

**APPENDIX F****WORDING FOR AN ESCROW AGREEMENT**Wording for an escrow agreement

Escrow number \_\_\_\_\_

## Paragraph 1. Establishment of escrow account.

It is agreed between the parties that [insert name of licensee] has elected to establish an escrow account with [insert name, address, and position of escrow agent] to provide financial assurance for decommissioning of the facility(ies) in the amounts shown below:

[For each facility for which financial assurance is provided by the escrow agreement, list facility name, address, and license number, corresponding estimated or certified decommissioning costs, and indicate amount of financial assurance provided by the escrow account.]

## Paragraph 2. Description of property in escrow account.

It is hereby acknowledged by the parties that [list the assets that have been delivered to the escrow agent and indicate the market value of each item] has (have) been delivered to escrow and will remain in the escrow account created by this agreement until one of the two conditions stated in paragraph 3 of this agreement have been satisfied.

[Insert name of licensee] warrants to and agrees with [insert name of escrow agent] that, unless otherwise expressly set forth in this agreement: there is no security interest in the property in the escrow account or any part thereof; no financing statement under the uniform commercial code is on file in any jurisdiction claiming a security interest in or describing (whether specifically or generally) the escrow account or any part thereof; and the escrow agent shall have no responsibility at any time to ascertain whether or not any security interest exists or to file any financing statement under the uniform commercial code with respect to the escrow account or any part thereof.

## Paragraph 3. Conditions of escrow agreement.

The property described in paragraph 2 above will remain in the escrow account created by this Agreement until one of the following two conditions has been satisfied:

- (1) The decommissioning activities required by Chapter 3748. of the Revised Code and rules promulgated thereunder have been completed, the license has been terminated, the facility site is available for unrestricted use for any public or private purpose, and the escrow account has been terminated by joint notice, in writing, from [insert name of licensee] and the state of Ohio; or

- (2) The escrow agent, [insert name of escrow agent] has been notified by the state of Ohio, in writing, that the licensee [insert name of licensee], has defaulted on the agreed obligation to carry out the decommissioning for the above listed facility(ies).

Paragraph 4. Disbursement of property in escrow account.

The [insert name of escrow agent] shall make payments from the escrow account upon presentation of a certificate duly executed by the secretary of the [insert name of licensee] attesting to the occurrence of the events, and in the form set forth in the attached specimen certificate, and upon presentation of a certification attesting to the following conditions:

- (1) That decommissioning is proceeding pursuant to a state of Ohio approved plan,
- (2) That the funds withdrawn will be expended for activities undertaken pursuant to that plan, and
- (3) That the state of Ohio has been given thirty days prior notice of [insert name of licensee]'s intent to withdraw funds from the escrow account.

No withdrawal from the account can exceed ten per cent of the outstanding balance of the escrow account or \_\_\_\_\_ dollars, whichever is greater, unless the state of Ohio approval is attached.

Or upon, [insert name of escrow agent] receiving written notification of licensee's default from the state of Ohio, [insert name of escrow agent] shall make payments from the escrow account as the state of Ohio shall direct, in writing, to provide for the payment of the costs of the required decommissioning activities covered by this agreement. The escrow agent shall reimburse the licensee or other persons as specified by the state of Ohio from the escrow account for expenses for required activities in such amounts as the state of Ohio shall direct in writing. In addition, the escrow agent shall refund to [insert name of licensee] such amounts as the state of Ohio specifies, in writing. Upon refund, such funds shall no longer constitute part of the escrow account as described in paragraph 2 above.

Paragraph 5. Irrevocability.

It is also agreed between the parties that this escrow became irrevocable upon delivery to [insert name of escrow agent], the escrow agent, and will remain irrevocable and in full force and effect until the occurrence of one of the conditions described in paragraph 3 above.

Paragraph 6. Powers of the escrow agent.

The only power and duties of the escrow agent shall be to hold the escrow property and to invest and dispose of it in accordance with the terms of this agreement.

Escrow account management

The escrow agent shall invest and reinvest the principal and income of the escrow account and keep the escrow account invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the [insert name of licensee] may communicate in writing to the escrow agent from time to time, subject, however, to the provisions of the escrow account; the escrow agent shall discharge its duties with respect to the escrow account solely in the interest of the state of Ohio and with the care, skill, prudence, and diligence, under the circumstances then prevailing, that persons of prudence, acting in like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims, except that:

- (A) Securities or other obligations of the licensee, or any other owner or operator of the licensed facility(ies), or any of their affiliates as defined in the federal Investment Company Act of 1940, as amended (15 U.S.C. 80a-2(a)), shall not be acquired or held, unless they are securities or other obligations of the federal government;
- (B) The escrow agent is authorized to invest the escrow account in time or demand deposits to the extent insured by an agency of the federal government; and
- (C) The escrow agent is authorized to hold uninvested cash, awaiting investment or distribution, for a reasonable time and without liability for the payment of interest thereon.

#### Express power of the escrow agent

Without in any way limiting the powers and discretion conferred upon the escrow agent by other provisions of this agreement or by law, the escrow agent is expressly authorized and empowered:

- (A) To register any securities held in the escrow account in its own name and to hold any security in bearer form or in book entry or to deposit or arrange for the deposit of any securities issued by the U.S. government, or any agency or instrumentality thereof, with a federal reserve bank, but the books and records of the escrow agent shall at all times show that all such securities are part of the escrow account;
- (B) To deposit any cash in the escrow account in interest-bearing accounts or savings certificates to the extent insured by an agency of the federal government; and
- (C) To pay taxes, from the account, of any kind that may be assessed or levied against the escrow account and all brokerage commissions incurred by the escrow account.

#### Paragraph 7. Annual valuation.

After delivery has been made into this escrow account, the escrow agent shall annually, at least thirty days before the anniversary date of receipt of the property into the escrow account, furnish to the licensee and to the state of Ohio a statement confirming the value of the escrow account. Any securities in the account shall be valued at market value as of no more than sixty days

before the anniversary date of the establishment of the escrow account. The failure of the licensee to object in writing to the escrow agent within ninety days after the statement has been furnished to the licensee shall constitute a conclusively binding assent by the licensee, barring the licensee from asserting any claim or liability against the escrow agent with respect to the matters disclosed in the statement.

Paragraph 8. Successor escrow agent.

Upon ninety days prior notice to the state of Ohio and [insert name of licensee], the escrow agent may resign; upon ninety days notice to the state of Ohio and the escrow agent, [insert name of licensee] may replace the escrow agent; provided that such resignation or replacement is not effective until the escrow agent has appointed a successor escrow agent, the successor accepts the appointment, and the successor is ready to assume its duties as escrow agent. The successor escrow agent shall have the same powers and duties as those conferred upon the escrow agent under this agreement. When the resignation or replacement is effective, the escrow agent shall assign, transfer, and pay over to the successor the funds and properties then constituting the escrow account. If for any reason the licensee cannot or does not act in the event of the resignation of the escrow agent, the escrow agent may apply to a court of competent jurisdiction for the appointment of a successor, or for instructions. The successor escrow agent shall specify the date on which it assumes administration of the escrow account in a writing sent to the licensee, the state of Ohio, and the current escrow agent by certified mail ten days before the change becomes effective. Any expenses incurred by the escrow agent as a result of any of the acts contemplated by this paragraph shall be paid as provided in paragraph 10 of this agreement.

Paragraph 9. Instructions to the escrow agent.

All orders, requests, and instructions from the licensee to the escrow agent shall be in writing, signed by such persons as are signatories to this agreement, or such other designees as the licensee or the state of Ohio may designate in writing. All orders, requests, and instructions from the state of Ohio shall be in writing, signed by the designees of the state of Ohio. The escrow agent shall be fully protected in acting in accordance with such orders, requests, and instructions. The escrow agent shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the licensee or the state of Ohio under this agreement has occurred. The escrow agent shall have no duty to act in the absence of such orders, requests, and instructions from the licensee and/or the state of Ohio, except as provided in this agreement.

Paragraph 10. Compensation and expenses of the escrow agent.

The fee of the escrow agent for its services in establishing the escrow account shall be \$ \_\_\_\_\_, payable at the time of the execution of this agreement, to be borne by [insert name of licensee].

Expenses of the escrow agent for the administration of the escrow account, the compensation of the escrow agent for services subsequent to the establishing of the escrow account to the extent

not paid directly by the licensee, and all other proper charges and disbursements shall be paid from the escrow account.

Paragraph 11. Amendment of agreement.

This agreement may be amended by an instrument in writing executed by the licensee and the escrow agent provided that the licensee has given thirty days prior notice to the state of Ohio.

Paragraph 12. Termination.

This agreement can be terminated by written notice of termination to the escrow agent signed by [insert name of licensee] and the state of Ohio or by the state of Ohio alone if the licensee has ceased to exist.

Paragraph 13. Interpretation.

This escrow agreement constitutes the entire agreement between [insert name of licensee] and [insert name of escrow agent]. The escrow agent shall not be bound by any other agreement or contract entered into by [insert name of licensee], and the only document that may be referenced in case of ambiguity in this escrow agreement is the licensing agreement between [insert name of licensee] and the state of Ohio.

Paragraph 14. Acceptance of appointment by escrow agent.

[Insert name, address, and position of escrow agent] does hereby acknowledge its appointment by [insert name of licensee] to serve as escrow agent for the escrow account created under this agreement and agrees to carry out its obligations and duties as stated in this escrow agreement.

Paragraph 15. Severability.

If any part of this agreement is invalid, it shall not affect the remaining provisions that will remain valid and enforceable.

Paragraph 16.

This agreement shall not become effective and the escrow agent shall have no responsibility hereunder except to return the escrow property to the [insert name of licensee] until the escrow agent shall have received the following and shall have advised [insert name of licensee] in writing that the same are in form and substance satisfactory to the escrow agent:

Certified resolution of its board of directors authorizing the making and performance of this agreement;

Certificate as to the names and specimen signatures of its officers or representatives authorized to sign this agreement and notices, instructions, and other communications hereunder.

[signatures and positions of the designees of the licensee and the escrow agent]

[insert name of escrow agent]

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

[Insert name of licensee]

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date:

Witness by Notary Public

**ESCROW CERTIFICATE OF RESOLUTION**

I \_\_\_\_\_, do hereby certify that I am Secretary of [insert name of licensee], a [insert state of incorporation] corporation, and that the resolution listed below was duly adopted at a meeting of this corporation's board of directors on \_\_\_\_\_, 20\_\_.

In witness whereof, I have hereunto signed my name and affixed the seal of this corporation this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Secretary of [insert name of licensee]

Resolved, that this board of directors hereby authorizes the president, or such other employee of the company as he may designate [insert, as appropriate, "to enter into an escrow agreement" or "to commence decommissioning activities at (name of facility)], with the [insert name of escrow agent] in accordance with the terms and conditions described to this board of directors at this meeting and with such other terms and conditions as the president shall approve with and upon the advice of counsel.

**ESCROW CERTIFICATE OF EVENTS**

[Insert name and address of trustee]

Attention: Escrow Division

Gentlemen:

In accordance with the terms of the agreement with you dated \_\_\_\_\_, I, \_\_\_\_\_, secretary of [insert name of licensee], hereby certify that the following events have occurred:

1. [Insert name of licensee] is required to commence the decommissioning of its facility located at [insert location of facility] (hereinafter called the decommissioning).
2. The plans and procedures for the commencement and conduct of the decommissioning have been approved by the state of Ohio on \_\_\_\_\_ (copy of approval attached).
3. The board of directors of [insert name of licensee] has adopted the attached resolution authorizing the commencement of the decommissioning.

\_\_\_\_\_  
Secretary of [insert name of licensee]

\_\_\_\_\_  
Date



**CERTIFICATE OF DEPOSIT**

Draft negotiable certificate of deposit payable at the expiration of a specified time

Name of bank \_\_\_\_\_

Address of bank \_\_\_\_\_

[Insert name of licensee or applicant] has deposited not subject to check \_\_\_\_\_ dollars (\$\_\_\_\_\_) payable to the order of the holder in current funds [not less than thirty] days after date, upon surrender of this certificate properly endorsed, with interest at the rate of \_\_\_\_\_ per cent per annum from date to maturity only. The rate of interest payable hereunder is subject to change by the bank to such extent as may be necessary to comply with requirements of the federal reserve board made from time to time pursuant to the federal reserve act.

These funds are deposited for the purpose of providing financial assurance for the cost of decommissioning activities as required under Chapter 3748. of the Revised Code and rules promulgated thereunder. Accordingly, this certificate will be renewed automatically unless written notice of (1) the default of the [insert name of licensee or applicant] on these obligations; (2) the termination of the facility license; or (3) the substitution of another financial assurance mechanism is received from [insert name of licensee or applicant].

\_\_\_\_\_  
Cashier

**CERTIFICATE OF DEPOSIT**

Draft negotiable certificate of deposit payable on a certain date

Certificate of deposit

Certificate of deposit \_\_\_\_\_, 20\_\_\_\_.

[Insert name of licensee or applicant] has deposited in the bank the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) payable to the order of the state of Ohio, trustee of standby trust, or escrow agent, \_\_\_\_\_ months after date, with interest thereon at the rate of \_\_\_\_\_ per cent per annum from date, upon presentation of this certificate properly endorsed.

These funds are deposited for the purpose of providing financial assurance for the cost of decommissioning activities as required under Chapter 3748. of the Revised Code and rules promulgated thereunder.

Accordingly, this certificate will be renewed automatically unless written notice of (1) the default of the [insert name of licensee or applicant] on these obligations; (2) the termination of the facility license; or (3) the substitution of another financial assurance mechanism is received from [insert name of licensee or applicant].

The deposit documented in this certificate is insured by the federal deposit insurance corporation.

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Cashier

## **WORDING FOR TRUST FUND**

### Trust Agreement

Trust agreement, the agreement entered into as of [date] by and between [name of licensee], a [name of State] [insert “corporation,” “partnership,” “association,” or “proprietorship”], herein referred to as the “grantor,” and [name and address of a national bank or other trustee acceptable to the state of Ohio], the “trustee.”

Whereas, the state of Ohio, has promulgated regulations pursuant to Chapter 3748. of the Revised Code. These regulations, applicable to the grantor, require that a holder of, or an applicant for, a radioactive material license provide assurance that funds will be available when needed for required decommissioning activities.

Whereas, the grantor has elected to use a trust fund to provide [insert “all” or “part”] of such financial assurance for the facilities identified herein;

Whereas, the grantor, acting through its duly authorized officers, has selected the trustee to be the trustee under this agreement, and the trustee is willing to act as trustee;

Now, therefore, the grantor and the trustee agree as follows:

Section 1. Definitions. As used in this agreement:

(A) The term “grantor” means the state of Ohio licensee who enters into this agreement and any successors or assigns of the grantor.

(B) The term “trustee” means the trustee who enters into this agreement and any successor trustee.

Section 2. Costs of decommissioning. This agreement pertains to the costs of decommissioning the materials and activities identified in license number [insert license number] issued pursuant to rule 3701:1-38-02 of the Administrative Code, as shown in Schedule A (This schedule is contained in the Trust Agreement Schedule following the Standby Trust Agreement).

Section 3. Establishment of fund. The grantor and the trustee hereby establish a trust fund (the fund) for the benefit of the state of Ohio. The grantor and the trustee intend that no third party shall have access to the fund except as provided herein.

Section 4. Payments constituting the fund. Payments made to the trustee for the fund shall consist of cash, securities, or other liquid assets acceptable to the trustee. The fund is established initially as consisting of the property, which is acceptable to the trustee, described in schedule B (This schedule is contained in the Trust Agreement Schedule following the Standby Trust Agreement) attached hereto. Such property and any other property subsequently transferred to the trustee are referred to as the “fund,” together with all earnings and profits thereon, less any

payments or distributions made by the trustee pursuant to this agreement. The fund shall be held by the trustee, in trust, as hereinafter provided. The trustee shall not be responsible nor shall it undertake any responsibility for the amount of, or adequacy of the fund, nor any duty to collect from the grantor, any payments necessary to discharge any liabilities of the grantor established by the state of Ohio.

Section 5. Payment for required activities specified in the plan. The trustee shall make payments from the fund to the grantor upon presentation to the trustee of the following:

(A) A certificate duly executed by the secretary of the depositor attesting to the occurrence of the events, and in the form set forth in the attached specimen certificate (see sample certificate following standby trust), and

(B) A certificate attesting to the following conditions:

(1) That decommissioning is proceeding pursuant to a state of Ohio approved plan.

(2) That the funds withdrawn will be expended for activities undertaken pursuant to that plan, and

(3) That the state of Ohio has been given thirty days prior notice of [insert name of licensee]'s intent to withdraw funds from the trust fund.

No withdrawal from the fund for a particular license can exceed ten per cent of the outstanding balance of fund or \_\_\_\_\_ dollars, whichever is greater, unless the state of Ohio approval is attached.

In the event of the grantor's default or inability to direct decommissioning activities, the trustee shall make payments from the fund as the state of Ohio shall direct, in writing, to provide for the payment of the costs of required activities covered by this agreement. The trustee shall reimburse the grantor or other persons as specified by the state of Ohio from the fund for expenditures for required activities in such amounts as the state of Ohio shall direct in writing. In addition, the trustee shall refund to the grantor such amounts as the state of Ohio specifies in writing. Upon refund, such funds shall no longer constitute part of the fund as defined herein.

Section 6. Trust management. The trustee shall invest and reinvest the principal and income of the fund and keep the fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the grantor may communicate in writing to the trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the fund, the trustee shall discharge its duties with respect to the fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

(A) Securities or other obligations of the grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the federal Investment Company Act of 1940, as amended (15 U.S.C. 80a-2(a)), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(B) The trustee is authorized to invest the fund in time or demand deposits of the trustee, to the extent insured by an agency of the federal government; and

(C) For a reasonable time, not to exceed sixty days, the trustee is authorized to hold uninvested cash, awaiting investment or distribution, without liability for the payment of interest thereon.

Section 7. Commingling and investment. The trustee is expressly authorized in its discretion:

(A) To transfer from time to time any or all of the assets of the fund to any common, commingled, or collective trust fund created by the trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(B) To purchase shares in any investment company registered under the investment company act of 1940 (15 U.S.C. 80a-1 et seq.), including one that may be created, managed, underwritten, or to which investment advice is rendered, or the shares of which are sold by the trustee. The trustee may vote such shares in its discretion.

Section 8. Express powers of trustee. Without in any way limiting the powers and discretion conferred upon the trustee by the other provisions of this agreement or by law, the trustee is expressly authorized and empowered:

(A) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale, as necessary for prudent management of the fund;

(B) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(C) To register any securities held in the fund in its own name, or in the name of a nominee, and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the trustee in other fiduciary capacities, to reinvest interest payments and funds from matured and redeemed instruments, to file proper forms concerning securities held in the fund in a timely fashion with appropriate government agencies, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee or such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the U.S. Government, or any agency or instrumentality thereof, with a federal reserve bank, but the books and records of the trustee shall at all times show that all such securities are part of the fund;

(D) To deposit any cash in the fund in interest-bearing accounts maintained or savings certificates issued by the trustee, in its separate corporate capacity, or in any other banking institution affiliated with the trustee, to the extent insured by an agency of the federal government; and

(E) To compromise or otherwise adjust all claims in favor of or against the fund.

Section 9. Taxes and expenses. All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the fund shall be paid from the fund. All other expenses incurred by the trustee in connection with the administration of this trust, including fees for legal services rendered to the trustee, the compensation of the trustee to the extent not paid directly by the grantor, and all other proper charges and disbursements of the trustee shall be paid from the fund.

Section 10. Annual valuation . After payment has been made into this trust fund, the trustee shall annually, at least thirty days before the anniversary date of receipt of payment into the trust fund, furnish to the grantor and to the state of Ohio a statement confirming the value of the trust. Any securities in the fund shall be valued at market value as of no more than sixty days before the anniversary date of the establishment of the fund. The failure of the grantor to object in writing to the trustee within ninety days after the statement has been furnished to the grantor and the state of Ohio shall constitute a conclusively binding assent by the grantor, barring the grantor from asserting any claim or liability against the trustee with respect to the matters disclosed in the statement.

Section 11. Advice of counsel. The trustee may from time to time consult with counsel with respect to any question arising as to the construction of this agreement or any action to be taken hereunder. The trustee shall be fully protected, to the extent permitted by law, in acting on the advice of counsel.

Section 12. Trustee compensation. The trustee shall be entitled to reasonable compensation for its services as agreed upon in writing with the grantor. (See Schedule C of the Trust Agreement Schedule following the Standby Trust Agreement.)

Section 13. Successor trustee. Upon ninety days notice to the state of Ohio, the trustee may resign; upon ninety days notice to the state of Ohio and the trustee, the grantor may replace the trustee, but such resignation or replacement shall not be effective until the grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the trustee hereunder. Upon the successor trustee's acceptance of the appointment, the trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the fund. If for any reason the grantor cannot or does not act in the event of the resignation of the trustee, the trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust, in a writing sent to the grantor, the state of Ohio, and the present trustee, by certified mail ten days before such change becomes effective. Any expenses incurred by the trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the trustee. All orders, requests, and instructions by the grantor to the trustee shall be in writing, signed by such persons as are signatories to this agreement or such other designees as the grantor may designate in writing. The trustee shall be fully protected in acting without inquiry in accordance with the grantor's orders, requests, and instructions. If the state of Ohio issues orders, requests, or instructions to the trustee these shall be in writing, signed by the state of Ohio or its designees, and the trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the grantor or the state of Ohio hereunder has occurred. The trustee shall have no duty to act in the absence of such orders, requests, and instructions from the grantor and/or the state of Ohio, except as provided for herein.

Section 15. Amendment of agreement. This agreement may be amended by an instrument in writing executed by the grantor and the trustee. All amendments shall meet the relevant regulatory requirements of the state of Ohio.

Section 16. Irrevocability and termination. Subject to the right of the parties to amend this agreement as provided in Section 15, this trust shall be irrevocable and shall continue until terminated at the written agreement of the grantor, the trustee, and the state of Ohio, or by the trustee and the state of Ohio, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the grantor or its successor.

Section 17. Immunity and indemnification. The trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust or in carrying out any directions by the grantor or the state of Ohio issued in accordance with this agreement. The trustee shall be indemnified and saved harmless by the grantor or from the trust fund, or both, from and against any personal liability to which the trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the grantor fails to provide such defense.

Section 18. This agreement shall be administered, construed, and enforced according to the laws of the state of Ohio.

Section 19. Interpretation and severability. As used in this agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this agreement shall not affect the interpretation or the legal efficacy of this agreement. If any part of this agreement is invalid, it shall not affect the remaining provisions which will remain valid and enforceable.

In witness whereof the parties have caused this agreement to be executed by the respective officers duly authorized and the incorporate seals to be hereunto affixed and attested as of the date first written above.

[Insert name of licensee (Grantor)]

[Signature of representative of Grantor]

[Title]

ATTEST:

[Title] [Seal]

[Insert name and address of Trustee]

[Signature of representative of Trustee]

[Title]

ATTEST:

[Title] [Seal]



## **WORDING FOR STANDBY TRUST AGREEMENT**

### Standby Trust Agreement

Trust agreement, the agreement entered into as of [date] by and between [name of licensee], a [name of State] [insert “corporation,” “partnership,” “association,” or “proprietorship”], herein referred to as the “grantor,” and [name and address of a national bank or other trustee acceptable to the state of Ohio], the “trustee.”

Whereas, the state of Ohio, has promulgated regulations pursuant to Chapter 3748. of the Revised Code. These regulations, applicable to the grantor, require that a holder of, or an applicant for, a radioactive material license provide assurance that funds will be available when needed for required decommissioning activities.

Whereas, the grantor has elected to use a [insert “letter of credit,” “line of credit,” “surety bond,” “insurance policy,” “parent company guarantee,” “certificate of credit,” or “deposit of government securities”] to provide [insert “all” or “part”] of such financial assurance for the facilities identified herein; and

WHEREAS, when payment is made under a [insert “letter of credit,” “line of credit,” “surety bond,” “insurance policy,” “parent company guarantee,” “certificate of credit,” or “deposit of government securities”], this standby trust shall be used for the receipt of such payment; and

Whereas, the grantor, acting through its duly authorized officers, has selected the trustee to be the trustee under this agreement, and the trustee is willing to act as trustee;

Now, therefore, the grantor and the trustee agree as follows:

Section 1. Definitions. As used in this agreement:

(A) The term “grantor” means the state of Ohio licensee who enters into this agreement and any successors or assigns of the grantor.

(B) The term “trustee” means the trustee who enters into this agreement and any successor trustee.

Section 2. Costs of decommissioning. This agreement pertains to the costs of decommissioning the materials and activities identified in license number [insert license number] issued pursuant to rule 3701:1-38-02 of the Administrative Code, as shown in Schedule A (This schedule is contained in the Trust Agreement Schedule following the Standby Trust Agreement).

Section 3. Establishment of fund. The grantor and the trustee hereby establish a standby trust fund (the fund) for the benefit of the state of Ohio. The grantor and the trustee intend that no third party shall have access to the fund except as provided herein.

Section 4. Payments constituting the fund. Payments made to the trustee for the fund shall consist of cash, securities, or other liquid assets acceptable to the trustee. The fund is established initially as consisting of the property, which is acceptable to the trustee, described in schedule B (This schedule is contained in the Trust Agreement Schedule following the Standby Trust Agreement) attached hereto. Such property and any other property subsequently transferred to the trustee are referred to as the “fund,” together with all earnings and profits thereon, less any payments or distributions made by the trustee pursuant to this agreement. The fund shall be held by the trustee, in trust, as hereinafter provided. The trustee shall not be responsible nor shall it undertake any responsibility for the amount of, or adequacy of the fund, nor any duty to collect from the grantor, any payments necessary to discharge any liabilities of the grantor established by the state of Ohio.

Section 5. Payment for required activities specified in the plan. The trustee shall make payments from the fund to the grantor upon presentation to the trustee of the following:

(A) A certificate duly executed by the secretary of the depositor attesting to the occurrence of the events, and in the form set forth in the attached specimen certificate, and

(B) A certificate attesting to the following conditions:

(1) That decommissioning is proceeding pursuant to a state of Ohio approved plan.

(2) That the funds withdrawn will be expended for activities undertaken pursuant to that plan, and

(3) That the state of Ohio has been given thirty days prior notice of [insert name of licensee]’s intent to withdraw funds from the trust fund.

No withdrawal from the fund for a particular license can exceed ten per cent of the outstanding balance of fund or \_\_\_\_\_ dollars, whichever is greater, unless the state of Ohio approval is attached.

In the event of the grantor’s default or inability to direct decommissioning activities, the trustee shall make payments from the fund as the state of Ohio shall direct, in writing, to provide for the payment of the costs of required activities covered by this agreement. The trustee shall reimburse the grantor or other persons as specified by the state of Ohio from the fund for expenditures for required activities in such amounts as the state of Ohio shall direct in writing. In addition, the trustee shall refund to the grantor such amounts as the state of Ohio specifies in writing. Upon refund, such funds shall no longer constitute part of the fund as defined herein.

Section 6. Trust management. The trustee shall invest and reinvest the principal and income of the fund and keep the fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the grantor may communicate in writing to the trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the fund, the trustee shall discharge its duties with respect to the fund solely in the interest of the beneficiary and with

the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

(A) Securities or other obligations of the grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the federal Investment Company Act of 1940, as amended (15 U.S.C. 80a-2(a)), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(B) The trustee is authorized to invest the fund in time or demand deposits of the trustee, to the extent insured by an agency of the federal government, and in obligations of the federal government such as GNMA, FNMA, and FHLM bonds and certificates or state and municipal bonds rated BBB or higher by Standard and Poors or Baa or higher by Moody's investment services; and

(C) For a reasonable time, not to exceed sixty days, the trustee is authorized to hold uninvested cash, awaiting investment or distribution, without liability for the payment of interest thereon.

Section 7. Commingling and investment. The trustee is expressly authorized in its discretion:

(A) To transfer from time to time any or all of the assets of the fund to any common, commingled, or collective trust fund created by the trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(B) To purchase shares in any investment company registered under the investment company act of 1940 (15 U.S.C. 80a-1 et seq.), including one that may be created, managed, underwritten, or to which investment advice is rendered, or the shares of which are sold by the trustee. The trustee may vote such shares in its discretion.

Section 8. Express powers of trustee. Without in any way limiting the powers and discretion conferred upon the trustee by the other provisions of this agreement or by law, the trustee is expressly authorized and empowered:

(A) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale, as necessary to allow duly authorized withdrawals at the joint request of the grantor and the state of Ohio or to reinvest in securities at the direction of the grantor;

(B) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(C) To register any securities held in the fund in its own name, or in the name of a nominee, and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the trustee in other fiduciary capacities, to reinvest interest payments and funds from matured and redeemed instruments, to file proper

forms concerning securities held in the fund in a timely fashion with appropriate government agencies, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee or such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the U.S. Government, or any agency or instrumentality thereof, with a federal reserve bank, but the books and records of the trustee shall at all times show that all such securities are part of the fund;

(D) To deposit any cash in the fund in interest-bearing accounts maintained or savings certificates issued by the trustee, in its separate corporate capacity, or in any other banking institution affiliated with the trustee, to the extent insured by an agency of the federal government; and

(E) To compromise or otherwise adjust all claims in favor of or against the fund.

Section 9. Taxes and expenses. All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the fund shall be paid from the fund. All other expenses incurred by the trustee in connection with the administration of this trust, including fees for legal services rendered to the trustee, the compensation of the trustee to the extent not paid directly by the grantor, and all other proper charges and disbursements of the trustee shall be paid from the fund.

Section 10. Annual valuation . After payment has been made into this standby trust fund, the trustee shall annually, at least thirty days before the anniversary date of receipt of payment into the standby trust fund, furnish to the grantor and to the state of Ohio a statement confirming the value of the trust. Any securities in the fund shall be valued at market value as of no more than sixty days before the anniversary date of the establishment of the fund. The failure of the grantor to object in writing to the trustee within ninety days after the statement has been furnished to the grantor and the state of Ohio shall constitute a conclusively binding assent by the grantor, barring the grantor from asserting any claim or liability against the trustee with respect to the matters disclosed in the statement.

Section 11. Advice of counsel. The trustee may from time to time consult with counsel with respect to any question arising as to the construction of this agreement or any action to be taken hereunder. The trustee shall be fully protected, to the extent permitted by law, in acting on the advice of counsel.

Section 12. Trustee compensation. The trustee shall be entitled to reasonable compensation for its services as agreed upon in writing with the grantor. (See Schedule C of the Trust Agreement Schedule following this agreement.)

Section 13. Successor trustee. Upon ninety days notice to the state of Ohio, the trustee may resign; upon ninety days notice to the state of Ohio and the trustee, the grantor may replace the trustee, but such resignation or replacement shall not be effective until the grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the trustee hereunder. Upon the successor

trustee's acceptance of the appointment, the trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the fund. If for any reason the grantor cannot or does not act in the event of the resignation of the trustee, the trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust, in a writing sent to the grantor, the state of Ohio, and the present trustee, by certified mail ten days before such change becomes effective. Any expenses incurred by the trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the trustee. All orders, requests, and instructions by the grantor to the trustee shall be in writing, signed by such persons as are signatories to this agreement or such other designees as the grantor may designate in writing. The trustee shall be fully protected in acting without inquiry in accordance with the grantor's orders, requests, and instructions. If the state of Ohio issues orders, requests, or instructions to the trustee these shall be in writing, signed by the state of Ohio or its designees, and the trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the grantor or the state of Ohio hereunder has occurred. The trustee shall have no duty to act in the absence of such orders, requests, and instructions from the grantor and/or the state of Ohio, except as provided for herein.

Section 15. Amendment of agreement. This agreement may be amended by an instrument in writing executed by the grantor, the trustee and the state of Ohio or by the trustee and the state of Ohio if the grantor ceases to exist.

Section 16. Irrevocability and termination. Subject to the right of the parties to amend this agreement as provided in Section 15, this trust shall be irrevocable and shall continue until terminated at the written agreement of the grantor, the trustee, and the state of Ohio, or by the trustee and the state of Ohio, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the grantor or its successor.

Section 17. Immunity and indemnification. The trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust or in carrying out any directions by the grantor or the state of Ohio issued in accordance with this agreement. The trustee shall be indemnified and saved harmless by the grantor or from the trust fund, or both, from and against any personal liability to which the trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the grantor fails to provide such defense.

Section 18. This agreement shall be administered, construed, and enforced according to the laws of the state of Ohio.

Section 19. Interpretation and severability. As used in this agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each

section of this agreement shall not affect the interpretation or the legal efficacy of this agreement. If any part of this agreement is invalid, it shall not affect the remaining provisions which will remain valid and enforceable.

In witness whereof the parties have caused this agreement to be executed by the respective officers duly authorized and the incorporate seals to be hereunto affixed and attested as of the date first written above.

[Insert name of licensee (Grantor)]

[Signature of representative of Grantor]

[Title]

ATTEST:

[Title]

[Seal]

[Insert name and address of Trustee]

[Signature of representative of Trustee]

[Title]

ATTEST:

[Title]

[Seal]

**TRUST CERTIFICATE OF EVENTS**

[Insert name and address of trustee]

Attention: Trust Division

Gentlemen:

In accordance with the terms of the agreement with you dated \_\_\_\_\_, I, \_\_\_\_\_, secretary of [insert name of licensee], hereby certify that the following events have occurred:

1. [Insert name of licensee] is required to commence the decommissioning of its facility located at [insert location of facility] (hereinafter called the decommissioning).
2. The plans and procedures for the commencement and conduct of the decommissioning have been approved by the state of Ohio on \_\_\_\_\_ (copy of approval attached).
3. The board of directors of [insert name of licensee] has adopted the attached resolution authorizing the commencement of the decommissioning.

\_\_\_\_\_  
Secretary of [insert name of licensee]

\_\_\_\_\_  
Date

**Trust certificate of resolution**

I \_\_\_\_\_, do hereby certify that I am secretary of [insert name of licensee], a [insert state of incorporation] corporation, and that the resolution listed below was duly adopted at a meeting of this corporation's board of directors on \_\_\_\_\_, 20\_\_.

In witness whereof, I have hereunto signed my name and affixed the seal of this corporation this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Secretary of [insert name of licensee]

Resolved, that this board of directors hereby authorizes the president, or such other employee of the company as he may designate, to commence decommissioning activities at [insert name of facility] in accordance with the terms and conditions described to this board of directors at this meeting and with such other terms and conditions as the President shall approve with and upon the advice of counsel.



**TRUST AGREEMENT SCHEDULE**

Sample Schedule A

This agreement demonstrates financial assurance for the following cost estimates for the following licensed activities:

Ohio Department of Health license number	Name and address of licensee	Address of licensed activity	Cost estimates for regulatory assurances demonstrated by the agreement
<hr/>			

The cost estimates listed here were last adjusted and approved by the state of Ohio on [date].

Sample Schedule B

Amount \_\_\_\_\_

As evidenced by \_\_\_\_\_

Sample Schedule C

\_\_\_\_\_, Trustee's fee shall be \$ \_\_\_\_\_

**TRUST ACKNOWLEDGEMENT**

[The following is an example of the acknowledgement that must accompany the trust agreement for a standby trust fund or trust fund.]

State of \_\_\_\_\_

To wit: \_\_\_\_\_

City of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, a notary public in and for the city and state aforesaid, personally appeared \_\_\_\_\_, and she/he did depose and say that she/he is the [title] of [\_\_\_\_\_], national banking association, trustee, which executed the above instrument, that she/he knows the seal of said association; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the association; and that she/he signed her/his name thereto by like order.

\_\_\_\_\_  
[Signature of notary public]

My Commission Expires: \_\_\_\_\_  
[Date]

**WORDING FOR PAYMENT SURETY BOND**

## Payment surety bond

Date bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of licensee or applicant]

Type of organization: [insert "proprietorship," "joint venture," "partnership," or "corporation"]

State of incorporation: \_\_\_\_\_ (if applicable) Ohio license number, name and address of facility, and amount(s) for decommissioning activities guaranteed by this bond:

\_\_\_\_\_

Surety(ies): [name(s) and business address(es)]

Type of organization: [insert "proprietorship," "joint venture," "partnership," or "corporation"]

State of incorporation: \_\_\_\_\_ (if applicable)

Surety's qualification in jurisdiction where licensed facility(ies) is (are) located.

Surety's bond number: \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Know all persons by these presents, that we, the principal and surety(ies) hereto, are firmly bound to the state of Ohio in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the sureties are corporations acting as co-sureties, we, the sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each surety binds itself, jointly and severally with the principal, for the payment of such sum only as is set forth opposite the name of such surety; but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, the state of Ohio, has promulgated regulations pursuant to Chapter 3748. of the Revised Code. These regulations, applicable to the Principal, which require that a license holder or an applicant for a facility license provide financial assurance that funds will be available when needed for facility decommissioning;

NOW, THEREFORE, the conditions of the obligation are such that if the principal shall faithfully, before the beginning of decommissioning of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility;

Or, if the principal shall fund the standby trust fund in such amount(s) after an order to begin facility decommissioning is issued by the state of Ohio or a United States district court or other court of competent jurisdiction;

Or, if the principal shall provide alternative financial assurance, and obtain the written approval of the state of Ohio of such assurance, within thirty days after the date a notice of cancellation from the surety(ies) is received by both the principal and the state of Ohio, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The surety(ies) shall become liable on this bond obligation only when the principal has failed to fulfill the conditions described above. Upon notification by the state of Ohio that the principal has failed to perform as guaranteed by this bond, the surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund.

The liability of the surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the amount of said penal sum.

The surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the principal and to the state of Ohio provided, however, that cancellation shall not occur during the ninety days beginning on the date of receipt of the notice of cancellation by both the principal and the state of Ohio, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the state of Ohio and to the surety(ies) ninety days prior to the proposed date of termination, provided, however, that no such notice shall become effective until the surety(ies) receives written authorization for termination of the bond from the state of Ohio.

The principal and surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount, provided that the penal sum does not increase by more than twenty per cent in any one year, and no decrease in the penal sum takes place without the written permission of the state of Ohio.

If any part of this agreement is invalid, it shall not affect the remaining provisions that will remain valid and enforceable.

In witness whereof, the principal and surety(ies) have executed this financial guarantee bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the principal and surety(ies).

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signatures, corporate seal, and other information in the same manner as for the surety(ies) above.]

Bond Premium: \$ \_\_\_\_\_

**WORDING FOR IRREVOCABLE STANDBY LETTER OF CREDIT**

Irrevocable standby letter of credit no. [insert no.]

This credit expires [insert date]

Issued To: Ohio Department of Health  
246 North High Street  
Columbus, Ohio 43215

Dear Sir or Madam:

We hereby establish our irrevocable standby letter of credit no. \_\_\_\_\_ in your favor, at the request and for the account of [applicant's name and address] up to the aggregate amount of [in words], U.S. dollars \$ \_\_\_\_\_, available upon presentation of:

- (1) Your sight draft, bearing reference to this letter of credit no. \_\_\_\_\_, and
- (2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the State of Ohio."

This letter of credit is issued in accordance with regulations issued under the authority of the State of Ohio. Chapter 3748. of the Revised Code and rules promulgated thereunder require that a holder of, or an applicant for, a license issued under rule 3701:1-38-02 of the Administrative Code provide assurance that funds will be available when needed for decommissioning.

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least ninety days before the current expiration date, we notify both you and [licensee's name], by certified mail, as shown on the signed return receipts. If [licensee's name] is unable to secure alternative financial assurance to replace this letter of credit within thirty days of notification of cancellation the director may draw upon the full value of this letter of credit prior to cancellation. The financial institution shall give immediate notice to the applicant and the state of Ohio of any notice received or action filed alleging (1) the insolvency or bankruptcy of the financial institution or (2) any violation of regulatory requirements that could result in suspension or revocation of the financial institution's charter or license to do business. The financial institution also shall give immediate notice if the financial institution, for any reason, becomes unable to fulfill its obligation under the letter of credit.

Whenever this letter of credit is drawn on, under and in compliance with the terms of this letter of credit, we shall duly honor such draft upon its presentation to us within 30 days, and we shall deposit the amount of the draft directly into the standby trust fund of [licensee's name] in accordance with your instructions.

Each draft must bear on its face the clause: "drawn under letter of credit no. \_\_\_\_\_,

dated \_\_\_\_\_, and the total of this draft and all other drafts previously drawn under this letter of credit does not exceed [fill in amount].”

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert “the most recent edition of the uniform customs and practice for documentary credits. Published by the international chamber of commerce,” or “the uniform commercial code”].

**WORDING FOR DOCUMENTS RECOMMENDED TO SUPPORT CORPORATE  
GUARENTEE**

Wording for letter from chief executive officer of applicant, certifying that applicant or licensee  
is a going concern with positive tangible net worth

[Address to Ohio Department of Health]

I am the chief executive officer of [name and address of firm], a [insert “proprietorship,” “joint venture,” “partnership,” or “corporation”]. This letter is in support of this firm’s use of the financial test to demonstrate financial assurance, as specified in Chapter 3748. of the Revised Code and rules promulgated thereunder.

I hereby certify that [name of firm] is currently a going concern, and that it possesses positive tangible net worth in the amount of \_\_\_\_\_.

This firm [insert “is required” or “is not required”] to file a Form 10-K with the U.S. Securities and Exchange Commission for the latest fiscal year. This fiscal year of this firm ends on [month and day].

I hereby certify that the content of this letter is true and correct to the best of my knowledge.

[Signature]

[Name]

[Title]

[Date]



**WORDING FOR LETTER FROM CHIEF FINANCIAL OFFICER OF CORPORATE  
PARENT, INCLUDING COST ESTIMATES AND DATA FROM AUDITED  
FINANCIAL STATEMENTS**

[Address to Ohio Department of Health]

I am the chief financial officer of [name and address of firm], a [[insert “proprietorship,” “joint venture,” “partnership,” or “corporation”]. This letter is in support of this firm’s use of the financial test to demonstrate financial assurance, as specified in Chapter 3748. of the Revised Code and rules promulgated thereunder.

[Complete the following paragraph regarding facility(ies) and associated cost estimates or certified amounts. For each facility, include its license number, name, address, and current cost estimates or certified amounts for the specified activities.]

This firm guarantees, through the parent company guarantee submitted to demonstrate compliance pursuant to Chapter 3748. of the Revised Code and rules promulgated thereunder, the decommissioning of the following facility(ies) owned or operated by subsidiary(ies) of this firm. The current cost estimates or certified amounts for decommissioning, so guaranteed, are shown for each facility:

<u>Name of Facility</u>	<u>Location of Facility</u>	<u>Certified Amounts or Current Cost Estimates</u>
-------------------------	-----------------------------	--

This firm [insert “is required” or “is not required”] to file a Form 10-K with the U.S. Securities and Exchange Commission for the latest fiscal year.

This fiscal year of this firm ends on [month and day]. The figures for the following items marked with an asterisk are derived from this firm’s independently audited, year-end financial statements and footnotes for the latest completed fiscal year, ended [date].

[Insert completed alternative I or alternative II.]

I hereby certify that the content of this letter is true and correct to the best of my knowledge.

[Signature]

[Name]

[Title]

[Date]

**FINANCIAL TEST: ALTERNATIVE I**

1. Decommissioning cost estimates or certified amounts for facility [insert license number] (total of all cost estimates or certified amounts shown in paragraphs above) \$ \_\_\_\_\_
- \*2. Total liabilities (if any portion of the cost estimates for decommissioning is included in total liabilities on your firm's financial statement, deduct the amount of that portion from this line and add that amount to lines 3 and 4) \$ \_\_\_\_\_
3. Tangible net worth\*\* \$ \_\_\_\_\_
- \*4. Net worth \$ \_\_\_\_\_
- \*5. Current assets \$ \_\_\_\_\_
- \*6. Current liabilities \$ \_\_\_\_\_
- \*7. Net working capital (line 5 minus line 6) \$ \_\_\_\_\_
- \*8. The sum of net income plus depreciation, depletion, and amortization \$ \_\_\_\_\_
- \*9. Total assets in United States (Required only if less than ninety per cent of firm's assets are located in the United States) \$ \_\_\_\_\_

		Yes	No
10	Is line 3 at least ten million dollars?		
11	Is line 3 at least 6 times line 1?		
12	Is line 7 at least 6 times line 1?		
13	Are at least ninety per cent of firms' assets located in the United States? If not, complete line 14.		
14	Is line 9 at least 6 times line 1? (Guarantor must meet two of the following three ratios)		
15	Is line 2 divided by line 4 less than 2.0?		
16	Is line 8 divided by line 2 greater than 0.1?		
17	Is line 5 divided by line 6 greater than 1.5?		

\*Denotes figures derived from financial statements.

\*\*Tangible net worth is defined as net worth minus goodwill, patents, trade marks, and copyrights.

**FINANCIAL TEST: ALTERNATIVE II**

1. Decommissioning cost estimates or certified amounts for facility [insert license number] (total of all cost estimates or certified amounts shown in paragraphs above) \$ \_\_\_\_\_
  2. Current bond rating of most recent issuance of this firm and name of rating service.
  3. Date of issuance of bond
  4. Date of maturity of bond
  - \*5. Tangible net worth\*\* (if any portion of estimates for decommissioning is included in total liabilities on your firm's financial statements, add the amount of that portion to this line) \$ \_\_\_\_\_
  - \*6. Total assets in United States (Required only if less than ninety per cent of firm's assets are located in the United States) \$ \_\_\_\_\_
- |  | Yes   | No    |
|--|-------|-------|
| 7. Is line 5 at least ten million dollars?   | _____ | _____ |
| 8. Is line 5 at least six times line 1?  | _____ | _____ |
| *9. Are at least ninety per cent of firm's assets located in the United States?<br>If not, complete line 10. | _____ | _____ |
| 10. Is line 6 at least 6 times line 1 six  | _____ | _____ |

\*Denotes figures derived from financial statements.

\*\*Tangible net worth is defined as net worth minus goodwill, patents, trade marks, and copyrights.

**WORDING FOR AUDITOR'S SPECIAL REPORT BY CERTIFIED PUBLIC  
ACCOUNTANT**

Confirmation of chief financial officer's letter

We have examined the financial statements of [company name] for the year ended [date], and have issued our report thereon dated [date]. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary.

The [company name] has prepared documents to demonstrate its financial responsibility under the state of Ohio's financial assurance regulations, Chapter 3748. of the Revised Code and rules promulgated thereunder. This letter is furnished to assist the licensee [insert license number and name] in complying with these regulations and should not be used for other purposes.

The attached schedule reconciles the specified information furnished in the chief financial officer's (CFO's) letter in response to the regulations with the company's financial statements. In connection therewith, we have

1. Confirmed that the amounts in the column "per financial statements" agree with amounts contained in the company's financial statements for the year ended [date];
2. Confirmed that the amounts in the column "per CFO's letter" agree with the letter prepared in response to the State of Ohio's request;
3. Confirmed that the amounts in the column "reconciling items" agree with analysis prepared by the company setting forth the indicated items; and
4. Recomputed the totals and percentages.

Because the procedures in 1-4 above do not constitute a full examination made in accordance with generally accepted auditing standards, we do not express an opinion on the manner in which the amounts were derived in the items referred to above. In connection with the procedures referred to above, no matters came to our attention that cause us to believe that the chief financial officer's letter and supporting information should be adjusted.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Sample schedule reconciling amounts contained in chief financial officer's letter with amounts in financial statements

XYZ COMPANY

YEAR ENDED DECEMBER 31, 20XX

Line Number in CFO's Letter		Per Financial Statements	Reconciling Items	Per CFO's Letter
6	Total current liabilities	X		
	Long-term debt	X		
	Deferred income taxes	X		
		XX		
	Accrued decommissioning costs included in current liabilities		X	
	Total liabilities (less accrued decommissioning costs)			X
4	Total net worth	XX		
	Less: Cost in excess of value of tangible assets acquired	<u>X</u>		
		XX		
	Accrued decommissioning costs included in current liabilities		X	
	Tangible net worth (plus decommissioning costs)			XX

(Balance of schedule is not illustrated.)

This illustrates the form of schedule that is contemplated. Details and reconciling items will differ in specific situation.

**WORDING FOR PARENT COMPANY GUARANTEE**

Parent company guarantee

Guarantee made this [date] by [name of guaranteeing entity], a [insert “proprietorship,” “joint venture,” “partnership,” or “corporation”] organized under the laws of the state of [insert name of state], herein referred to as “guarantor,” to the state of Ohio, beneficiary, on behalf of our subsidiary [licensee], of [business address].

Recitals

1. The guarantor has full authority and capacity to enter into this guarantee [if the guarantor is a corporation, add the following phrase “under its bylaws, articles of incorporation, and the laws of the state of [insert guarantor’s state of incorporation], its state of incorporation.”] [If the guarantor has a board of directors, insert the following: “guarantor has approval from its board of directors to enter into this guarantee.”]
2. This guarantee is being issued to comply with regulations issued by the state of Ohio, pursuant to Chapter 3748. of the Revised Code and rules promulgated thereunder. These rules require that a holder of, or an applicant for, a materials license issued pursuant to rule 3701:1-38-02 of the Administrative Code provide assurance that funds will be available when needed for decommissioning activities.
3. The guarantee is issued to provide financial assurance for decommissioning activities for [identify licensed facility(ies)] as required by Chapter 3748. of the Revised Code and rules promulgated thereunder. The decommissioning costs for these activities are as follows: [insert amount of decommissioning costs guaranteed for each identified facility].
4. The guarantor meets or exceeds the following financial test criteria [insert statement indicating which financial test is being used] and agrees to comply with all notification requirements as specified in Chapter 3748. of the Revised Code and rules promulgated thereunder.

The guarantor meets one of the following two financial tests:

(A) (I) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard & Poor’s, or Aaa, Aa, A or Baa as rated by Moody’s; and

(II) Tangible net worth of at least ten million dollars and at least six times the current decommissioning cost estimate (or prescribed amount if a certification is used); and

(III) Assets located in the United States amounting to at least ninety percent of its total assets or at least six times the current decommissioning cost estimate (or prescribed amount if a certification is used).

or

- (B) (I) Net working capital and tangible net worth each at least six times the current decommissioning cost estimate (or prescribed amount if a certification is used); and
- (II) Assets located in the United States amounting to at least ninety percent of its total assets or at least six times the current decommissioning cost estimate (or prescribed amount if a certification is used); and
- (III) Meets 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 that is greater than 0.1; and a ratio of current assets to current liabilities that is greater than 1.5; and
- (IV) Tangible net worth of at least ten million dollars.
5. The guarantor has majority control of the voting stock for the following licensee(s) covered by this guarantee: [list for each licensee: name, address, the facility(ies) owned or operated by each licensee, and the corresponding license number(s).]
6. Decommissioning activities as used below refer to the activities required by Chapter 3748. of the Revised Code and rules promulgated thereunder for decommissioning of facility(ies) identified above.
7. For value received from [licensees], (if the guarantor is a corporation, add “and pursuant to the authority conferred upon the guarantor by (“the unanimous resolution of its directors” or “the majority vote of its shareholders”), [a certified copy of which is attached”], the guarantor guarantees to the state of Ohio that, if the licensee fails to perform the required decommissioning activities, as required by license no. [insert license number], the guarantor shall
- (A) Carry out the required activities, or
- (B) Set up a trust fund in favor of the above identified beneficiary in the amount of the current cost estimates for these activities.
8. The guarantor agrees to submit revised financial statements, financial test data, and a special auditor’s report and reconciling schedule annually within ninety days of the close of the parent guarantor’s fiscal year.
9. The guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, it fails to meet the financial test criteria, the licensee shall send within ninety days of the end of the fiscal year, by certified mail, notice to the state of Ohio that the licensee intends to provide alternative financial assurance as specified in Chapter 3748. of the Revised Code and rules promulgated thereunder. Within one hundred days after the end of the fiscal year, the guarantor shall establish such financial assurance if the [licensee] has not done so.

10. The guarantor also agrees to notify the beneficiary promptly if the ownership of the licensee or the parent firm is transferred and to maintain this guarantee until the new parent firm or the licensee provides alternative financial assurance acceptable to the beneficiary.
11. The guarantor agrees that within 30 days after it determines that it no longer meets the financial test criteria or that it is disallowed from continuing as a guarantor for the facility under license no. [insert license number], it shall establish an alternative financial assurance as specified in Chapter 3748. of the Revised Code and rules promulgated thereunder, in the name of [licensee] unless [licensee] has done so.
12. The guarantor as well as its successors and assigns agree to remain bound jointly and severally under this guarantee notwithstanding any or all of the following: amendment or modification of license or state of Ohio approved decommissioning funding plan for that facility, the extension or reduction of the time of performance of required activities, or any other modification or alteration of an obligation of the licensee pursuant to Chapter 3748. of the Revised Code and rules promulgated thereunder.
13. The guarantor agrees that all bound parties shall be jointly and severally liable for all litigation costs incurred by the beneficiary [insert name] in any successful effort to enforce the agreement against the guarantor.
14. The guarantor agrees to remain bound under this guarantee for as long as [licensee] must comply with the applicable financial assurance requirements of Chapter 3748. of the Revised Code and rules promulgated thereunder, for the previously listed facility(ies), except that the guarantor may cancel this guarantee by sending notice by certified mail to the state of Ohio and to [licensee], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by both the state of Ohio and [licensee] as evidenced by the return receipts.
15. The guarantor agrees that if [licensee] fails to provide alternative financial assurance as specified in Chapter 3748. of the Revised Code and rules promulgated thereunder, as applicable, and obtain written approval of such assurance from the state of Ohio within ninety days after a notice of cancellation by the guarantor is received by both the state of Ohio and [licensee] from the guarantor, the guarantor shall provide such alternative financial assurance in the name of [licensee] or make full payment under the guarantee.
16. The guarantor expressly waives notice of acceptance of this guarantee by the state of Ohio or by [licensee]. The guarantor also expressly waives notice of amendments or modifications of the decommissioning requirements and of amendments or modifications of the license.
17. If the guarantor files financial reports with the U.S. securities and exchange commission, then it shall promptly submit them to the state of Ohio during each year in which this guarantee is in effect.

I hereby certify that this guarantee is true and correct to the best of my knowledge.



Effective date: \_\_\_\_\_

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: \_\_\_\_\_