in implementing a Work Takeover under ¶ 30; (f) in securing, implementing, monitoring, maintaining, or enforcing the requirements of Section VIII (Property Requirements); **[insert if Financial Assurance required:** (g) in taking action under ¶ 47 (Access to Financial Assurance);] and (h) in enforcing this Settlement, including all costs paid under Section XIII (Dispute Resolution) and all litigation costs. Future Response Costs also includes all Interest accrued on EPA’s unreimbursed costs.

“Including” or “including” means “including but not limited to.”

“Interest” means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest is the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. As of the date EPA signs this Settlement, rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

“Paragraph” or “¶” means a portion of this Settlement identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” means the United States and Purchaser.

“Property” means that portion of the Site, located at **[address or description of location]** in **[city]**, \_\_\_\_\_ County, **[state]**, encompassing approximately \_\_ acres, to be acquired by Purchaser, which is depicted generally in Appendix D.

“Purchaser” means **[Purchaser name]** as the prospective purchaser of the Property.

“RCRA” means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k (also known as the Resource Conservation and Recovery Act).

“Removal Action” means the removal action **[insert either selected in the Action Memorandum or required under this Settlement]**.

“Section” means a portion of this Settlement identified by a Roman numeral.

“Settlement” means this Administrative Settlement Agreement for Removal Action by Prospective Purchaser, all appendixes attached hereto (listed in Section XXII). If there is a conflict between a provision in Sections I through XXIX and a provision in any appendix, the provision in Sections I through XXIX controls.

“Site” means the \_\_\_\_\_ Superfund Site, **[comprising approximately \_\_ acres, located at [address or description of location] in [city], \_\_\_\_\_ County, [state], and depicted generally on the map attached as Appendix C.**

**Commented [A4]:** Add a definition of Post-Removal Site Control, if necessary:

“Post-Removal Site Control” means actions necessary to ensure the effectiveness and integrity of the Removal Action to be performed under this Settlement consistent with sections 300.415(f) and 300.5 of the NCP and “Policy on Management of Post-Removal Site Control” (OSWER No. 9360.2-02, Dec. 3, 1990).

**Commented [A5]:** It is generally sufficient to describe the property using the street address or the tax parcel ID number, but you also may use the legal property description. Legal property descriptions can be lengthy. It is common in conveyance documents to include the legal property description in an attachment. If using a legal property description, it should be one of the types found in a deed. Ensure definition is consistent with description in ¶ 1.

**Commented [A6]:** The definition of “Site” affects the scope of the covenants not to sue. The definition should conform with the intended scope of the covenants and the general reservations provided in Sections XVI (Covenants by United States). Note that “suitable areas in very close proximity to the contamination necessary for implementation of the response action” should be included within the boundaries of the Site. See NCP, 40 C.F.R. § 300.400(e)(1).

“Special Account” means the special account within the Fund, established for the Site by EPA under section 122(b)(3) of CERCLA.

“State” means the State [or Commonwealth] of \_\_\_\_\_.

“Transfer” means to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“Transferee” means the party to whom a Transfer is made.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” means (a) any “hazardous substance” under section 101(14) of CERCLA; (b) any pollutant or contaminant under section 101(33) of CERCLA; (c) any “solid waste” under section 1004(27) of RCRA; and (d) any [“hazardous material”] under **[insert appropriate state or tribal statutory terminology and citation]**.

“Work” means all obligations of Purchaser under Sections VI (Coordination and Supervision) through X (Indemnification and Insurance).

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with ¶ 30.

#### IV. STATEMENT OF FACTS

9. **[Insert facts.]**

#### V. DETERMINATIONS

10. Based on the Statement of Facts set forth above, and the administrative record, EPA has determined that:

- a. The Site is a “facility” [and the Property is a “facility”] as defined by section 101(9) of CERCLA.
- b. The contamination found at the Site [[and/or] the Property], as identified in the Statement of Facts above, includes [a] “hazardous substance[s]” as defined by section 101(14) of CERCLA.
- c. Purchaser is a “person” as defined by section 101(21) of CERCLA.
- d. The conditions described in [¶] \_\_\_ of] the Statement of Facts above constitute an actual or threatened “release” of a hazardous substance from the Site [[and/or] the Property] as defined by section 101(22) of CERCLA.

**Commented [A7]:** If Section XI (Payment for Response Costs) provides that payments for response costs be deposited into the Site’s Special Account, keep this definition. Modify as appropriate if EPA has established more than one special account, or if the special account was established under a prior settlement.

**Commented [A8]:** Add a definition for the State pollution control agency if needed.

**Commented [A9]:** Add a definition of Statement of Work, as necessary:

“Statement of Work” or “SOW” means the document attached as Appendix B, which describes the activities Purchaser shall perform to implement and maintain the effectiveness of the Removal Action.

When appropriate, a pre-negotiated work plan may be used instead of a SOW.

**Commented [A10]:** Add a definition for “Tribe” if there is one that has a role or interest at the Site:

“Tribe” means the \_\_\_\_\_ Tribe.

If the Site is entirely on tribal land, substitute “Tribe” for “State” throughout the Decree.

**Commented [A11]:** Because the Statement of Facts is site-specific, no model language is provided. Facts should provide context for the Settlement and support the Work required and the covenants provided. Facts should be presented concisely, accurately, and logically. The EPA Region should consider including a discussion of the following points: Site location and description; Site history and operations; Site ownership; enforcement history; past EPA and/or State activities and investigations; conditions and data showing hazardous substances are present and releases or threats of releases exist; identification of Purchaser; Purchaser’s actions at the site (e.g., Purchaser’s representation that it performed of all appropriate inquiry); Purchaser’s current or planned use of the Property; whether the Property is part of an effort to reuse/revitalize an area underutilized or overburdened by pollution; community outreach conducted or to be conducted by Purchaser regarding the project; community support for the project; and community impacts of the Settlement. **The EPA Region should be careful to describe Purchaser’s actions as Purchaser’s representations unless the EPA Region has reviewed the statement carefully enough to be comfortable making the factual assertion itself.** If the EPA Region has not made an imminent and substantial endangerment finding at the Site/Property, the Region should, where the conditions warrant, include data showing that the releases or threats of releases may constitute an imminent and substantial endangerment, e.g., exposure routes, risk assessment, affected populations, environmental harm, potential for fire or explosion, or other dangers, and should be supported by an administrative record. If such a finding has been properly made and documented in an Action Memorandum in accordance with the “Superfund Removal Guidance for Preparing Action Memoranda” (Sept. 2009), available at <https://www.epa.gov/emergency-response/superfund-removal-guidance-preparing-action-memoranda> (and is not being made in the Settlement as well), the signature date of the Action Memorandum should be included in Section V (Determinations), and the Action Memorandum should be attached and incorporated by reference into the Settlement.

e. The conditions described in ¶¶ \_\_\_ of] the Statement of Facts above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of section 106(a) of CERCLA. EPA determined in an Action Memorandum dated [date], that the conditions [at [the Site [and/or]] the Property] [described in ¶¶ \_\_\_ of] the Statement of Facts above] may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of section 106(a) of CERCLA.

**Commented [A12]:** Where an imminent and substantial endangerment may exist at the Site, and at the Property independently of the Site, such a determination should be included in this Section and supported by the Statement of Facts or administrative record.

**Commented [A13]:** Keep this sentence if an endangerment determination is being made in the Settlement.

**Commented [A14]:** Keep this sentence if the endangerment determination was made in the Action Memorandum. (Don't use both sentences.)

f. The Removal Action required by this Settlement is necessary to protect the public health or welfare or the environment.

## VI. COORDINATION AND SUPERVISION

### 11. Purchaser's Project Coordinator

a. Purchaser's Project Coordinator will be responsible for administration of the Work required by this Settlement. Purchaser's Project Coordinator must have sufficient technical expertise to coordinate the Work. To the greatest extent possible, the Project Coordinator shall be present at the Property or readily available during the Work.

b. Notice or communication relating to this Settlement from EPA to Purchaser's Project Coordinator constitutes notice or communication to Purchaser.

### 12. Procedures for Notice and Disapproval

a. Within [10] days after the Effective Date, Purchaser shall designate a Project Coordinator and shall notify EPA of the name, title, contact information, and qualifications of the proposed Project Coordinator, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and to ensure there is no conflict of interest with respect to the project. Purchaser shall notify EPA of the names, titles, contact information, and qualifications of any contractors or subcontractors retained to perform the Work at least [ ] days prior to commencement of such Work.

b. EPA may issue notices of disapproval regarding any proposed Project Coordinator, contractor, or subcontractor, as applicable. If EPA issues a notice of disapproval, Purchaser shall, within [ ] days, submit to EPA a list of supplemental proposed project coordinators, contractors, or subcontractors, as applicable, including a description of the qualifications of each.

c. EPA may disapprove the proposed Project Coordinator, contractor, or subcontractor, based on objective assessment criteria (e.g., experience, capacity, technical expertise), if they have a conflict of interest regarding the project, or any combination of these factors.

d. Purchaser may change its Project Coordinator by following the procedures under ¶¶ 12.a and 12.b.

e. Notwithstanding the procedures of ¶¶ 12.a through 12.c, Purchaser has proposed, and EPA has authorized Purchaser to proceed, regarding the following Project Coordinator and Supervising Contractor: [name and contact information].

**Commented [A15]:** Include this paragraph if EPA has already accepted Purchaser's Project Coordinator/Supervising Contractor.

13. **EPA On-Scene Coordinator.** EPA designates \_\_\_\_\_ of the [insert EPA Regional Office, e.g., Emergency and Enforcement Response Branch, Region \_\_\_\_], as its On-Scene Coordinator ("OSC"). The OSC has the authorities described in the NCP, including oversight of Purchaser's implementation of the Work, authority to halt, conduct, or direct any Work, or to direct any other removal action undertaken at the Property. The OSC's absence from the Site is not a cause for stoppage of work unless specifically directed by the OSC. EPA may change its OSC and will notify Purchaser of any such change.

**Commented [A16]:** In non-time critical removal actions, a Remedial Project Manager (RPM) may oversee the work rather than an OSC. In that case, if the RPM is not also authorized to act as an OSC, replace "On-Scene Coordinator" and "OSC" with "Project Coordinator" here and throughout the Settlement.

## VII. REMOVAL ACTION TO BE PERFORMED

14. Purchaser shall perform all actions necessary to implement, maintain, and monitor the effectiveness of the Removal Action all in accordance with this Settlement and all EPA-approved, conditionally approved, or modified deliverables as required by this Settlement. The Removal Action generally includes the following: \_\_\_\_\_.

**Commented [A17]:** This Section should provide a brief description of the Removal Action consistent with the Action Memorandum [or SOW] and should provide sufficient detail to permit Purchaser to draft a Removal Work Plan. The EPA Region should ensure the description is sufficiently broad and does not unintentionally limit the Removal Action in terms of hazardous substances to be addressed or to site boundaries if hazardous substances are present or migrate beyond boundaries to be addressed. For sites that are located in, or have a direct impact on, residential areas, the work plan should include provisions for expedited generation and communication of data and other relevant information to residents. Consistent with EPA's *Superfund Community Involvement Handbook*, OLEM 9230.0-51 (Mar. 2020), this may be of particular importance and emphasis for areas where EPA's Environmental Justice Screening and Mapping Tool ("EJSscreen") evaluation identifies environmental justice concerns. The EPA Region may append their own SOW or Removal Work Plan; if this situation occurs, modify ¶ 16 (Removal Work Plan) as appropriate. The Handbook is located at <https://www.epa.gov/superfund/superfund-community-involvement-tools-and-resources#handbook>. EJSscreen is available at <https://www.epa.gov/ejscreen>.

15. For any regulation or guidance referenced in the Settlement, the reference will be used to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Purchaser receives notification from EPA of the modification, amendment, or replacement.

**Commented [A18]:** If a planning period of at least 6 months exists, EPA shall require the performance of an Engineering Evaluation/Cost Analysis (EE/CA) as required by the NCP at 40 C.F.R. § 300.415(b)(4). Early Property security requirements, if any, should be added to this Section.

16. **Removal Work Plan.** Within [ ] days after the Effective Date, Purchaser shall submit to EPA for approval in accordance with ¶ 20 (Deliverables: Specifications and Approval) a work plan for performing the Work (the "Removal Work Plan") as described in ¶ 14. The Removal Work Plan must describe all community impact mitigation activities to be performed to: (a) reduce impacts (e.g., air emissions, dust, odor, traffic, noise, negative economic effects) to residential areas, schools, playgrounds, healthcare facilities, or recreational public areas frequented by community members ("Community Areas") during implementation of the Removal Action; (b) conduct monitoring in Community Areas of impacts from the implementation of the Removal Action; (c) communicate validated sampling data; [and] (d) make adjustments during the implementation of the Removal Action in order to further reduce negative impacts to affected Community Areas [; and] (e) [insert other activities as appropriate]. The Removal Work Plan shall contain information about impacts to Community Areas that is sufficient to assist EPA's [On-Scene Coordinator/Community Involvement Coordinator] in performing the evaluations described in the *Superfund Community Involvement Handbook*, OLEM 9230.0-51 (Mar. 2020). The Handbook is located at <https://www.epa.gov/superfund/superfund-community-involvement-tools-and-resources#handbook>. [The Removal Work Plan must provide a description of, and an expeditious schedule for, the actions required by this Settlement.]

**Commented [A19]:** Refer to the Action Memo to ensure description is consistent with EPA's record.

17. **Health and Safety Plan.** Within [ ] days after the Effective Date, Purchaser shall submit to EPA for review and comment a Health and Safety Plan ("HASP") that meets the requirements of 29 C.F.R. § 910.120 for developing the HASP and that describes all activities to be performed to protect on site personnel and area residents from physical, chemical, biological,

**Commented [A20]:** Include this language in ¶ 16 or in the SOW as appropriate based on site-specific circumstances.

and all other hazards related to the performance of Work at the Property under this Settlement. Purchaser shall develop the HASP in accordance with EPA's *Emergency Responder Health and Safety Manual*, OSWER 9285.3-12 (July 2005 and updates), available at [https://response.epa.gov/site/site\\_profile.aspx?site\\_id=2810](https://response.epa.gov/site/site_profile.aspx?site_id=2810). In addition, Purchaser shall ensure that the HASP complies with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. part 1910. If EPA determines that it is appropriate, the HASP must also include contingency planning. **[EPA Region may provide more detail, e.g.,** evacuation plans] Purchaser shall incorporate all changes to the HASP recommended by EPA and shall implement the HASP during the pendency of the Work. Purchaser shall update the HASP as necessary or appropriate during the course of the Work, and/or as requested by EPA.

#### 18. Quality Assurance, Sampling, and Data Analysis

a. Purchaser shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with EPA's *Environmental Information Quality Policy*, CIO 2105.1 (Mar. 31, 2021), available at <https://www.epa.gov/irmpoli8/environmental-information-quality-policy>, the most recent version of *Quality Management Systems for Environmental Information and Technology Programs – Requirements with Guidance for Use*, ASQ/ANSI E4:2014 (Feb. 2014), and *EPA Requirements for Quality Assurance Project Plans*, EPA QA/G-5 (EPA/240/B-01/02) (Mar. 2001), available at <https://www.epa.gov/quality/epa-qar-5-epa-requirements-quality-assurance-project-plans>.

b. Purchaser shall ensure that EPA personnel and its authorized representatives are allowed reasonable access to laboratories used by Purchaser in implementing this Settlement. In addition, Purchaser shall ensure that such laboratories analyze all samples submitted by EPA under the Quality Assurance Project Plan ("QAPP") for quality assurance monitoring, and that sampling and field activities are conducted in accordance with the Agency's *EPA QA Field Activities Procedure*, CIO 2105-P-02.0 (Sept. 24, 2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Purchaser shall ensure that the laboratories it uses for the analysis of samples taken under this Settlement meet the competency requirements set forth in the *Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions*, Directive No. FEM-2011-01 (Nov. 14, 2016), available at <https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to EPA-accepted methods. Accepted EPA methods are documented on the EPA's "Superfund Contract Laboratory Program" website at <https://www.epa.gov/clp>, the "Hazardous Waste Test Methods / SW 846" website (*Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*) at <https://www.epa.gov/hw-sw846>, the "Standard Methods for the Examination of Water and Wastewater" website at <https://www.standardmethods.org/>, and the "Air Toxics - Monitoring Methods" (40 C.F.R. part 136) website at <https://www3.epa.gov/ttnamti1/airtox.html>.

c. Upon request, Purchaser shall provide split or duplicate samples to EPA or its authorized representatives. Purchaser shall notify EPA not less than [seven] days prior to any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA has the right to take any additional samples that EPA deems necessary. Upon request, EPA may provide

**Commented [A21]:** A preview of ANSI E4:2014 is available at [https://webstore.ansi.org/preview-pages/ASQ/preview\\_ASQ+ANSI+E4-2014.pdf](https://webstore.ansi.org/preview-pages/ASQ/preview_ASQ+ANSI+E4-2014.pdf). The document is available for purchase from the ANSI webstore at <https://webstore.ansi.org/Standards/ASQ/asqansie42014>.

to Purchaser split and/or duplicate samples of any samples in connection with EPA’s oversight sampling.

d. Purchaser shall submit to EPA all sampling and tests results and other data obtained or generated by or on behalf of Purchaser or in connection with the implementation of this Settlement. Purchaser shall expedite all data generation and validation for residential sampling activities.

19. **Community Involvement.** EPA has the lead responsibility for implementing community involvement activities at the Site, including the preparation of a community involvement plan, in accordance with the NCP and EPA guidance. As requested by EPA, Purchaser shall participate in community involvement activities, including participation in (a) the preparation of information regarding the Work for dissemination to the public (including compliance schedules and progress reports), with consideration given to the specific needs of the community, including translated materials and mass media and/or Internet notification, and (b) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site.

## 20. Deliverables: Specifications and Approval

a. **General Requirements for Deliverables.** Purchaser shall submit all deliverables to EPA in electronic form, unless otherwise specified by the OSC.

b. **Technical Specifications for Deliverables.** Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (“EDD”) format. **[Specify the EDD format that the EPA Region uses.]** Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

21. **Approval of Deliverables.** After review of the Removal Work Plan and any other deliverable required to be submitted for EPA approval under this Settlement, EPA shall: (a) approve, in whole or in part, the deliverable; (b) approve the submission upon specified conditions and/or require revisions to the deliverable; (c) disapprove, in whole or in part, the deliverable and require revisions to the deliverable; or (d) any combination of the foregoing. If EPA requires revisions, EPA will provide a deadline for the resubmission, and Purchaser shall submit the revised deliverable by the required deadline. Once approved or approved with conditions, Purchaser shall implement the Removal Work Plan or other deliverables in accordance with the EPA-approved schedule. Upon approval or subsequent modification by EPA of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, and any subsequent modifications, will be incorporated into and enforceable under this Settlement; and (2) Purchaser shall take any action required by such deliverable, or portion thereof. Purchaser shall not commence or perform any Work except in conformance with the terms of this Settlement.

## 22. Off-Site Shipments

a. Purchaser may ship hazardous substances, pollutants, and contaminants from the Site to an off-site facility only if it complies with section 121(d)(3) of CERCLA and 40 C.F.R. § 300.440. Purchaser will be deemed to be in compliance with CERCLA § 121(d)(3)

**Commented [A22]:** Insert this paragraph if Post-Removal Site Controls may be needed:

19. **Post-Removal Site Controls.** Purchaser shall submit to EPA for approval a Post-Removal Site Control Plan to develop controls to ensure the effectiveness and integrity of the Removal Action after its completion, and shall implement the Plan and provide verification of any controls put in place.

If the Action Memorandum provides for Post-Removal Site Controls that includes some form of property controls, consider adding a requirement to develop and implement an Institutional Controls Implementation and Assurance Plan (“ICIAP”). Refer to the Model RD/RA SOW for this provision, at [https://cfpub.epa.gov/compliance/models/view.cfm?model\\_ID=543](https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=543).

**Commented [A23]:** EPA’s *Superfund Community Involvement Handbook*, OLEM 9230.0-51 (Mar. 2020) provides guidance on community involvement activities for removal actions, including when and how to prepare a Community Involvement Plan (“CIP”). Consistent with the Handbook, CIPs should be implemented when residential communities may be impacted by the removal action. In other circumstances, the case team may decide that a CIP is not appropriate given the nature and scope of the specific removal action. Regions should evaluate the appropriateness of community impact mitigation activities in the Removal Work Plan under ¶ 16 (or in the SOW) even if a CIP is not prepared. The Handbook is located at <https://www.epa.gov/superfund/superfund-community-involvement-tools-and-resources#handbook>.

**Commented [A24]:** The information in this paragraph is consistent with the EPA National Geospatial Data Policy 2008, which is under review and may be revised at any time. The EPA Region should check <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for the latest guidance on the policy and associated EPA and CERCLA procedures and technical specifications, including standards and quality assurance for geographic information system (GIS) deliverables.

and 40 C.F.R. § 300.440 regarding a shipment if Purchaser obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Purchaser may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the OSC. This written notice requirement will not apply to any off-site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The written notice must include the following information, if available: (1) name and location of the receiving facility; (2) type and quantity of Waste Material to be shipped; (3) schedule for the shipment; and (4) method of transportation. Purchaser also shall notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Purchaser shall provide the written notice after the award of the contract for the Removal Action and before the Waste Material is shipped.

c. Purchaser may ship Investigation Derived Waste ("IDW") from the Site to an off-site facility only if it complies with section 121(d)(3) of CERCLA, 40 C.F.R. § 300.440, EPA's *Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992) available at <https://semspub.epa.gov/work/03/136166.pdf>, and any IDW-specific requirements contained in the Action Memorandum. Wastes shipped off-site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-site for treatability studies, are not subject to 40 C.F.R. § 300.440.

### 23. Permits

a. As provided in CERCLA § 121(e), and section 300.400(e) of the NCP, no permit is required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Purchaser shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

b. Purchaser may seek relief under the provisions of Section XII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 23.a required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. Nothing in this Settlement constitutes a permit issued under any federal or state statute or regulation.

24. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Property that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Purchaser shall: (a) immediately take all appropriate action to

prevent, abate, or minimize such release or threat of release; (b) immediately notify the OSC or, in the event of their unavailability, the EPA Regional Duty Officer at [insert EPA Regional spill phone number] of the incident or Property conditions; and (c) take such actions in consultation with the OSC or authorized EPA officer and in accordance with all applicable provisions of this Settlement, including the Health and Safety Plan, and any other applicable deliverable approved by EPA.

**Commented [A25]:** EPA Regional spill reporting phone numbers are located on the Agency's website at <https://www.epa.gov/pesticide-incidents/how-report-spills-and-environmental-violations>.

25. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Purchaser is required to report under CERCLA § 103 or section 304 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11004, Purchaser shall immediately orally notify the OSC or, in the event of their unavailability, the EPA Regional Duty Officer at [insert EPA Regional spill phone number], and the National Response Center at (800) 424-8802. Purchaser shall also submit a written report to EPA within seven days after the onset of such event that describes (a) the event and (b) all measures taken and to be taken: (1) to mitigate any release or threat of release; (2) to mitigate any endangerment caused or threatened by the release; and (3) to prevent the reoccurrence of any such a release or threat of release. The reporting requirements are in addition to the reporting required by CERCLA § 103 and EPCRA § 304.

26. **Progress Reports.** Commencing upon EPA’s approval of the Removal Work Plan and until issuance of a notice of completion of work under ¶ 28, Purchaser shall submit written progress reports to EPA on a [monthly/weekly] basis, or as otherwise directed in writing by the OSC. These reports must describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

27. **Final Report.** Within [ ] days after completion of all Work required by this Settlement, other than continuing obligations listed in ¶ 28, Purchaser shall submit for EPA review [and approval] a final report regarding the Work.

- a. The final report must:
  - (1) summarize the actions taken to comply with this Settlement;
  - (2) conform to the requirements of section 300.165 of the NCP (“OSC Reports”);
  - (3) list the quantities and types of materials removed off-site or handled on-site;
  - (4) describe the removal and disposal options considered for those materials;
  - (5) identify the ultimate destination(s) of those materials;
  - (6) include the analytical results of all sampling and analyses performed; and

**Commented [A26]:** For more extensive removals, the case team may require compliance with “Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports” (OSWER 9360.3-03, June 1, 1994).



- (7) include all relevant documentation generated during the Work (e.g., manifests, invoices, bills, contracts, and permits) and an estimate of the total costs incurred to complete the Work.

b. The final report must also include the following certification signed by a responsible corporate official of Purchaser or Purchaser's Project Coordinator: "I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### 28. **Notice of Completion of Work**

a. If after reviewing the final report under ¶ 27, EPA determines that all Work, other than the continuing obligations, has been fully performed in accordance with this Settlement, EPA will provide written notice to Purchaser. A notice of completion of work is not a protectiveness determination and does not affect the following continuing obligations:

- (1) [obligations under the Post Removal Site Controls Plan;]
- (2) obligations under Section VIII (Property Requirements);
- (3) payment of Future Response Costs;
- (4) obligations under Section XX (Records); and
- (5) **[add others as appropriate]**.

b. If EPA determines that any Work other than the continuing obligations has not been completed in accordance with this Settlement, EPA will notify Purchaser and provide a list of the deficiencies. Purchaser shall promptly correct all such deficiencies. Purchaser shall submit a modified final report upon completion of the deficiencies.

29. **Compliance with Applicable Law.** Nothing in this Settlement affects Purchaser's obligations to comply with all applicable state and federal laws and regulations, except as provided in section 121(e) of CERCLA and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required under this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. [Purchaser shall include ARARs selected by EPA in the Removal Work Plan.] EPA deems the activities conducted in accordance with this Settlement, if approved by EPA, to be consistent with the NCP as provided under section 300.700(c)(3).

30. **Work Takeover**

a. If EPA determines that Purchaser: (1) has ceased to implement any of the Work required under Section VII (Removal Action to be Performed), (2) is seriously or repeatedly deficient or late in its performance of the Work required under Section VII, or (3) is performing the Work required under Section VII in a manner that may cause an endangerment to public health or welfare or the environment, EPA may issue a notice of Work Takeover to Purchaser, including a description of the grounds for the notice and a period of time (“Remedy Period”) within which Purchaser shall remedy the circumstances giving rise to the notice. The Remedy Period will be [20] days, unless EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be [10] days.

b. If, by the end of the Remedy Period, Purchaser does not remedy to EPA’s satisfaction the circumstances giving rise to Work Takeover Notice, EPA may notify Purchaser and, as it deems necessary, commence a Work Takeover.

c. EPA may conduct the Work Takeover during the pendency of any dispute under Section XIII but shall terminate the Work Takeover if and when: (1) Purchaser remedies, to EPA’s satisfaction, the circumstances giving rise to the notice of Work Takeover; or (2) upon the issuance of a final determination under Section XIII that EPA is required to terminate the Work Takeover.

**VIII. PROPERTY REQUIREMENTS**

31. **Notices.** Purchaser shall provide all legally required notices with respect to the discovery or release of any hazardous substance at the Property that occurs after the Effective Date.

32. **Non-Interference and Access.** Purchaser shall refrain from using the Property in any manner that EPA determines will pose an unacceptable risk to public health or welfare or the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the response action. Upon acquisition of the Property, Purchaser shall provide full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the Property (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the Property). Commencing on the Effective Date, Purchaser shall provide EPA [, the State,] and its [their] representatives, including contractors, and subcontractors, access to the Property [, and to any other property owned or controlled by Purchaser that is part of the Site,] at all reasonable times to conduct any activity regarding the Settlement at the Property, including the following:

**Commented [A27]:** Augment this list as appropriate.

- a. implementing the Work and overseeing compliance with the Settlement;
- b. conducting investigations of contamination at or near the Property;
- c. assessing the need for planning, implementing, or monitoring additional response actions at or near the Property;

- d. implementing a response action by persons performing under EPA oversight;
- e. determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under this Settlement or an EPA decision document for the [Site/Property]; and
- f. implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any institutional controls.

33. **Appropriate Care.** Commencing on the Effective Date, Purchaser shall exercise appropriate care with respect to hazardous substances found at the Property by taking reasonable steps to stop any continuing release; prevent any threatened future release; and prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance.

34. **Land, Water, or Other Resource Use Restrictions**

a. Purchaser shall: (1) remain in compliance with any land use restrictions established in connection with any response action at the Property; (2) implement, maintain, monitor, and report on institutional controls; and (3) not impede the effectiveness or integrity of any institutional control employed at the Property in connection with a response action.

b. [The following is a list of land, water, or other resource use restrictions currently applicable to the Property:

- (1) [Insert applicable restrictions.]

35. **Notice to Successors-in-Title**

a. [Purchaser shall within 15 days after the Effective Date, submit to EPA for approval a notice to be filed in the appropriate land records office regarding the Property. The notice must: (1) include a proper legal description of the Property; (2) provide notice to all successors-in-title that: (i) the Property is part of, or affected by, the Site, (ii) EPA has selected a removal action for the [Site/Property], and (iii) Purchaser has entered into an Administrative Settlement Agreement requiring implementation of this removal action and compliance with the property requirements in this Section; and (3) identify the name, CERCLA docket number, and Effective Date of this Settlement. Purchaser shall record the notice within 10 days after EPA’s approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.]

b. Purchaser shall, prior to entering into a contract to Transfer any of the Property, or 60 days prior to transferring any of the Property, whichever is earlier:

- (1) notify the proposed Transferee that EPA has selected a removal action regarding the [Site/Property], that Purchaser has entered into an Administrative Settlement Agreement requiring implementation of such removal action and compliance with the requirements at the Property in

**Commented [A28]:** If institutional controls have been selected in the Action Memorandum for the response action, refer to the Property Requirements Section of the model Remedial Design/Remedial Action Consent Decree, available at [https://cfpub.epa.gov/compliance/models/view.cfm?model\\_ID=81](https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=81), for appropriate language to add to this Section and the removal work plan or SOW.

**Commented [A29]:** Augment this list as appropriate:  
 (1) prohibiting the following activities which could interfere with the response action: \_\_\_\_\_;  
 (2) prohibiting use of contaminated groundwater;  
 (3) prohibiting the following activities which could result in exposure to contaminants in subsurface soils and groundwater: \_\_\_\_\_;  
 (4) ensuring that any new structures on the Property will not be constructed in the following manner which could interfere with the response action: \_\_\_\_\_;  
 (5) ensuring that any new structures on the Property will be constructed in the following manner which will minimize potential risk of inhalation of contaminants: \_\_\_\_\_; and  
 (6) compliance with the [insert title of Environmental Covenant document], attached as Appendix \_\_\_\_.

this Section (identifying the name, CERCLA docket number, and the Effective Date of this Settlement); and

- (2) notify EPA [and the State] of the name and address of the proposed Transferee and provide EPA [and the State] with a copy of the above notice that it provided to the proposed Transferee, and notify EPA if Purchaser seeks termination of its obligations in accordance with ¶ 37.

36. For so long as Purchaser is an owner or operator of any of the Property, Purchaser shall require that Transferees and other parties with rights to use any of the Property provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Purchaser shall require that Transferees and other parties with rights to use any of the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with any response action, and not contest EPA's authority to enforce any land use restrictions and institutional controls on any of the Property.

37. Upon sale or other conveyance of any of the Property, Purchaser shall require that each Transferee or other holder of an interest in any of the Property agrees to comply with Section XX (Records) and this Section and not contest EPA's authority to enforce any land use restrictions and institutional controls on any of the Property. After EPA's issuance of a notice of completion of work under ¶ 28 and Purchaser's written demonstration to EPA that a Transferee or other holder of an interest in any of the Property agrees to comply with the requirements of this ¶ 37, EPA will notify Purchaser that its obligations under this Settlement, except obligations under Section XX, are terminated with respect to any of the Property.

38. Purchaser shall provide a copy of this Settlement to any current lessee, sublessee, and other party with rights to use any of the Property as of the Effective Date.

39. Notwithstanding any provision of this Settlement, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions and institutional controls, including related enforcement authorities, under CERCLA, RCRA, and any other applicable statute or regulations.

## IX. FINANCIAL ASSURANCE

40. To ensure completion of the Work required under Section VII (Removal Action to be Performed), Purchaser shall secure financial assurance, initially in the amount of \$\_\_\_\_\_ ("Estimated Cost of the Work"), for the benefit of EPA.

41. The financial assurance must: (a) be one or more of the mechanisms listed in ¶ 42, in a form substantially identical to the relevant sample documents available from EPA; and (b) be satisfactory to EPA. As of the date EPA signs this Settlement, the sample documents can be found under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. Purchaser may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, insurance policies, or some combination thereof.

**Commented [A30]:** Any requirement concerning institutional controls must run with the land, unless the particular institutional control is for a specifically limited period of time that will have lapsed by the date of property transfer.

**Commented [A31]:** The EPA Region may consider omitting this section if the estimated cost of the Work is less than \$50,000. When determining whether to include this Section in the Settlement or whether to modify it to limit the form of the financial assurance (formerly known as a performance guarantee) to certain mechanisms (such as excluding the bracketed ¶¶ 42.e (demonstration) or 42.f (corporate guarantee)), case teams should consider the facts and circumstances of each case, including but not limited to: the estimated cost of Work to be performed, the estimated time to complete the Work, the nature and extent of contamination at the Property, whether the financial assurance can be secured before commencement of the Work, the industry sectors in which Purchaser operates, and the financial health of Purchaser, particularly where Purchaser is a limited liability corporation or otherwise does not appear to have sufficient capital if the Work subsequently costs more than anticipated. Case teams are encouraged to include this Section for the more costly and time-consuming removal actions. When this Section is included, case teams should negotiate and finalize the form, substance, and value of Purchaser's financial assurance well before finalizing the Settlement so that the final financial assurance mechanism can take effect within 30 days after the Effective Date. Such review should ensure, among other things, that an instrument or account is established (or can be established) to receive financial assurance resources when needed. Case teams can find the most current sample financial assurance documents in the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. When this Section is included in the Settlement, case teams should examine the form and substance of all financial assurance mechanisms submitted by Purchaser, both initially and over time, to ensure consistency and compliance with this Section (e.g., case teams should ensure that entities providing a demonstration or guarantee under ¶ 42.e or 42.f have: (a) submitted all required documentation so that EPA can determine whether such financial assurance is adequate; and (b) fully and accurately reflected in its submission all of its other applicable financial assurance obligations (under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) to the United States or other governmental entities so all such obligations have been properly accounted for in determining whether such entity meets the financial test criteria). If a Purchaser is a municipality or if case teams have financial assurance questions, contact financial assurance team members within the Office of Site Remediation Enforcement. For more specific information and considerations, see "Guidance on Financial Assurance in Superfund Settlement Agreements and Unilateral Administrative Orders" (Apr 6, 2015), available at <https://www.epa.gov/enforcement/guidance-financial-assurance-superfund-settlements-and-orders/>.

42. The following are acceptable mechanisms:

a. a surety bond guaranteeing payment, performance of the Work, or both, that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. an irrevocable letter of credit, payable to EPA or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. a trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; [or]

d. a policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency; [or]

e. [a demonstration by Purchaser that it meets the relevant test criteria of ¶ 43 [ , accompanied by a standby funding commitment that requires Purchaser to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover]; or]

**Commented [A32]:** A sample of a standby funding commitment is available via the link in ¶ 41.

f. [a guarantee to fund or perform the Work executed in favor of EPA by a company: (i) that is a direct or indirect parent company of Purchaser or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with Purchaser; and (ii) demonstrates to EPA’s satisfaction that it meets the financial test criteria of ¶ 43.]

43. [A Purchaser seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 42.e or 42.f shall, within 30 days of the Effective Date:

a. demonstrate that:

(1) Purchaser or guarantor has:

i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

- iii. tangible net worth of at least \$10 million; and
- iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) Purchaser or guarantor has:

- i. a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii. tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. tangible net worth of at least \$10 million; and
- iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. submit to EPA for Purchaser or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA. As of the date of signature of this Settlement, a sample letter and report are available under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.]

44. [A Purchaser providing financial assurance by means of a demonstration or guarantee under ¶ 42.e or 42.f shall also:

- a. annually resubmit to EPA the documents described in ¶ 43 within 90 days after the close of Purchaser's or guarantor's fiscal year;
- b. notify EPA within 30 days after Purchaser or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and
- c. provide to EPA, within 30 days of EPA's request, reports of the financial condition of Purchaser or guarantor in addition to those specified in ¶ 43; EPA may make such a

request at any time based on a belief that Purchaser or guarantor may no longer meet the financial test requirements of this Section.]

45. Purchaser has selected, and EPA has found satisfactory, a [insert type] as an initial form of financial assurance. Purchaser shall, within [ ] days after the Effective Date, seek EPA's approval of the form of Purchaser's financial assurance. Within 30 days after [the Effective Date / such approval], Purchaser shall secure all executed or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to EPA, the EPA Regional Financial Management Officer, and DOJ.

**Commented [A33]:** If the parties have pre-negotiated the form of the financial assurance, use this sentence.

**Commented [A34]:** Otherwise, use this sentence. (Don't use both sentences.)

46. Purchaser shall diligently monitor the adequacy of the financial assurance. If Purchaser becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Purchaser shall notify EPA of such information within [seven] days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Purchaser of such determination. Purchaser shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Purchaser, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed [60] days. Purchaser shall follow the procedures of ¶ 48 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Purchaser's inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Settlement.

#### 47. Access to Financial Assurance

a. If EPA issues a notice of a Work Takeover under ¶ 30, then, in accordance with any applicable financial assurance mechanism [if a standby funding commitment requirement is included in ¶ 40, insert: including the related standby funding commitment], EPA may require: (1) the performance of the Work; and/or (2) that any funds guaranteed be paid in accordance with ¶ 47.d.

b. If EPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and Purchaser fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 47.d.

c. If, upon issuance of a notice of a Work Takeover under ¶ 30, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism [if a standby funding commitment requirement is included in ¶ 40, insert: including the related standby funding commitment], whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 42.e or 42.f, then EPA is entitled to demand an amount, as determined by

**Commented [A35]:** Case teams should make sure that the "trigger" for obtaining funds and/or work under the financial assurance mechanism in ¶ 47 (Access to Financial Assurance) is consistent with the trigger in the Settlement, e.g., if the Settlement allows EPA to access the funds in the event of a Work Takeover or Purchaser's failure to provide alternative financial assurance 30 days prior to an impending mechanism cancellation, the mechanism should contain equivalent language.

EPA, sufficient to cover the cost of the remaining Work to be performed. Purchaser shall, within [ ] days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 47.d must be, as directed by EPA: (1) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (2) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the Fund or into the Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Fund.

48. **Modification of Amount, Form, or Terms of Financial Assurance.** On any anniversary of the Effective Date, or at any other time agreed to by the Parties, Purchaser may submit a request to change the form, terms, or amount of the financial assurance mechanism. Purchaser shall submit any such request to EPA in accordance with ¶ 45, and shall include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Purchaser of its decision regarding the request. Purchaser may modify the form, terms, or amount of the financial assurance mechanism only: (a) in accordance with EPA's approval; or (b) in accordance with any resolution of a dispute under Section XIII. Purchaser may initiate dispute resolution under Section XIII regarding EPA's decision about a request to change the amount of financial assurance. Any decision made by EPA on a request to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Purchaser pursuant to the dispute resolution provisions under Section XIII. Purchaser shall submit to EPA, within 30 days after receipt of EPA's approval or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

49. **Release, Cancellation, or Discontinuation of Financial Assurance.** Purchaser may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a notice of completion of work under ¶ 28; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final administrative decision resolving such dispute under Section XIII.

## X. INDEMNIFICATION AND INSURANCE

### 50. Indemnification

a. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Purchaser as EPA's authorized representatives under section 104(e)(1) of CERCLA. Purchaser shall indemnify and save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Purchaser's behalf or under its control, in carrying out activities under this Settlement, including any claims arising from any



designation of Purchaser as EPA's authorized representatives under section 104(e)(1) of CERCLA. Further, Purchaser agrees to pay the United States all costs it incurs, including attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities under this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities under this Settlement. Purchaser and any such contractor may not be considered an agent of the United States.

b. The United States shall give Purchaser notice of any claim for which the United States plans to seek indemnification under this ¶ 50, and shall consult with Purchaser prior to settling such claim.

51. Purchaser covenants not to sue and shall not assert any claim against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work or other activities on or relating to the Site, including claims on account of construction delays. In addition, Purchaser shall indemnify and save and hold the United States harmless with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of work on or relating to the Site, including claims on account of construction delays.

52. **Insurance.** Purchaser shall secure, by no later than [15] days before commencing any on-site Work, the following insurance: (a) commercial general liability insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance with limits of liability of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Purchaser under this Settlement. Purchaser shall maintain this insurance until the first anniversary after issuance of EPA's notice of completion of work under ¶ 28. In addition, for the duration of this Settlement, Purchaser shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Purchaser in furtherance of this Settlement. Prior to commencement of the Work, Purchaser shall provide to EPA certificates of such insurance and a copy of each insurance policy. Purchaser shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Purchaser demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering all of the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Purchaser need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Purchaser shall ensure that all submittals to EPA under this Paragraph identify the [Site name, city, state] and the CERCLA docket number for this action.

## XI. PAYMENT FOR RESPONSE COSTS

53. **One-Time Payment.** Within 30 days after the Effective Date, Purchaser shall pay EPA \$\_\_\_\_\_. If the payment required under this Paragraph is late, Purchaser shall pay [, in addition to any stipulated penalties owed under Section XIV,] an additional amount for Interest accrued from the Effective Date until the date of payment.]

**Commented [A36]:** A “One-Time Payment” may be for a payment outside the definition of Future Response Costs and could, for example, cover costs to resolve a lien, costs incurred in negotiating this Settlement, or EPA’s unreimbursed past response costs.

### 54. Payments for Future Response Costs

a. **Periodic Bills.** On a periodic basis, EPA will send Purchaser a bill for Future Response Costs, including a [“**SCORPIOS Report**” or other standard cost summary] listing direct costs paid by EPA and DOJ and related indirect costs. Purchaser may initiate a dispute under Section XIII regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (1) whether EPA has made an arithmetical error; (2) whether EPA has included a cost item that is not within the definition of Future Response Costs; or (3) whether EPA has paid excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Purchaser shall specify in the Notice of Dispute the contested costs and the basis for the objection.

**Commented [A37]:** If purchaser will be pre-paying Future Response Costs, the EPA Region should refer to the model RD/RA CD for relevant provisions, available at [https://cfpub.epa.gov/compliance/models/view.cfm?model\\_ID=81](https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=81), and consult with OSRE when including these provisions.

b. **Payment of Bill.** Purchaser shall pay the bill, or if it initiates dispute resolution under Section XIII, the uncontested portion of the bill, if any, within 30 days after receipt of the bill. Purchaser shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (1) the uncontested bill or portion of bill, if late, and; (2) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment.

55. **Payment Instructions.** Purchaser shall make all payments at <https://www.pay.gov> using the “EPA Miscellaneous Payments Cincinnati Finance Center” link and include references to the CERCLA docket number and Site/Spill ID number listed in ¶ 92 and the purpose of the payment. Purchaser shall send notices of this payment to EPA and include these references.

**Commented [A38]:** The pay.gov system includes alternatives for making payment by credit card, debit card, and automatic clearinghouse (ACH). If Purchaser cannot make payment using the pay.gov system, the EPA attorney should contact the Cincinnati Finance Center about alternative methods of payment.

56. **Deposit of Payments.** EPA may, in its unreviewable discretion, deposit the amounts paid under ¶ [¶ 53 and] 54 in the Fund, in the Special Account, or both. EPA may, in its unreviewable discretion, retain and use any amounts deposited in the Special Account to conduct or finance response actions at or in connection with the Site, or transfer those amounts to the Fund.

**Commented [A39]:** The case team can modify this sentence to provide for different allocations between the Fund and the Special Account.

## XII. FORCE MAJEURE

57. “Force Majeure,” for purposes of this Settlement, means any event arising from causes beyond the control of Purchaser, of any entity controlled by Purchaser, or of Purchaser’s contractors that delays or prevents the performance of any obligation under this Settlement despite Purchaser’s best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Purchaser exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best

efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work[,] [or] increased cost of performance **[insert, if applicable:** or a failure to achieve [performance standards] set forth in the Action Memorandum].

58. If any event occurs for which Purchaser will or may claim a force majeure, Purchaser shall notify EPA’s OSC by email. The deadline for the initial notice is [ ] days after the date Purchaser first knew or should have known that the event would likely delay performance. Purchaser shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Purchaser knew or should have known. Within [ ] days thereafter, Purchaser shall send a further notice to EPA that includes: (a) a description of the event and its effect on Purchasers’ completion of the requirements of the Settlement; (b) a description of all actions taken or to be taken to prevent or minimize the delay; (c) the proposed extension of time for Purchaser to complete the requirements of the Settlement; (d) a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health or welfare or the environment; and (e) all available proof supporting its claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Purchaser from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 57 and whether Purchaser has exercised best efforts under ¶ 57, EPA may, in its unreviewable discretion, excuse in writing Purchaser’s failure to submit timely or complete notices under this Paragraph.

59. EPA will notify Purchaser of its determination whether Purchaser is entitled to relief under ¶ 57, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. Purchaser may initiate dispute resolution under Section XIII regarding EPA’s determination within 15 days after receipt of the determination. In any such proceeding, Purchaser has the burden of proving that it is entitled to relief under ¶ 57 and that its proposed extension was or will be warranted under the circumstances.

60. The failure by EPA to timely complete any activity under this Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Purchaser from meeting one or more deadlines under this Settlement, Purchaser may seek relief under this Section.

### XIII. DISPUTE RESOLUTION

61. Unless otherwise provided in this Settlement, Purchaser shall use the dispute resolution procedures of this Section to resolve any dispute arising under this Settlement. Purchaser shall not initiate a dispute challenging the Action Memorandum.

62. A dispute will be considered to have arisen when Purchaser sends EPA a timely written notice of dispute (“Notice of Dispute”). A notice is timely if sent within 30 days after receipt of the EPA notice or determination giving rise to the dispute or within 15 days in the case

**Commented [A40]:** The dispute resolution process is not a substitute for the modification requirements in Section XXIII.

of a force majeure determination. Disputes arising under this Settlement must in the first instance be the subject of informal negotiations between EPA and Purchaser. The period for informal negotiations may not exceed [ ] days after the dispute arises unless EPA otherwise agrees. If the parties cannot resolve the dispute by informal negotiations, the position advanced by EPA is binding unless Purchaser initiates formal dispute resolution under ¶ 63. [By agreement of the parties, mediation may be used during this informal negotiation period to assist the parties in reaching a voluntary resolution or narrowing of the matters in dispute.]

### 63. Formal Dispute Resolution

a. **Statement of Position.** Purchaser may initiate formal dispute resolution by submitting to EPA, within [seven] days after the conclusion of informal dispute resolution under ¶ 62, an initial Statement of Position regarding the matter in dispute. EPA’s responsive Statement of Position is due within [20] days after receipt of the initial Statement of Position. All statements of position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within [10] days after receipt of the response. If appropriate, EPA may extend the deadlines for filing statements of position for up to [15] days and may allow the submission of supplemental statements of position.

b. **Formal Decision.** The Director of the [Superfund & Emergency Management Division], EPA Region \_\_, will issue a formal decision resolving the dispute (“Formal Decision”) based on the statements of position and any replies and supplemental statements of position. The Formal Decision is binding on Purchaser and shall be incorporated into and become an enforceable part of this Settlement.

64. **[Escrow Account.** For disputes regarding a Future Response Costs billing, Purchaser shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (“FDIC”); (b) remit to that escrow account funds equal to the amount of the contested Future Response Costs; and (c) send to EPA copies of the correspondence and of the payment documentation (e.g., the check) that established and funded the escrow account, including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. EPA may, in its unreviewable discretion, waive the requirement to establish the escrow account. Purchaser shall cause the escrow agent to pay the amounts due to EPA under ¶ 54, if any, by the deadline for such payment in ¶ 54. Purchaser is responsible for any balance due under ¶ 54 after the payment by the escrow agent.]

65. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Settlement, except as EPA agrees. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 68.

## XIV. STIPULATED PENALTIES

66. Unless the noncompliance is excused under Section XII (Force Majeure), Purchaser is liable to the United States for the following stipulated penalties:

**Commented [A41]:** EPA should compile an administrative record regarding the dispute, which would include all statements of position, replies, supplemental statements of position, and the Formal Decision.

**Commented [A42]:** Except for the work takeover penalty, the inclusion of stipulated penalties will be left to the EPA Region’s enforcement discretion. Inclusion of stipulated penalties encourages timely compliance and completion of the response action.

a. for any failure: (1) to pay any amount due under Section XI (Payment for Response Costs); (2) **[include if Financial Assurance required:** to establish and maintain financial assurance in accordance with Section IX]; (3) to submit timely or adequate deliverables under this Settlement, specifically **[list major deliverables]**; (4) **[add other compliance milestones or obligations as necessary]**:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1 <sup>st</sup> through 14 <sup>th</sup> day	\$
15 <sup>th</sup> through 30 <sup>th</sup> day	\$
31 <sup>st</sup> day and beyond	\$

**Commented [A43]:** For each milestone or obligation added here make sure that (a) the Settlement sets forth a date for the start and/or completion of the obligation, or (b) the start or completion date can be readily ascertained after the Effective Date.

b. for any failure to submit timely or adequate deliverables required by this Settlement other than those specified in ¶ 66.a:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1 <sup>st</sup> through 14 <sup>th</sup> day	\$
15 <sup>th</sup> through 30 <sup>th</sup> day	\$
31 <sup>st</sup> day and beyond	\$

67. **Work Takeover Penalty.** If EPA commences a Work Takeover, Purchaser is liable for a stipulated penalty in the amount of \$\_\_\_\_\_. **[Include if Financial Assurance required:** This stipulated penalty is in addition to the remedy available to EPA under ¶ 47 (Access to Financial Assurance).]

68. **Accrual of Penalties**

a. Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Settlement prevents the simultaneous accrual of separate penalties for separate noncompliances with this Settlement. Stipulated penalties accrue regardless of whether Purchaser has been notified of its noncompliance, and regardless of whether Purchaser has initiated dispute resolution under Section XIII, provided, however, that no penalties will accrue as follows:

- (1) with respect to a submission that EPA determines requires revision under ¶ 21, during the period, if any, beginning on the 31<sup>st</sup> day after EPA’s receipt of such submission until the date that EPA notifies Purchaser of any need for revision; or
- (2) with respect to a matter that is the subject of dispute resolution under Section XIII, during the period, if any, beginning on the 21<sup>st</sup> day after the later of the date that EPA’s Statement of Position is received or the date that Purchaser’s reply thereto (if any) is received until the date of the Formal Decision under ¶ 63.

b. If EPA requires revision under ¶ 21, stipulated penalties for revisions to an original deliverable submission accrue during the specified period allowed for resubmission, but are not payable unless the resubmission is disapproved in whole or in part; provided that, if the original deliverable submission was so deficient as to constitute a bad faith lack of effort by Purchaser, the stipulated penalties applicable to the original deliverable submission are due and payable notwithstanding any subsequent resubmission.

69. **Demand and Payment of Stipulated Penalties.** EPA may send Purchaser a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. Purchaser may initiate dispute resolution under Section XIII regarding the demand. Purchaser shall pay the amount demanded or, if Purchaser initiates dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand. Purchaser shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late, and; (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment. Purchaser shall make payment at <https://www.pay.gov> using the link for “EPA Miscellaneous Payments Cincinnati Finance Center,” including a reference to the CERCLA docket number and Site/Spill ID number listed in ¶ 92, and the purpose of the payment. Purchaser shall send a notice of this payment to DOJ and EPA. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Purchaser under this Settlement.

70. Nothing in this Settlement limits the authority of the United States: (a) to seek any remedy otherwise provided by law for Purchaser’s failure to pay stipulated penalties or interest; or (b) to seek any other remedies or sanctions available by virtue of Purchaser’s noncompliance with this Settlement or of the statutes and regulations upon which it is based including penalties under section 106(b) of CERCLA provided, however, that the United States may not seek civil penalties under section 106(b) for any noncompliance for which a stipulated penalty is provided herein, except in the case of a willful noncompliance with this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 30 (Work Takeover).

71. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Settlement.

## XV. CERTIFICATION

72. Purchaser certifies to the best of its knowledge and belief that after thorough inquiry and as of the date of Purchaser’s signature (a) it has not caused or contributed to a release or threat of release of hazardous substances, pollutants or contaminants at the Site; (b) it has fully and accurately disclosed to EPA all information known to Purchaser and all information in the possession or control of its officers, directors, employees, contractors, and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site; and (c) it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any documents and electronically stored information relating to the Site. [Purchaser also certifies that it has fully complied with any and

all EPA requests for information under sections 104(e) and 122(e) of CERCLA, and section 3007 of RCRA.]. [If needed, add a sentence regarding known document or data losses.]

## XVI. COVENANTS BY UNITED STATES

73. **Covenants for Purchaser.** Subject to ¶ 76, the United States covenants not to sue or to take administrative action against Purchaser under sections 106 and 107(a) of CERCLA for Existing Contamination, the Work, and payments under Section XI (Payment for Response Costs).

74. The covenants under ¶ 73: (a) take effect upon the Effective Date; (b) are conditioned on (1) the satisfactory performance by Purchaser of the requirements of this Settlement; and (2) the veracity of the information provided to EPA by Purchaser relating to Purchaser's involvement with the Site and the certification made by Purchaser in ¶ 72; (c) extend to the successors of Purchaser but only to the extent that the successor of Purchaser is assuming all obligations under this Settlement and the alleged liability of the successor of Purchaser is based solely on its status as a successor of Purchaser; and (d) do not extend to any other person.

75. Nothing in this Settlement constitutes a covenant not to sue or not to take action or otherwise limits the ability of the United States or EPA to seek or obtain further relief from Purchaser if the information provided to EPA by Purchaser relating to Purchaser's involvement with the Site or the certification made by Purchaser in ¶ 72 is false or in any material respect inaccurate.

76. **General Reservations.** Notwithstanding any other provision of this Settlement, the United States reserves, and this Settlement is without prejudice to, all rights against Purchaser regarding the following:

- a. liability for failure by Purchaser to meet a requirement of this Settlement;
- b. liability resulting from an act or omission that causes exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees;
- c. liability resulting from the disposal, release, or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;
- d. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site, except as provided in clause c of the definition of Existing Contamination;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- f. criminal liability.

**Commented [A44]:** Since the covenants not to sue are from the United States, the EPA Region negotiating this settlement should use best efforts to advise any other federal agency involved with the Site, or which may have a claim under CERCLA with respect to the Site, of the proposed settlement and shall either seek to obtain its/their approval or reserve any such potential claims. The EPA Region should also advise the Department of Justice of any such federal agencies.

77. With respect to any claim or cause of action asserted by the United States, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

78. Subject to ¶ 73, nothing in this Settlement limits any authority of the United States or EPA to take, direct, or order all appropriate action to protect public health and welfare and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or to request a Court to order such action. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent the United States from seeking legal or equitable relief to enforce the terms of this Settlement or from taking other legal or equitable action as it deems appropriate and necessary.

## XVII. COVENANTS BY PURCHASER

### 79. Covenants by Purchaser

a. Subject to ¶ 80, Purchaser covenants not to sue and shall not assert any claim or cause of action against the United States under CERCLA, RCRA § 7002(a), the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, State law, or at common law regarding Existing Contamination, the Work, payments under Section XI (Payment for Response Costs), and this Settlement.

b. Subject to ¶ 80, Purchaser covenants not to seek reimbursement from the Fund through CERCLA or any other law for the costs regarding the Existing Contamination, the costs of the Work, payments under Section XI (Payment for Response Costs), or any claim arising out of response actions at or in connection with the Site.

80. **Purchaser's Reservation.** The covenants in ¶ 79 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 76.a through 76.e.

81. [Purchaser agrees not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.]

## XVIII.EFFECT OF SETTLEMENT; CONTRIBUTION

82. Except as provided in Section XVII (Covenants by Purchaser), each of the Parties expressly reserves any and all rights (including under section 113 of CERCLA), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

83. The Parties agree that: (a) this Settlement constitutes an administrative settlement under which Purchaser has, as of the Effective Date, resolved liability to the United States within the meaning of sections 113(f)(2) and 113(f)(3)(B) of CERCLA; and (b) Purchaser is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by



section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work, payments under Section XI and all response actions taken or to be taken and all response costs incurred or to be incurred in connection with Existing Contamination by the United States or any other person, except the State. However, if the United States exercises rights under the reservations in ¶¶ 76.a through 76.e, the “matters addressed” in this Settlement will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

84. Purchaser shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify DOJ and EPA in writing no later than 60 days prior to the initiation of such suit or claim. Purchaser shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify DOJ and EPA in writing within 10 days after service of the complaint or claim upon Purchaser. In addition, Purchaser shall notify DOJ and EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

85. Nothing in this Settlement diminishes the right of the United States under sections 113(f)(2) and (3) of CERCLA to pursue any person not a Party to this Settlement to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2).

#### XIX. [RELEASE AND WAIVER OF LIEN(S)]

86. [Subject to the reservation of rights in Section XVI (Covenants by United States), upon payment of the amount specified in Section XI (Payment for Response Costs) and issuance of a notice of completion of work in ¶ 28, EPA agrees (a) to release any lien it may have on the Property under section 107(l) of CERCLA as a result of response actions conducted by EPA at the Property and (b) to release and waive any lien it may have on the Property now and in the future under section 107(r)(2) of CERCLA for costs incurred or to be incurred by EPA in responding to the release or threat of release of Existing Contamination.]

**Commented [A46]:** The EPA Region should consider on a site-specific basis, consistent with EPA guidance, whether all or part of this provision is appropriate.

#### XX. RECORDS

##### 87. Retention of Records and Information

a. Purchaser shall retain, and instruct their contractors and agents to retain, the following documents and electronically stored data (“Records”) until 10 years after a notice of completion of the work under ¶ 28 (“Record Retention Period”):

- (1) All records regarding Existing Contamination or any release or threat of release of hazardous substances, pollutants or contaminants at or from the Site.
- (2) All records regarding Purchaser’s liability and the liability of any other person under CERCLA regarding the Site;

**Commented [A47]:** The case team has flexibility to add to this paragraph other categories of information that the agency wants Purchaser to retain during the Record Retention Period. Be specific about what the agency wants and consider proposals to exclude categories of electronically stored information (“ESI”) that may be inaccessible. Consult DOJ’s e-discovery office coordinator for advice regarding inaccessible ESI.

- (3) All reports, plans, permits, and documents submitted to EPA in accordance with this Settlement, including all underlying research and data; and
- (4) All data developed by, or on behalf of, Purchaser in the course of performing the Work.

b. At the end of the Record Retention Period, Purchaser shall notify EPA that it has 90 days to request Purchaser's Records subject to this Section. Purchaser shall retain and preserve its Records subject to this Section until 90 days after EPA's receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

88. Purchaser shall provide to EPA, upon request, copies of all Records and information required to be retained under this Section. Purchaser shall also comply, as required by law, with any authorized request for information or administrative subpoena issued by EPA or the State.

**89. Privileged and Protected Claims**

a. Purchaser may assert that all or part of a record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the record, provided that Purchaser complies with ¶ 89.b, and except as provided in ¶ 89.c.

b. If Purchaser asserts a claim of privilege or protection, it shall provide EPA with the following information regarding such record: title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a record, Purchaser shall provide the record to EPA in redacted form to mask the privileged or protected portion only. Purchaser shall retain all records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Purchaser's favor.

c. Purchaser shall not make any claim of privilege or protection regarding: (1) any data regarding the Site, including all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any record that Purchaser is required to create or generate in accordance with this Settlement.

90. **Confidential Business Information Claims.** Purchaser is entitled to claim that all or part of a record submitted to EPA under this Section is Confidential Business Information ("CBI") that is covered by section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Purchaser shall segregate all records or parts thereof submitted under this Settlement which it claims are CBI and label them as "claimed as confidential business information" or "claimed as CBI." Records that Purchaser properly labels in accordance with the preceding sentence will be afforded the protections specified in 40 C.F.R. part 2, subpart B. If the records are not properly labeled when they are submitted to EPA, or if EPA notifies Purchaser that the records are not entitled to confidential treatment under the standards of section 104(e)(7) of CERCLA or

**Commented [A49]:** Don't substitute "Record" for "record" here, as this provision is not limited to "Records" referenced in ¶ 87.a.

40 C.F.R. part 2, subpart B, the public may be given access to such records without further notice to Purchaser.

91. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

### XXI. NOTICES AND SUBMISSIONS

92. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Settlement must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Settlement, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to DOJ: *via email to:*  
eescdcopy@usdoj.gov  
Re: DJ# \_\_\_\_\_

As to EPA: *via email to:*  
[EPA OSC's email address],  
Re: Site/Spill ID # \_\_\_\_\_

As to [insert EPA contact title]

As to the EPA Regional Financial Management Officer: *via email to:*  
\_\_\_\_\_@epa.gov  
Re: Site/Spill ID # \_\_\_\_\_

As to Purchaser: *via email to:*  
[Purchaser's Project Coordinator's email address]

**Commented [A50]:** This block of addresses is a table. To make it easier to navigate within it, turn on gridlines as follows: Click anywhere in the table. Under the "Table Tools" menu that appears in the upper ribbon, click the "Layout" button. In the layout ribbon that appears, on the far left, click the "View Gridlines" button.

**Commented [A51]:** As drafted, all submissions are to be sent to the OSC. If all submission should be sent to another EPA contact, such as the Site Attorney/Enforcement Coordinator, add email address to this block.

**Commented [A52]:** If only certain submissions need to be sent to another EPA contact, such as the Site Attorney/Enforcement Coordinator; Director, Superfund & Emergency Management Division; or EPA Project Coordinator, add the contact information to this block (add additional rows as needed) and modify the specific paragraph in the settlement to include the contact title.

### XXII. APPENDIXES

93. The following appendixes are attached to and incorporated into this Settlement.

"Appendix A" is the Action Memorandum.

"Appendix B" is the [SOW][Removal Work Plan].

"Appendix C" is the description [and/or] map of the Site.

"Appendix D" is the description [and/or] map of the Property.

"Appendix E" is a deed of the Property.

“Appendix [ ]” is [for example, institutional control documents].

### **XXIII.MODIFICATIONS**

94. If the OSC determines a modification to any approved deliverable submitted to EPA after the Effective Date is appropriate, the OSC may make such modification in writing or by oral direction. EPA will promptly memorialize in writing any oral modification, but the modification has as its effective date the date of the OSC’s oral direction, unless otherwise indicated. Any other requirements of this Settlement may be modified by mutual agreement of the Parties, and any such modification has as its effective date the date of signature by all Parties.

95. If Purchaser seeks permission to deviate from any approved deliverable [or the SOW/Removal Work Plan], Purchaser’s Project Coordinator shall submit a written request to the OSC outlining the proposed modification and its basis. Purchaser may not proceed with a requested modification under this Paragraph until receiving approval under ¶ 94.

96. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding any deliverable submitted by Purchaser shall relieve Purchaser of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

### **XXIV.SIGNATORIES**

97. [The/Each] undersigned representative of the United States and [the/each] undersigned representative of Purchaser certifies that the signatory is authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Purchaser to this Settlement.

### **XXV. DISCLAIMER**

98. This Settlement is in no way a finding by EPA as to the risks to public health and welfare and the environment that may be posed by contamination at the Property or the Site or a representation by EPA that the Property or the Site is fit for any particular purpose.

### **XXVI.ENFORCEMENT**

99. The Parties agree that the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_ (“Court”) will have jurisdiction, including under section 113(b) of CERCLA for any judicial enforcement action brought with respect to this Settlement.

100. Notwithstanding ¶ 73 of this Settlement, if Purchaser fails to comply with the terms of this Settlement, the United States may file a lawsuit for breach of this Settlement, or any provision thereof, in the Court. In any such action, Purchaser consents to and agrees not to contest the exercise of personal jurisdiction over it by the Court. Purchaser further acknowledges that venue in the Court is appropriate and agrees not to raise any challenge on this basis.

101. If the United States files a civil action as contemplated by ¶ 100 to remedy breach of this Settlement, the United States may seek, and the Court may grant as relief, the following:

(a) an order mandating specific performance of any term or provision in this Settlement, without regard to whether monetary relief would be adequate; and (b) any additional relief that may be authorized by law or equity.

**XXVII. INTEGRATION**

102. This Settlement constitutes the entire agreement among the Parties regarding the subject matter of the Settlement and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of the Settlement.

**XXVIII. PUBLIC COMMENT**

103. This Settlement is subject to a 30-day public comment period, after which the United States may withdraw its consent or seek to modify this Settlement if comments received disclose facts or considerations that indicate that this Settlement is inappropriate, improper, or inadequate.

**XXIX.EFFECTIVE DATE**

104. The effective date of this Settlement is the date upon which both of the following have occurred: (a) EPA issues written notice to Purchaser that the United States, after review of and response to any public comments received, will not withdraw consent or seek to modify this Settlement, and (b) Purchaser acquires the Property. Purchaser shall notify EPA in writing within three days of acquiring the Property.

Signature Page for Administrative Settlement Agreement regarding the [Site name] Superfund Site (CERCLA Docket No. \_\_\_\_\_)

**Commented [A53]:** A separate signature page is required for each settlor.

**IT IS SO AGREED:**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Purchaser  
[Title]  
[Company]  
[Address]

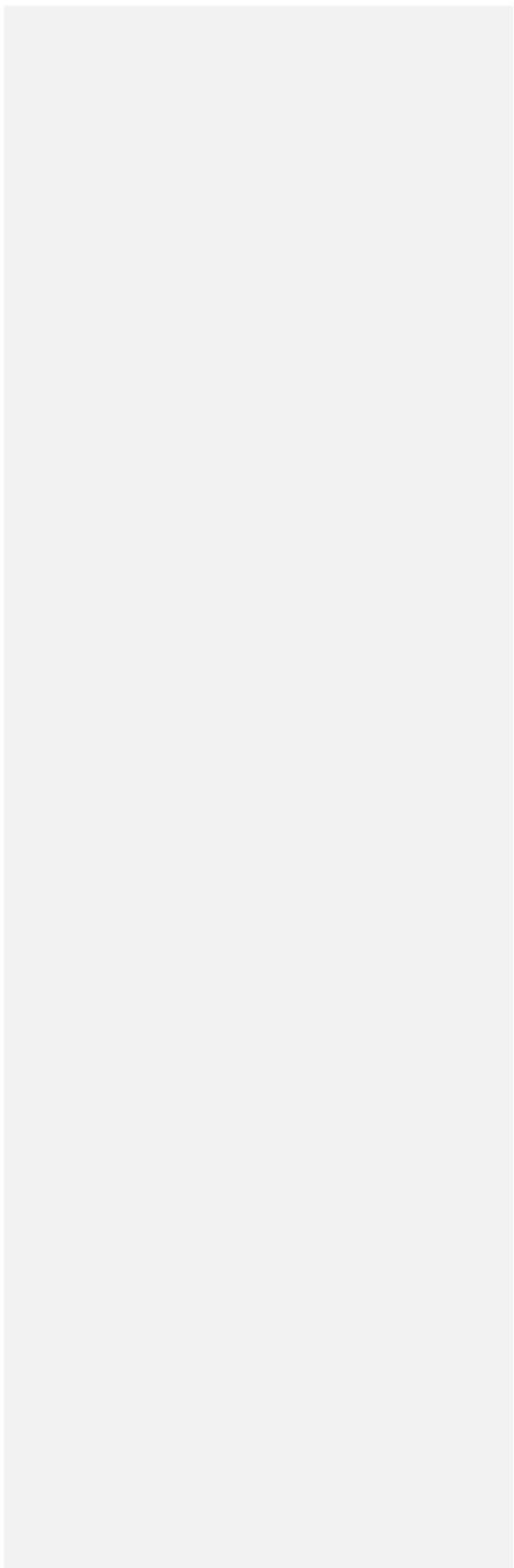
Signature Page for Administrative Settlement Agreement regarding the **[Site name]** Superfund Site (CERCLA Docket No. \_\_\_\_\_)

**IT IS SO AGREED:**

**U.S. ENVIRONMENTAL PROTECTION AGENCY:**

\_\_\_\_\_  
Dated

\_\_\_\_\_  
**[Name]**  
Regional Administrator, Region \_\_\_\_



Signature Page for Administrative Settlement Agreement regarding the [Site name] Superfund Site (CERCLA Docket No. \_\_\_\_\_)

**IT IS SO AGREED:**

**U.S. DEPARTMENT OF JUSTICE:**

[Name]  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division  
Washington, D.C. 20530

**Commented [A54]:** The DOJ attorney assigned to the matter will determine who has the authority to approve the settlement under the current applicable DOJ delegations. Although the AAG does not sign (nor generally does the person to whom the authority has been delegated, if applicable), the AAG's name should appear as shown. The DOJ signatory is usually the attorney assigned to the matter, but they will determine if someone else should sign instead and will revise the signature block below as needed.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
[Name]  
Trial Attorney  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
[Address]  
[Email and phone number, if needed]



## Instructions Regarding Automated Features

FEATURE	INSTRUCTIONS
<b>Inserting text copied from a different document</b>	Text copied from a different document will usually have embedded formatting codes. Pasting the text into your document will cause the formatting codes to be inserted as well, which will create unpredictable and frustrating formatting and numbering results. <b>Therefore, ALWAYS use the “Paste Special” function to insert text copied from another document.</b> Press Ctrl-Alt-V; in the pop-up menu, click “Unformatted Text” and OK. (You can also click the Home tab, Paste, Paste Special, Unformatted Text and OK.)
<b>Inserting a new paragraph</b>	Click at the end of the ¶ immediately preceding the place where you wish to add the new <b>paragraph</b> , and press Enter. To change the new ¶’s outline level use (under the Home tab) the styles menu. For example, to change ¶ 12.b into ¶ 12.a(1), click in that ¶ and then (using the Home tab) click the “LVL 3” style. To change ¶ 13.a into ¶ 14, click in that ¶ and then (using the Home tab) click the “LVL 1” Style. Note that in consent decree models, the letters denoting each background paragraph must be manually updated.
<b>Adding an updateable section or paragraph cross-reference</b>	(a) Click where you wish to insert a cross-reference; (b) Click the “References” tab, and, in the “Captions” box, click “Cross-reference;” (c) In the pop-up menu that appears, make sure the “Reference type” field contains “Numbered item” and the “Insert reference to” field contains “Paragraph Number (full context); (d) In the “For which numbered item” field” select the numbered item (section, paragraph. or subparagraph) you wish to cross-reference and click Insert.
<b>Updating the cross-references</b>	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Update Field;” click OK. Note: If a numbered paragraph that has been cross-referenced elsewhere in the document is deleted, remove the obsolete paragraph cross-reference. Otherwise, when you update the cross-references, the following message will appear: “Error! Reference source not found.”
<b>Updating the table of contents</b>	Right-click in the TOC, and in the pop-up menu, left-click “Update Field.” Or click in the TOC, press F9, click Update Entire Table and OK. If you have just added a new section heading, click Update entire table before pressing Enter.
<b>Inserting a new section heading</b>	Click in the text of the new heading and assign the “SECTION” paragraph style to the text by clicking the “Home” tab, and in Styles box, clicking the “SECTION” style button.) That will add the section number, change the numbering of later sections, and ensure that the new section will be referenced in the table of contents.
<b>Changing the font</b>	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Font;” in the “font” field, select a new font; click OK.