~~PSI Draft: 2019.02.18~~
EPA Revision 2.27.19

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF: Offsite Operable Unit Triple Site Sunnyvale, California Advanced Micro Devices, Inc., Northrup Grumman Systems Corporation, and Philips Semiconductors, Inc~~.~~, Respondents Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622	CERCLA Docket No. ~~.....~~2019-05

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL SITE EVALUATION AND REMOVAL ACTION

DRAFT

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Advanced Micro Devices, Inc., Northrup Grumman Systems Corporation, and Philips Semiconductors, Inc. ("Respondents"). This Settlement provides for the performance by Respondents of a removal site evaluation ("RSE") and removal action to address vapor intrusion and the payment of certain response costs incurred by the United States at or in connection with the Offsite Operable Unit ("OOU") of the Triple Site (the "Site") located in Sunnyvale, Santa Clara County, California.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). This authority was further redelegated by the Regional Administrator of EPA Region 9 to the director, deputy director, and branch chiefs or equivalent of the Superfund Division by Region 9 Delegation Nos. R9 14-14C (May 9, 2018) and R9 14-14D (May 9, 2018).

3. EPA has notified the State of California (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondents recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections [REF _Ref326220061 \r \h] (Findings of Fact) and [REF _Ref326220067 \r \h] (Conclusions of Law and Determinations) of this Settlement. Respondents agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

5. This Settlement is binding upon EPA and upon Respondents and their successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement. In the event of the insolvency or other failure of any Respondent to implement the requirements of this Settlement, the remaining Respondents shall complete all such requirements. As set forth in Paragraph ~~_____~~ 9, Philips Semiconductor, Inc. ("PSI") will be ~~responsible for conducting~~ the initial Work ~~in the first instance.~~Party. Respondents may by agreement among themselves designate a different Respondent as the Work Party, with EPA's consent. If a new Work Party is designated, the new Work Party shall within thirty (30) days designate any new or changed

contractors and ~~Advanced Micro Devices, Inc.~~ a Project Coordinator pursuant to Paragraphs 21 and ~~Northrop Grumman Systems Corporation will receive notice~~22, and ~~have an opportunity to cure,~~ if ~~PSI fails to perform the Work.~~ applicable, Paragraph 80.b.

7. Each undersigned representative of a Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind such Respondent to this Settlement.

8. Respondents shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondent(s) with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Respondents or their contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

9. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"Action Memorandum" shall mean those portions of the EPA Action Memorandum signed on February 18, 2015, by the Acting Assistant Director, Superfund Division, EPA Region IX, and all attachments thereto, which relate to the Site. The "Action Memorandum" is attached as Appendix A.

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, indoor air, or other resource use restrictions are needed to implement the RSE or the removal action.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement as provided in Section [REF _Ref326220092 \r \h].

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section [REF _Ref326220118 \r \h] (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, indoor air, or other resource use restrictions, including, but not limited to, the amount of just compensation), Section [REF _Ref326220129 \r \h] (Emergency Response and Notification of Releases), Paragraph [REF _Ref404327109 \r \h] (Work Takeover), Paragraph [REF _Ref362014500 \r \h] (Access to Financial Assurance), community involvement (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section [REF _Ref326220161 \r \h] (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry ("ATSDR") costs regarding the Site, all Interim Response Costs, and all Interest on those Interim Response Costs Respondents have agreed to pay under this Settlement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from April 1, 2018 to the Effective Date.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

"Interim Response Costs" shall mean all costs, including but not limited to direct and indirect costs, (a) paid by the United States in connection with the Site between April 1, 2018 and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Non-Settling Owner" shall mean any person, other than a Respondent, that owns or controls any Affected Property. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by Non-Settling Owner.

"Offsite Operable Unit" or "OOU" or "Site" and the area to which this Settlement applies shall mean the Offsite Operable Unit described in Section 1.1.4 of the 1991 Record of Decision for the Advanced Micro Devices 901/902 Thompson Place ("AMD 901/902"), TRW Microwave ("TRW") and Signetics sites in Sunnyvale, California. The OOU is generally considered as the 100-acre area, downgradient and north of the AMD 901/902, TRW and Signetics sites, where the contamination from the AMD 901/902, TRW and Signetics sites has come to be located, depicted generally on the map attached as Appendix B.

"Paragraph" shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA and Respondents.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the OOU Site from July 1, 2016 through March 31, 2018, plus Interest on all such costs through such date.

"Post-Removal Site Control" shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Settlement consistent with Sections 300.415(*l*) and 300.5 of the NCP and "Policy on Management of Post-Removal Site Control" (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Respondents" shall mean Advanced Micro Devices, Inc. ("AMD"), Northrop Grumman Systems Corporation ("Northrop"), and PSI.

"Section" shall mean a portion of this Settlement identified by a Roman numeral.

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section [REF _Ref351019729 \r \h]II (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"State" shall mean the State of California.

"Triple Site Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and the March 4, 2015 Administrative Settlement Agreement and Order on Consent for Evaluation of Vapor Intrusion to Indoor Air and Conditional Evaluation and Implementation of Mitigation Measures at the Offsite Operable Unit (OOU), Triple Site Superfund Site ("2015 ASAOC").

"Statement of Work" or "SOW" shall mean the document describing the activities Respondents must perform to implement the RSE and removal action pursuant to this Settlement, as set forth in Appendix C, and any modifications made thereto in accordance with this Settlement.

"Transfer" shall mean 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.

"Triple Site" shall mean the sites described in Sections 1.1.1, 1.1.2, and 1.1.3 of the 1991 Record of Decision for Advanced Micro Devices # 901-902, Signetics, TRW Microwave, Combined Superfund Sites, Sunnyvale, California: (1) the AMD 901/902 Site,

located at 901/902 Thompson Place (now 875 East Arques Avenue) in Sunnyvale, California; (2) the TRW Site, located at 825 Stewart Drive, in Sunnyvale, California; (3) the Signetics Site, located at 811 East Arques Avenue, 440 North Wolfe Road, and 813, 815 and 830 Stewart Drive, in Sunnyvale, California; and (4) the Offsite Operable Unit ("OOU"), a 100-acre area, downgradient and north of the AMD 901/902, TRW and Signetics Sites, defined by the area bounded by the Sunnyvale East Drainage Channel on the west and Santa Paula Avenue on the east, and as the area inside a 5 micrograms per liter (ug/L) contour for trichloroethene ("TCE") in shallow-zone groundwater.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities and obligations Respondents are required to perform under this Settlement except those required by Section [REF _Ref326220583 \r \h] (Record Retention).

"Work Party" shall mean PSI, or any temporary or permanent replacement for PSI designated by Respondents with EPA's consent.

IV. FINDINGS OF FACT

10. The AMD 901/902 and TRW Sites were originally listed on the National Priorities List ("NPL") following the discovery of contaminant releases to soil and groundwater from their facilities located in Sunnyvale, California. The Signetics Site was proposed for listing in 1989 but was not listed because it was being regulated as a RCRA site at that time. Similar to the AMD 901/902 and TRW Sites, the Signetics Site is now a closed facility and has been redeveloped into light commercial use. Releases from the AMD 901/902, TRW and Signetics Sites, primarily volatile organic compounds ("VOCs") such as TCE, have resulted in groundwater contamination and associated vapor intrusion in the OOU.

11. Since 1985, the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Water Board") had been the lead agency for overseeing cleanup activities at the Triple Site, pursuant to the South Bay Multi-Site Cooperative Agreement and South Bay Ground Water Contamination Enforcement Agreement entered into by the Regional Water Board and EPA in May 1985.

12. In 1998, PSI and Northrop (then TRW, Inc.) entered into a contractual agreement regarding, among other matters, the investigation and remediation of the OOU. In that agreement, PSI and TRW agreed that, as between TRW and PSI, PSI would be responsible for conducting certain investigation and remediation activities in the OOU. Nothing in this Settlement is intended to alter or amend PSI and Northrop's 1998 agreement.

13. In 1999, PSI and AMD entered into a contractual agreement regarding, among other matters, the investigation and remediation of the OOU. In that agreement, PSI and AMD agreed that, as between PSI and AMD, PSI would be responsible for conducting investigation and remediation activities in the OOU. Nothing in this Settlement is intended to alter or amend PSI and AMD's 1999 agreement.

~~14. Pursuant to the above-described agreements with Northrop and AMD, PSI will conduct the Work required by this Settlement on behalf of all Respondents.~~

~~15.~~14. PSI has represented to EPA that the assets of Signetics Company which related to prior operations at the Signetics Site, were sold by PSI in or about September 2006, including certain books, documents and records.

~~16.~~15. On December 3, 2013, EPA Region 9 issued to the Regional Water Board supplemental guidelines for evaluation of vapor intrusion to indoor air and short-term inhalation exposures for TCE at the Triple Site and other NPL Sites within the South San Francisco Bay Area. On December 19, 2013, EPA Region 9 issued additional technical comments specific to vapor intrusion evaluations at the Triple Site.

~~17.~~16. On July 9, 2014, EPA Region 9 issued a memorandum to EPA Region 9 Superfund Staff recommending response action levels to address near-term inhalation exposures to TCE in indoor air from subsurface vapor intrusion.

~~18.~~17. On August 4, 2014, the Regional Water Board transferred lead agency oversight responsibilities for the Triple Site to EPA Region 9, subsequent to which EPA and PSI signed the 2015 ASAOC, which required vapor intrusion evaluations and mitigation efforts in residences and schools buildings within the OOU.

~~19.~~18. Pursuant to the 2015 ASAOC and under EPA oversight, PSI completed vapor intrusion evaluations and mitigation efforts in households and school campuses in the OOU. The 2015 ASAOC expired on June 30, 2016 before all response actions were completed. PSI continued work at the OOU after June 30, 2016 and through multiple outreach efforts, has offered sampling to all residences throughout the OOU. As of the Effective Date, PSI has conducted investigations in 227 residences and 39 school buildings~~,~~ and installed ~~24~~ mitigation systems in ~~27~~ residences and ~~12~~ school buildings where appropriate. As of the Effective Date, all properties with elevated TCE levels exceeding EPA's health-protective screening criteria have been addressed via mitigation plans where consent from the property owners has been received. Any residential and school buildings that show elevated TCE levels have been or are being addressed by PSI pursuant to the 2015 ASAOC or this ASAOC.

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V. CONCLUSIONS OF LAW AND DETERMINATIONS

~~20.~~19. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The OOU is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the OOU, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)(2). Respondents were the "owners" and/or "operators" of the electronics research and development facilities at the AMD 901/902, TRW and Signetics Sites at the time of disposal of hazardous substances at the facilities, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. EPA determined in an Action Memorandum, dated February 18, 2015, that the conditions at the Triple Site, and also described in the Findings of Fact 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, 42 U.S.C. § 9606(a).

g. The RSE and any removal action required by this Settlement are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

~~21.~~20. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND REMEDIAL PROJECT MANAGER

~~22.~~21. Respondents shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within thirty (30) days after the Effective Date. Respondents shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least thirty (30) days prior to commencement of such Work, unless such contractors or subcontractors have already been performing environmental investigatory or remedial work for Respondents at the Site and such notification was previously made to EPA~~.~~. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected

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contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within twenty-one (21) days after EPA's disapproval. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

~~23.~~22. ~~Within thirty (30) days after~~The Work Party has designated, and EPA has not disapproved, the ~~Effective Date, PSI, with the consent of AMD and NGC, shall designate a~~following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondents required by this Settlement ~~and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications.~~: J. Wesley Hawthorne, President, Locus Technologies, 299 Fairchild Drive, Mountain View, CA 94043, 415-799-9937, [HYPERLINK "mailto:hawthornej@locustec.com"]. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. ~~EPA retains the right to disapprove of any designated Project Coordinator who does not meet the requirements of Paragraphxx.~~ If EPA disapproves of the designated Project Coordinator, ~~PSI, with the consent of AMD and NGC~~the Work Party, shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within fourteen (14) days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondents' Project Coordinator shall constitute notice or communication to all Respondents.

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~~24.~~23. EPA has designated Melanie Morash, Remedial Project Manager ("RPM") of the Superfund Division, as its Project Coordinator. EPA and Respondents shall have the right, subject to Paragraph [REF _Ref326154507 \r \h]xx, to change their respective designated RPM or Project Coordinator. Respondents shall notify EPA fourteen (14) days before such a change is made. The initial notification by Respondents may be made orally, but shall be promptly followed by a written notice.

~~25.~~24. EPA's Project Coordinator shall be responsible for overseeing Respondents' implementation of this Settlement. In addition, EPA's Project Coordinator shall have the authority vested in an OSC or RPM by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other removal action undertaken at the Site. Absence of the EPA Project Coordinator from the Site shall not be cause for stoppage of work unless specifically directed by the EPA Project Coordinator.

VIII. WORK TO BE PERFORMED

~~26.~~25. Respondents shall conduct the Work and prepare and implement all plans in accordance with the provisions of this Settlement, the attached SOW, the Action Memorandum, CERCLA, and the NCP, and consistent with applicable EPA guidance.

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~~27.~~26. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from EPA of the modification, amendment, or replacement.

IX. SUBMISSION AND APPROVAL OF DELIVERABLES

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~~28.~~27. Submission of Deliverables

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a. General Requirements for Deliverables

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(1) Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to the RPM by e-mail or via other method of electronic submission for documents too large to e-mail. Respondents shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph [REF _Ref404258275 \r \h]~~.b.~~27.b. All other deliverables shall be submitted to EPA in the form specified by the RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide EPA with paper copies of such exhibits upon request.

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b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at https://www.epa.gov/geospatial/epa-metadata-editor.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult https://www.epa.gov/geospatial/geospatial-policies-and-standards for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

28. ~~29.~~ **Approval of Deliverables.**

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a. ~~a.~~ **Initial Submissions**

(1) ~~(1)~~ After review of any deliverable that is required to be submitted for EPA approval under this Settlement or the attached SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

(2) ~~(2)~~ EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause an imminent and substantial threat to human health or the environment; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. ~~b.~~ **Resubmissions**. Upon receipt of a notice of disapproval under Paragraph ~~32~~28.a (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph ~~32~~28.a, ~~Respondent~~Respondents shall, within thirty (30) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring ~~Respondent~~Respondents to correct the deficiencies; or (e) any combination of the foregoing.

c. **Implementation.** Upon approval, approval upon conditions, or modification by EPA under Paragraph ~~32~~28.a (Initial Submissions) or Paragraph ~~32~~28.b (Resubmissions), of any deliverable, or any portion thereof: (i) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (ii) ~~Respondent~~Respondents shall take any action required by such deliverable, or portion thereof. Implementation of any non-deficient portion of a submission shall not relieve ~~Respondent~~Respondents of any liability for penalties under Section XIX (Stipulated Penalties) for violations of this Settlement.

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~~QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS~~

29. ~~30.~~ Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA.

30. Respondents shall not proceed with any activities or tasks dependent on the deliverables listed in the SOW until receiving EPA approval, approval on condition, or modification of such deliverables. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondents shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement.

31. For all remaining deliverables not listed in Paragraph 30, Respondents shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval of the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the Work.

32. **Material Defects.** If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 28.a (Initial Submissions) or 28.b (Resubmissions) due to such material defect, Respondents shall be deemed in violation of this Settlement for failure to submit such plan, report, or other deliverable timely and adequately. Respondents may be subject to penalties for such violation as provided in Section XIX (Stipulated Penalties).

33. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

X. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

34. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

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35. ~~31.~~ **Laboratories**

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a. ~~a.~~ Respondents shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Settlement. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the Quality Assurance Project Plan ("QAPP") for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure," CIO 2105-P-02.1 (9/23/2014) available at http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating

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Environmental Measurement Data under Agency-Funded Acquisitions" available at http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/clp), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (https://www.epa.gov/hw-sw846), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" ~~(http://www3.epa.gov/ttnamti1/airtox.html).~~([HYPERLINK "http://www3.epa.gov/ttnamti1/airtox.html"]).

b. ~~b.~~ However, upon approval by EPA, Respondents may use other appropriate analytical method(s), as long as (i) quality assurance/quality control ("QA/QC") criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc.

c. ~~c.~~ Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements.

d. ~~d.~~ Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

36. ~~32.~~ **Sampling**

a. ~~a.~~ Upon request, Respondents shall provide split or duplicate samples to EPA or its authorized representatives. Respondents shall notify EPA not less than seven (7) days in advance of any sample collection activity or promptly following the scheduling of a sampling event with the property owner or tenant, unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondents split or duplicate samples of any samples it takes as part of EPA's oversight of Respondents' implementation of the Work.

b. ~~b.~~ Respondents shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Settlement.

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c. ~~c.~~ Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Respondents object to any other data relating to the Work, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within thirty (30) days after the monthly progress report or other report containing the data.

XI. PROPERTY REQUIREMENTS

37. ~~33.~~ **Agreements Regarding Access and Non-Interference.** Respondents shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondents and the EPA, providing that such Non-Settling Owner: (i) provide the EPA, Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph [REF _Ref410741686 \w \h] (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action, including the restrictions listed in Paragraph [REF _Ref410741693 \w \h] (Land, Water, ~~Vapor Intrusion/~~Indoor Air or Other Resource Use Restrictions). Respondents shall provide a copy of such access and use restriction agreement(s) to EPA.

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Commented [A5]: Internal PSI Note: PSI to revise access agreements to address these topics.

~~a.~~ a. **Access Requirements**. The following is a list of activities for which access is required regarding the Affected Property:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States;

(3) Conducting investigations regarding contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, implementing, or monitoring response actions;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph [REF _Ref326154334 \r \h] (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section [REF _Ref326224302 \r \h] (Access to Information);

(9) Assessing Respondents' compliance with the Settlement;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, indoor air, or other resource use restrictions regarding the Affected Property.

Land, Water, Indoor Air, or Other Resource Use Restrictions. The following is a list of possible future resource use restrictions or other requirements that may be applicable to any Affected Property:

(1) Prohibition on the use of the upper water-bearing aquifers as a source and/or supply of drinking water;

(2) Prohibition on the drilling, construction, installation, inspection, maintenance, replacement, removal, usage, or operation of any groundwater extraction or monitoring wells on any Affected Property, with the exception of any such wells located on or operated on any Affected Property as may be necessary to investigate, characterize and remediate groundwater contamination pursuant to any order of any local, state or federal governmental or regulatory agency.

(3) Requirement for further consideration, investigation and/or mitigation of potential exposures within or above the protective risk range for TCE;

(4) Requirements for occupants and property owners to comply with any building-specific Operations, Maintenance and Monitoring Plans ("OM&M" Plans), which include procedures for ongoing maintenance and periodic monitoring to confirm continued operations of mitigation systems;

(5) Requirements that any new structures on any Affected Property will not be constructed in a manner which could interfere with the removal action, such as a new residential addition that disrupts or shuts down the operation of a previously installed mitigation system; and

(6) Requirements that any new structures on any Affected Property will be constructed only after EPA review and approval of construction plans and in accordance with any EPA requirements to minimize potential risk of inhalation of contaminants.

Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondents

are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section [REF _Ref326224281 \w \h] (Payment of Response Costs).

~~30.~~39. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondents shall cooperate with EPA's efforts to secure and ensure compliance with such institutional controls.

~~31.~~40. In the event of any Transfer of any Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligation to use best efforts to secure access and comply with any land, water, indoor air, or other resource use restrictions regarding any Affected Property covered by this Settlement.

~~32.~~41. Notwithstanding any provision of the Settlement, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, indoor air, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

XII. ACCESS TO INFORMATION

~~33.~~42. Respondents shall provide to EPA, and the State upon EPA's request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

~~34.~~43. **Privileged and Protected Claims**

a. Respondents may assert 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 Respondents comply with Paragraph [REF _Ref358288570 \w \h], and except as provided in Paragraph [REF _Ref383005108 \w \h].

b. If Respondents assert such a privilege or protection, they shall provide EPA with the following information regarding such Record: its 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, Respondents shall provide the Record to EPA in redacted form to mask the privileged or protected portion only.

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Respondents shall retain all Records that they claim 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 Respondents' favor.

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, 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 Respondents are required to create or generate pursuant to this Settlement.

~~35.~~44. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to EPA under this Section or Section [REF _Ref326220583 \w \h * MERGEFORMAT] (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records that Respondents claim to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

~~36.~~45. 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.

XIII. RECORD RETENTION

~~37.~~46. Until ten (10) years after EPA provides Respondents with notice, pursuant to Section [REF _Ref326220653 \r \h] (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. ~~As Respondent performing Work under this Settlement, PSI~~The Work Party must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that ~~PSI~~the Work Party (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

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~~38.~~47. At the conclusion of the document retention period, Respondents shall notify EPA at least ninety (90) days prior to the destruction of any such Records, and, upon request by EPA, and

except as provided in Paragraph [REF _Ref358291431 \r \h] (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA.

~~39.~~48. Except as set forth in Paragraph ~~13~~14 above (specifically in regards to the 2006 sale of Signetics Company's assets including books and records, etc), each Respondent certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law. ~~If Settling Partya~~ Respondent is unable to so certify, it shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all records.

XIV. COMPLIANCE WITH OTHER LAWS

~~40.~~49. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), 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 pursuant to 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.

~~41.~~50. No local, state, or federal permit shall be 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), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section [REF _Ref326225083 \r \h] (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 required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

~~42.~~51. **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 Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at (800) 300-2193 of the incident or Site conditions. In the event that

Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section [REF _Ref326224281 \r \h] (Payment of Response Costs).

~~43.~~52. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), 42 U.S.C. § 11004, Respondents shall immediately orally notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at (800) 300-2193, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

~~44.~~53. For any event covered under this Section, Respondents shall submit a written report to EPA within fourteen (14) days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XVI. PAYMENT OF RESPONSE COSTS

~~45.~~54. **Payment for Past Response Costs**

a. Within thirty (30) days after the Effective Date, ~~PSI, on behalf of~~ Respondents shall pay to EPA ~~-~~$3,000,000.00 for Past Response Costs. By agreement among Respondents, PSI will make the payment for Past Response Costs. Payment made by any Respondent may be made on behalf of all Respondents. Unless otherwise directed by EPA, ~~PSI~~Respondents shall make payment to EPA by one of the methods identified below:

For Fedwire Electronic Funds Transfer ("EFT~~")~~"):

~~a.~~ Payment may be made to~~:~~ EPA to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number A974 and the EPA docket number for this action.

For ACH payment:

~~PSIshall make payment~~Payment may be made to EPA by Automated Clearinghouse (ACH) to:

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PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
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and shall reference Site/Spill ID Number A974 and the EPA docket number for this action.

For online payment:

~~PSI shall make payment~~Payment may be made at https://www.pay.gov to the U.S. EPA account in accordance with instructions to be provided to ~~Respondent~~Respondents by EPA.

For official bank check:

~~PSI shall make payment~~Payment may be made by official bank check made payable to "EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall identify the name and address of the party making payment, the Site name, Site/Spill ID Number A974, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

b. At the time of payment, ~~PSI~~Respondents shall send notice that payment has been made to EPA's Project Coordinator (Melanie Morash at morash.melanie@epa.gov), EPA Site Attorney (Rebekah Reynolds at reynolds.rebekah@epa.gov), EPA Cost Recovery Specialist (Gwendolyn Brown at brown.gwenl@epa.gov), and the EPA Cincinnati Finance Office, by email at cinwd_acctsreceivable@epa.gov, or by mail to:

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EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number A974 and the EPA docket number for this action.

c. **Deposit of Past Response Costs Payments**. The total amount to be paid by ~~PSI, on behalf of~~ Respondents, pursuant to Paragraph [REF _Ref326155583 \w \h] shall be deposited by EPA in the Triple Site 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 EPA Hazardous Substance Superfund.

~~46.~~55. **Payments for Future Response Costs**. Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP. Payment made by any Respondent may be made on behalf of all Respondents.

a. **Periodic Bills**. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a cost summary, for Future Response Costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondents shall make all payments within thirty (30) days after Respondents' receipt of each bill requiring payment, except as otherwise provided in Paragraph [REF _Ref326155627 \r \h] (Contesting Future Response Costs), and in accordance with Paragraphs [REF _Ref326155583 \w \h] and [REF _Ref326155893 \w \h] (Payments for Past Response Costs).

b. **Deposit of Future Response Costs Payments**. The total amount to be paid by Respondents pursuant to Paragraph [REF _Ref247429713 \w \h] (Periodic Bills) shall be deposited by EPA in the Triple Site 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 EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Triple Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.

~~47.~~56. **Interest**. In the event that any payment for Past Response Costs or Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section [REF _Ref326221439 \r \h] (Stipulated Penalties).

~~48.~~57. **Contesting Future Response Costs**. Respondents may initiate the procedures of Section [REF _Ref326220161 \w \h] (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph xx (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the RPM within thirty (30) days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the thirty (30)-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph [REF _Ref326154300 \r \h], and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC") and

remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within fourteen (14) days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph [REF _Ref326154300 \r \h]. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph [REF _Ref326154300 \r \h]. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section [REF _Ref326220161 \r \h] (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XVII. DISPUTE RESOLUTION

~~49.~~58. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

~~50.~~59. **Informal Dispute Resolution**. If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within thirty (30) days after such action. EPA and Respondents shall have thirty (30) days from EPA's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

~~51.~~60. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within thirty (30) days after the end of the Negotiation Period, submit a statement of position to EPA's Director of the Superfund Division. EPA may, within thirty (30) days thereafter, submit a statement of position. Thereafter, an EPA management official at the Director of the Superfund Division level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

~~52.~~61. Except as provided in Paragraph [REF _Ref326155627 \r \h] (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement. Except as provided in Paragraph [REF _Ref326156602 \r \h], stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first

day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section [REF _Ref326221439 \r \h] (Stipulated Penalties).

XVIII. FORCE MAJEURE

~~53.~~62. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents 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 or a failure to attain performance standards set forth in the Action Memorandum.

~~54.~~63. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement, Respondents shall notify EPA's RPM orally or, in his or her absence, the alternate EPA RPM, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 9, within forty-eight (48) hours of when Respondents first knew that the event might cause a delay. Within seven (7) days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all applicable documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents 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 Paragraph [REF _Ref326156611 \r \h] and whether Respondents have exercised their best efforts under Paragraph [REF _Ref326156611 \r \h], EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

~~55.~~64. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. 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. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

~~56.~~65. If Respondents elect to invoke the dispute resolution procedures set forth in Section [REF _Ref326220161 \r \h] (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs [REF _Ref326156611 \r \h] and [REF _Ref326156667 \r \h]. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

~~57.~~66. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XIX. STIPULATED PENALTIES

~~58.~~67. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in ~~Paragraphs 58~~Paragraph 68 for failure to comply with this Settlement, unless excused under Section [REF _Ref326225083 \r \h] (Force Majeure). "Comply," as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement ~~(including those modified by Paragraph xx to allow Northrop and AMD the time and opportunity to cure).~~ EPA will use its enforcement discretion to assess penalties only against the Work Party in the first instance and will not look to the other parties unless the Work Party fails to pay stipulated penalties in a timely manner.

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~~59. **Time to Cure.** As noted in Section IV (Findings of Fact), PSI is conducting the Work and retaining Records as required by this Settlement on behalf of Respondents. Should EPA determine that PSI has failed to comply with any of the applicable requirements of this Settlement such that penalties would otherwise be assessed pursuant to this Section XVII (Stipulated Penalties) or Paragraph xx (Work Takeover), EPA agrees that it will first provide written notice to Northrop and AMD of its intent to assess stipulated penalties or issue a Work Takeover Notice as described in Paragraph xx. Northrop and AMD will then have 60 days (or longer, if a longer time period would be reasonable under the circumstances) to step in and cure any deficiencies or perform required Work, without incurring any penalties under this Settlement.~~

~~60.~~68. Stipulated Penalty Amounts. ~~Subject to the reasonable cure period described in Paragraph xx, the~~The following stipulated penalties shall accrue per violation per day for any noncompliance with this Settlement.

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Penalty Per Violation Per Day	Period of Noncompliance
$ 500.00	1st through 14th day
$ 1000.00	15th through 30th day
$ 2000.00	31st day and beyond

~~61.~~69. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph [REF _Ref326154334 \r \h] (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of $500,000. In the event that the cost of the Work that EPA assumes pursuant to Paragraph ~~70~~80 (Work Takeover) is less than $500,000, Respondent shall be liable for a stipulated penalty in an amount no greater than the cost of the Work that EPA takes over. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs [REF _Ref326154334 \r \h] (Work Takeover) and [REF _Ref362014500 \r \h] (Access to Financial Assurance).

~~62.~~70. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. ~~For avoidance of doubt, penalties do not accrue against Northrop or AMD during the period provided under Paragraph xx above for Northrop and AMD to cure any default in obligations or performance of Work by PSI.~~ Penalties shall continue to accrue during any dispute resolution period, and shall be paid within thirty (30) days after the agreement or the receipt of EPA's decision. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph [REF _Ref326155028 \w \h] (Work Plan and Implementation), during the period, if any, beginning on the thirty-first (31st) day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Division Director of the Superfund Division level, under Paragraph [REF _Ref326218345 \r \h] (Formal Dispute Resolution), during the period, if any, beginning on the twenty-first (21st) day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

~~63.~~71. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

~~64.~~72. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section [REF _Ref326220161 \r \h] (Dispute Resolution) within the thirty (30)-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph [REF _Ref326154300 \r \h] (Payments for Future Response Costs).

~~65.~~73. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph [REF _Ref326156602 \r \h] until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph [REF _Ref326218242 \r \h] until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

~~66.~~74. The payment of penalties and Interest, if any, shall not alter in any way Respondents' obligation to complete the performance of the Work required under this Settlement.

~~67.~~75. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph [REF _Ref404327109 \r \h] (Work Takeover).

~~68.~~76. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XX. COVENANTS BY EPA

~~69.~~77. Except as provided in Section [REF _Ref326225313 \r \h] (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

XXI. RESERVATIONS OF RIGHTS BY EPA

~~70.~~78. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

~~71.~~79. The covenants set forth in Section [REF _Ref326225235 \r \h] (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. liability for failure by Respondents to meet a requirement of this Settlement;

b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

~~73.~~80. **Work Takeover**

a. ~~As noted in Paragraph xx above, EPA shall provide Northrop and AMD with~~In the time and opportunity to cure any default by Philips to perform the required Work ~~under this Settlement before assessing penalties under the Settlement (including the takeover of Work). If~~event EPA determines ~~after the period to cure has expired~~ that ~~Respondents~~the Work Party (1) ~~have~~has ceased implementation of any portion of the Work; (2) ~~are~~is seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondents. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of fourteen (14) days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the fourteen (14)-day notice period specified in Paragraph [REF _Ref403996886 \r \h].a, Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph [REF _Ref403996886 \r \h]-[REF _Ref404343990 \r \h]-.b. Funding of Work Takeover costs is addressed under Paragraph [REF _Ref362014500 \r \h] (Access to Financial Assurance). If within five (5) days of the notice of Work Takeover, one or more of the non-Work Party Respondents provide(s) EPA with a request to cure, EPA will provide an additional period to cure of sixty (60) days, unless EPA determines in EPA's sole discretion that circumstances warrant a shorter period, before taking over the Work.

c. Respondents may invoke the procedures set forth in Paragraph [REF _Ref326218345 \r \h] (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph [REF _Ref403996886 \r \h]-[REF _Ref404343990 \r \h]-.b. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and

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during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph [REF _Ref403996886 \r \h].[REF _Ref404343990 \r \h] until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph [REF _Ref326218345 \r \h] (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY RESPONDENTS

~~73.~~81. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, and this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Past Response Costs, Future Response Costs, and this Settlement; or

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

~~74.~~82. Except as provided in Paragraph [REF _Ref326219259 \r \h * MERGEFORMAT] (Waiver of Claims by Respondents), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section [REF _Ref326225313 \r \h * MERGEFORMAT] (Reservations of Rights by EPA), other than in Paragraph [REF _Ref326219296 \r \h * MERGEFORMAT] (liability for failure to meet a requirement of the Settlement), [REF _Ref326219302 \r \h * MERGEFORMAT] (criminal liability), or [REF _Ref394313395 \r \h * MERGEFORMAT] (violations of federal/state law), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

~~75.~~83. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

~~76.~~84. Respondents reserve, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the

scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

~~77.~~85. **Waiver of Claims by Respondents**

a. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) ***De Micromis* Waiver**. For all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

b. **Exceptions to Waiver**

(1) The waiver under this Paragraph [REF _Ref402348662 \w \h] shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Site against such Respondent.

(2) The waiver under Paragraph [REF _Ref402351252 \w \h] (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

XXIII. OTHER CLAIMS

~~78.~~86. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The

United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

~~79.~~87. Except as expressly provided in Paragraphs [REF _Ref326219259 \r \h] (Waiver of Claims by Respondents) and Section [REF _Ref326225235 \r \h] (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

~~80.~~88. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIV. EFFECT OF SETTLEMENT/CONTRIBUTION

~~81.~~89. Except as provided in Paragraphs [REF _Ref326219259 \r \h] (Waiver of Claims by Respondents), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section [REF _Ref326220423 \r \h] (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which 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. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

~~82.~~90. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) 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, Past Response Costs, and Future Response Costs.

~~83.~~91. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

~~84.~~92. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within ten (10) days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within ten (10) days after

service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

~~85.~~93. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section [REF _Ref326225235 \r \h] (Covenants by EPA).

~~86.~~94. Effective upon signature of this Settlement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Respondent the payment(s) required by Paragraphs [REF _Ref326155588 \r \h] (Payment for Past Response Costs) and, if any, Section [REF _Ref326221439 \r \h] (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph [REF _Ref326219447 \r \h] and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondents that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing ninety (90) days after the date such notice is sent by EPA.

XXV. INDEMNIFICATION

~~87.~~95. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the United States, 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 Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents agree to pay the United States all costs it incurs, including but not limited to 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 Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

~~88.~~96. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

~~89.~~97. Respondents covenant not to sue and agree not to assert any claims or causes of action 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 any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVI. INSURANCE

~~90.~~98. No later than fifteen (15) days before commencing any on-site Work, ~~PSI, on behalf of~~ Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section [REF _Ref326220653 \r \h * MERGEFORMAT] (Notice of Completion of Work), commercial general liability insurance with limits of liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $2 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, ~~PSI, on behalf of~~ Respondents~~,~~ shall provide EPA with certificates of such insurance and a copy of each insurance policy. ~~PSI, on behalf of~~ Respondents~~,~~ shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their 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 Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the Offsite Operable Unit of the Triple Site Superfund Site, Sunnyvale, California, and the EPA docket number for this action. Satisfaction of the insurance requirements of this Section by any Respondent will satisfy the obligations of all Respondents.

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XXVII. FINANCIAL ASSURANCE

~~91.~~99. In order to ensure completion of the Work, ~~PSI, on behalf of Respondents,~~Respondents shall secure financial assurance, initially in the amount of $2,000,000 ("Estimated Cost of the Work"), for the benefit of EPA. Satisfaction of the financial assurance requirements of this section by any Respondent will satisfy the obligations of all Respondents. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

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a. A surety bond guaranteeing payment and/or performance of the Work 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 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;

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;

e. A demonstration by a Respondent that it meets the financial test criteria of Paragraph [REF _Ref462901925 \r \h]; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of Paragraph [REF _Ref362013837 \r \h].

~~93.~~100. ~~PSI, on behalf of~~ Respondents~~,~~ shall, within thirty (30) days after the Effective Date, obtain EPA's approval of the form of Respondents' financial assurance. Within ninety (90) days of such approval, ~~PSI, on behalf of~~ Respondents~~,~~ shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional Financial Assurance Specialist (SFD-7-5) and Regional Financial Management Officer (EMD-4-1) at 75 Hawthorne Street, San Francisco, California, 94105.

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~~93.~~101. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph [REF _Ref462901235 \r \h] or [REF _Ref247353284 \r \h] must, within thirty (30) days of the Effective Date:

a. Demonstrate that:

(1) the affected Respondent 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) The affected Respondent 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 the affected Respondent 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 or 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/.

~~94.~~102. Respondents providing financial assurance by means of a demonstration or guarantee under Paragraph [REF _Ref462901235 \r \h] or [REF _Ref247353284 \r \h] must also:

a. Annually resubmit the documents described in Paragraph [REF _Ref453847742 \r \h] within ninety (90) days after the close of the affected Respondent's or guarantor's fiscal year;

b. Notify EPA within thirty (30) days after the affected Respondent 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 thirty (30) days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in Paragraph [REF _Ref453847742 \w \h * MERGEFORMAT]; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

~~95.~~103. ~~PSI, on behalf of~~ Respondents~~,~~ shall diligently monitor the adequacy of the financial assurance. If any Respondent 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, such Respondent shall notify EPA of such information within fourteen (14) 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 the affected Respondent of such determination. ~~PSI, on behalf of~~ Respondents~~,~~ shall, within sixty (60) 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 the affected Respondent, 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 ninety (90) days. Respondents shall follow the procedures of Paragraph [REF _Ref362014481 \w \h * MERGEFORMAT] (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

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~~96.~~104. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph [REF _Ref404343990 \r \h], then, in accordance with any applicable financial assurance mechanism and/or related standby funding commitment, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph [REF _Ref362014763 \w \h * MERGEFORMAT].

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least thirty (30) days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph [REF _Ref362014763 \w \h * MERGEFORMAT].

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph [REF _Ref404343990 \r \h], either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraph [REF _Ref462901235 \r \h] or [REF _Ref247353284 \r \h], then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within thirty (30) days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph [REF _Ref362014500 \w \h * MERGEFORMAT] shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) 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 EPA Hazardous Substance Superfund or into the Triple Site Special Account within the EPA Hazardous Substance Superfund 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 EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph [REF _Ref362014500 \w \h * MERGEFORMAT] must be reimbursed as Future Response Costs under Section [REF _Ref326224281 \w \h] (Payments for Response Costs).

~~97.~~105. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph [REF _Ref462906777 \r \h], and must 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 Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section [REF _Ref326220161 \w \h] (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within thirty (30) days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph [REF _Ref462906777 \r \h].

~~98.~~106. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section [REF _Ref326220653 \w \h] (Notice of Completion of Work); (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 decision resolving such dispute under Section [REF _Ref326220161 \w \h] (Dispute Resolution).

XXVIII. MODIFICATION

~~99.~~107. EPA's Project Coordinator may modify any plan, schedule, or SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

~~100.~~108. If Respondents seek permission to deviate from any approved work plan, schedule, SOW, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to Paragraph [REF _Ref326219627 \r \h].

~~101.~~109. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXIX. ADDITIONAL REMOVAL ACTION

~~102.~~110. If EPA determines that additional removal actions not included in the Updated Removal Work Plan or other approved plan(s) are necessary to protect public health, welfare, or the environment, and such additional removal actions are consistent with the Action Memorandum and SOW, EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within thirty (30) days after receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a work plan for the additional removal actions. The plan shall conform to the applicable requirements of Section [REF _Ref351036471 \w \h] (Work to Be Performed) of this Settlement. Upon EPA's approval of the plan pursuant to Paragraph [REF _Ref326155028 \r \h] (Work Plan and Implementation), Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the EPA Project Coordinator's authority to make oral modifications to any plan, schedule or submission pursuant to Section [REF _Ref326225793 \r \h] (Modification).

XXX. NOTICE OF COMPLETION OF WORK

~~103.~~111. When EPA determines, after EPA's review of the Final Removal Action Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including Post-Removal Site Controls, land, water, indoor air or other resource use restrictions, payment of Future Response Costs, or record retention, EPA will provide written notice to Respondents. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Removal Work Plan if appropriate in order to correct such deficiencies. ~~PSI, on behalf of Respondents,~~ The Work Party shall implement the modified and approved Removal Work Plan and shall submit a modified Final Removal Action

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Report in accordance with the EPA notice. Failure ~~by Respondents~~ to implement the approved modified Removal Work Plan shall be a violation of this Settlement.

XXXI. PUBLIC COMMENT

~~104.~~112. Final acceptance by EPA of Paragraph ~~(insert paragraph title~~54.a (Payment for Past Response Costs) shall be subject to Section 122(i) of CERCLA, 42 U.S.C.§ 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. EPA may withhold consent from, or seek to modify, all or part of Section [REF _Ref326224281 \r \h] (Payment of Response Costs) of this Settlement if comments received disclose facts or considerations that indicate that Section [REF _Ref326224281 \r \h] of this Settlement is inappropriate, improper, or inadequate. Otherwise, Section [REF _Ref326224281 \r \h] shall become effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section [REF _Ref326224281 \r \h] of this Settlement.

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XXXII. ATTORNEY GENERAL APPROVAL

~~105.~~113. The Attorney General or his designee has approved the response cost settlement embodied in this Settlement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XXXIII. INTEGRATION/APPENDICES

~~106.~~114. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the Settlement t other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement:

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a. "Appendix A" is the Action Memorandum.

b. "Appendix B" is a map of the Site.

c. "Appendix C" is the SOW.

XXXIV. EFFECTIVE DATE

This Settlement shall be effective three (3) days after the Settlement is signed by the Assistant Director or his/her delegatee, who will sign only after all Respondents sign, with the exception of Paragraph ~~(insert paragraph title~~54.a (Payment for Past Response Costs), which shall be effective when EPA issues notice to Respondents that public comments received, if any, do not

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require EPA to modify or withdraw from Paragraph ~~(insert paragraph title~~54.a (Payment for Past Response Costs), the Past Response Cost compromise included within this Settlement~~.]~~.

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IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____	_____
Dated	Dana Barton Assistant Director Superfund Division

Signature Page for Settlement Regarding the Offsite Operable Unit Triple Site Superfund Site

FOR PHILIPS SEMICONDUCTORS, INC:

_____	_____
Dated	Paul Cavanaugh Vice President Philips Semiconductors, Inc. 3000 Minuteman Road Building One Andover, MA 01810
_____	_____
Dated	Joseph E. Innamorati Vice President & Secretary Philips Semiconductors, Inc. 3000 Minuteman Road

Signature Page for Settlement Regarding the Offsite Operable Unit Triple Site Superfund Site

FOR ADVANCED MICRO DEVICES INC.:

_____	_____
Dated	Shaun Moore Corporate Vice President, Legal Advanced Micro Devices, Inc. M/S B100.3 7171 Southwest Pkwy. Austin, TX 78735

Signature Page for Settlement Regarding the Offsite Operable Unit Triple Site Superfund Site

FOR NORTHROP GRUMMAN CORPORATION:

_____	_____
Dated	TBD
	Authorized Signatory
	Northrup Grumman Systems Corporation
	[Address]

Commented [A19]: Wendy, Please insert signatory information

Instructions Regarding Automated Features

FEATURE	INSTRUCTIONS
INSERTING TEXT COPIED FROM A DIFFERENT DOCUMENT	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. **Therefore, ALWAYS use the "Paste Special" function to insert text copied from another document**. 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.)
INSERTING A NEW PARAGRAPH	Click at the end of the ¶ immediately preceding the place where you wish to add the new **paragraph**, 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.
ADDING AN UPDATEABLE SECTION OR PARAGRAPH CROSS-REFERENCE	(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.
UPDATING THE CROSS-REFERENCES	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."
UPDATING THE TABLE OF CONTENTS	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.
INSERTING A NEW SECTION HEADING	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.
CHANGING THE FONT	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.

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