

***Settlement Agreement and Mutual Release***

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN CONTINENTAL HOLDINGS, INC.,  
THE BOEING COMPANY, THE CITY OF SEATTLE, AND KING COUNTY**

This Settlement Agreement and Mutual Release (the “**Agreement**”) is entered into by and between the “**Settling Funding Party**” (as defined below), on the one hand, and the “**Settling LDWG Parties**” (as defined below), on the other hand. The Settling Funding Party and Settling LDWG Parties collectively shall be referred to as the “**Settling Parties**,” and each individually as a “**Settling Party**,” for the purpose of this Agreement only. This Agreement shall be effective on the Effective Date as defined in this Agreement.

**RECITALS**

**WHEREAS,**

**A.** In accordance with section 105 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9675 (“**CERCLA**”), the United States Environmental Protection Agency (“**EPA**”) listed the Site on the National Priorities List (“**NPL**”), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 13, 2001, 66 Fed. Reg. 47,583.

**B.** On December 20, 2000, the City of Seattle, King County, the Port of Seattle (“**Port**”), and The Boeing Company (“**Respondents**”) entered into an Administrative Order on Consent for Remedial Investigation/Feasibility Study, U.S. EPA, Region 10 Docket No. CERCLA 10-2001-0055, Ecology Docket No 00TCPNR-1895 (12/20/2000) (the “**RI/FS AOC**”) with the EPA and the Washington Department of Ecology (“**Ecology**”). The RI/FS AOC has been amended five times and will be terminated under the terms of a sixth amendment.

**C.** In response to a release or a substantial threat of a release of hazardous substances at or from the Site, Respondents completed a Remedial Investigation for the Site in 2010, and a Feasibility Study for the Site in 2012, in accordance with 40 C.F.R. § 300.430.

**D.** EPA selected a remedial action to be implemented at the Site, which is embodied in a final Record of Decision (“**ROD**”), executed on November 21, 2014, on which the State has given its concurrence. The ROD established the remedy to be implemented at the Site. Notice of the final plan was published in accordance with section 117(b) of CERCLA. In 2021, EPA issued an Explanation of Significant Differences, which revised the cleanup levels and remedial action

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levels in the ROD for cPAHs, including BaP, in sediments, and the target level of cPAHs in clam tissue.

**E.** Ecology gave notice by letter, dated August 2, 2000, to each Respondent that it was a Potentially Liable Person (“**PLP**”) under RCW 70A.305.040, after notice and opportunity for comment. Ecology has represented that, absent entry of the Consent Decree as defined below in Recital G, Ecology could have issued preliminary PLP notice letters to others, including the Settling Funding Party.

**F.** In accordance with the **Allocation MOA**, as defined below, the Settling Parties and others participated in a confidential, non-binding Alternative Dispute Resolution Allocation Process (the “**Allocation**”) as to certain costs of response incurred and to be incurred at the Site.

**G.** The Settling LDWG Parties have negotiated a Consent Decree among themselves, the United States, Ecology, the Settling Funding Party and the other parties listed in an appendix to the Consent Decree (the “**Settling Cash-Out Parties**,” defined below) relating to response action at the Site (“**Consent Decree**”). The Settling LDWG Parties will perform Site response action as required by the Consent Decree.

**H.** The Settling Parties anticipate that the Consent Decree will be entered by the United States District Court, after public notice and opportunity for comment, in an action to be filed by the United States and Ecology against the Settling Parties.

**I.** EPA has issued the **Bridge UAO**, as defined below, to address response actions at the Site that will take place prior to entry of the Consent Decree. The Settling Parties expect that the Bridge UAO will be terminated upon entry of the Consent Decree.

**J.** The Settling LDWG Parties have entered or may enter into separate settlement agreements with other parties, including but not limited to certain Settling Cash-Out Parties to provide lump sum payments toward past response costs and estimated future response costs for the Site, plus a premium.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Settling Parties agree as follows:

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**1. Definitions.** In addition to the definitions that are provided in any other part of this Agreement, the following definitions shall apply to this Agreement. If a definition is not contained herein, the definitions in the Consent Decree shall apply and, if a term is not defined in the Consent Decree, the definitions in CERCLA shall apply to this Agreement. If a term is defined in both the Consent Decree and in CERCLA, the Consent Decree's terms shall apply.

**1.1 "Allocation MOA"** means the LDW Alternative Dispute Resolution Memorandum of Agreement that governed the Allocation process among the Settling Parties and others.

**1.2 "Bridge UAO"** means the Unilateral Administrative Order regarding the Lower Duwamish Waterway Site (CERCLA Docket No. 10-2024-1077) and dated July 18, 2024.

**1.3 "Double Recovery"** is defined as any collateral funds that the Settling LDWG Parties, collectively or any of them, receive from any source that would pay for or reimburse one or more of the Settling LDWG Parties for part or all of the Funding Party's FAR share of Response Costs paid or to be paid under the Decree, such that the Settling LDWG Parties would be reimbursed twice for part or all of the Funding Party's share of costs absent an offset. Provided, however, that the following sources of funds shall not be considered double recovery: (i) MTCA grants issued to the County and/or City; (ii) King County's insurance recovery; (iii) funds the City received in settlement of its lawsuit against Monsanto, et al., Case No. 2-16-cv-00107 RAJ (W.D. WA.); (iv) funds the County has or will receive in settlement of *City of Long Beach v. Monsanto Co.*, No. 2-16-cv-03493-FMO-A (C.D. CA); (v) funds one or more Settling LDWG Parties obtain from parties listed on Appendix D or F of the Consent Decree or the Settling Federal Agencies as defined in the Consent Decree; and, (vi) funds EPA

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disburses to the Settling LDWG Parties pursuant to the Consent Decree.

- 1.4** **“Effective Date”** of this Agreement is defined as the date a federal court approves and enters the Consent Decree; provided, however, that the release described in Paragraph 10 of this Agreement shall become effective as set forth in that Paragraph.
- 1.5** **“FAR Share”** is defined as the MOA Participant and the United States Allocation shares assigned to each Settling Party in the Final Allocation Report (**“FAR”**) Attachment 1. The Settling Funding Party’s FAR Share is 1.7406%.
- 1.6** **“MTCA”** is defined as the Washington State Model Toxics Control Act, Revised Code of Washington (RCW) Chapter 70A.305 and its implementing regulations, the Washington Administrative Code (WAC) Chapters 173-340 and 173-204, including amendments thereto.
- 1.7** **“Released Claims”** shall have the meaning set forth in Paragraph 10 below.
- 1.8** **“Response Costs”** means Past Response Costs, Interim Response Costs, and Future Response Costs as defined in Section 2.1 through 2.5 below.
- 1.9** **“Settling Cash-Out Party”** is defined as each entity that participated in the Allocation and that executes a final settlement agreement with the Settling LDWG Parties that requires the Settling Cash-Out Party to pay its FAR Share of the Settling LDWG Parties’ Past Response Costs and Future Response Costs, plus a premium, or such other amount as agreed to by the Settling LDWG Parties. Each Settling Cash-out Party is listed in Appendix D to the Consent Decree (collectively, **“Settling Cash Out Parties”**).

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- 1.10** “**Settling Funding Party**” is Continental Holdings Inc. as a successor to Continental Can Company, Inc.
- 1.11** “**Settling LDWG Party**” is defined as one of The Boeing Company, the City of Seattle, and King County.
- 1.12** “**Settling Parties**” for purposes of this Agreement is defined as the Settling Funding Party and Settling LDWG Parties collectively, with each individually referred to as a “**Settling Party.**”
- 1.13** The “**Site**” or the “**Lower Duwamish Waterway Site**” is as defined in the Consent Decree.
- 1.14** “**Waste Materials**” means any material now or hereafter defined as (a) any “hazardous substance” under section 101(14) of CERCLA; (b) any pollutant or contaminant under section 101(33) of CERCLA; (c) any “solid waste” under section 1004(27) of the Resource Conservation and Recovery Act; and (d) any “hazardous substance” under MTCA, RCW 70A.305.020(13).

## **2. Settlement Payments.**

- 2.1** Within thirty (30) days after the Effective Date, the Settling Funding Party shall pay \$1,301,843.76, as directed by the Settling LDWG Parties. This payment amount is Settling Funding Party’s FAR Share of \$74,792,816.15, which, solely for the purpose of this Agreement, is the total amount of Response Costs for the Site that Settling LDWG Parties and Settling Funding Party have agreed are recoverable under CERCLA or MTCA and were incurred through December 31, 2022 (“**Past Response Costs**”).
- 2.2** Within sixty (60) days of receiving a payment demand from the Settling LDWG Parties, the Settling Funding Party shall pay its FAR Share of Response Costs incurred by the Settling LDWG Parties

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between January 1, 2023, and the Effective Date (“**Interim Response Costs**”).

**2.3** The Settling Funding Party shall pay its FAR Share of the Settling LDWG Parties’ Response Costs incurred after the Effective Date (“**Future Response Costs**”).

**2.4** **Interim Response Costs** and **Future Response Costs** under this agreement are limited to all costs that the **Settling LDWG Parties** reasonably allocate among themselves consistent with their respective **FAR Shares** in a timely manner.

**2.5** Solely for the purpose of this Agreement, **Interim Response Costs** and **Future Response Costs** do not include costs the Settling LDWG Parties incur to provide the financial assurance mechanism that the Bridge UAO or Consent Decree requires them to provide.

**2.6** The Settling LDWG Parties will establish a Trust (with a trustee) to receive funds for Future Response Costs from the Settling Funding Party (“**Trust**” and “**Trustee**”). The Settling LDWG Parties will direct the Trustee to issue an invoice within sixty (60) days after the Effective Date to the Settling Funding Party for its FAR Share of estimated Response Costs from the Effective Date through the remainder of the funding year in question, with each year running from January 1<sup>st</sup> through December 31<sup>st</sup>. The Settling Funding Party will pay the invoice no more than sixty (60) days after receipt.

**2.6.1** The Settling LDWG Parties will direct the Trustee to draw on funds received from the Settling Funding Party to pay its FAR Share of Future Response Costs for the funding year period as those costs are incurred or invoiced for payment or reimbursement.

**2.6.2** When funds are withdrawn from the Trust to pay or reimburse for the Settling Funding Party’s share of costs, the Settling Funding Party shall be

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provided with copies of the same invoices and/or other documentation the LDWG Parties receive.

- 2.6.3** If a shortfall is anticipated for the current funding year, a call for additional funds will be made by the Trustee to the Settling Funding Party to cover the Settling Funding Party's FAR Share of the estimated shortfall of costs through the end of the current funding year with funds due in ninety (90) days.
- 2.6.4** The Settling Funding Party will be provided with the same information provided by the Trustee to the Settling LDWG Parties regarding the notice of a potential shortfall and the calculation of the amount.
- 2.6.5** The Settling LDWG Parties will direct the Trustee to thereafter issue an invoice to the Settling Funding Party by November 1<sup>st</sup> of each year for its FAR Share of estimated Response Costs for the subsequent funding year. The Settling Funding Party will pay each invoice no more than sixty (60) days after receipt.
- 2.6.6** The Settling Funding Party will be provided with the same budgeting information available to the Settling LDWG Parties before the estimate of Response Costs for the coming funding year is finalized.
- 2.6.7** Neither the Trustee nor the Settling LDWG Parties have any obligation to invest funds paid by the Settling Funding Party or to deposit such funds into an interest-bearing account. However, if interest is earned or there is a positive return on invested funds from the Settling Funding Party, such interest or investment return shall inure to the benefit of the Settling Funding Party.
- 2.6.8** The Settling LDWG Parties shall direct the Trustee to provide the Settling Funding Party with an annual report showing the amounts and vendors paid with funds from the Settling Funding Party and any interest earned or positive return on investment of funds paid by the Settling Funding Party.

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- 2.7** Twelve percent (12%) interest will accrue on any amount owed by the Settling Funding Party if not paid by the due date.
- 2.8** The Settling LDWG Parties will not charge the Settling Funding Party for amounts that would constitute a Double Recovery.
- 2.9** In the event a Settling LDWG Party receives a Double Recovery, that Settling LDWG Party shall repay the Settling Funding Party's share of the amount that qualified as a Double Recovery to the Trust for deposit in the sub-account of the Settling Funding Party within sixty (60) days of the Settling LDWG Party's acknowledgment that a Double Recovery was received or a determination through dispute resolution under this Agreement or by a court that a Double Recovery was received. If not paid within the sixty (60) days, such funds shall accrue twelve percent interest (12%) in favor of the Settling Funding Party until paid.

### **3. Other Entities.**

- 3.1** The Settling LDWG Parties will have the sole right to bring and exclusive control over any future contribution or cost-recovery litigation to recover Response Costs from any entity.
- 3.2** Except for any funds that constitute a Double Recovery, the Settling LDWG Parties will be the sole beneficiaries of proceeds received from any other party for Response Costs, whether through a judgment or settlement.
- 3.3** The Settling Funding Party will be responsible for negotiating and paying the Port, whether in settlement or as a result of a judgment, whatever share of the Port's past response costs that the Settling Funding Party and the Port or a court determines is appropriate.



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- 4. Control of the Work.** The Settling LDWG Parties shall control the means, manner and scope of the Work (defined in the Consent Decree) in consultation with EPA and the contractors. The Settling Funding Party is not entitled to control over the Work or any role in decision-making concerning the Work.
- 5. Disputes.** The Settling Funding Party shall be able to reasonably dispute: (a) whether invoiced costs constitute Response Costs, including whether they are necessary and consistent with the National Contingency Plan; (b) whether a Double Recovery has occurred; (c) whether the Settling Funding Party's FAR Share of the invoiced costs has been calculated correctly; and (d) whether there are mathematical errors or other mistakes in an invoice, such as double-counting of costs.
- 5.1** Any dispute must be initiated by the Settling Funding Party within sixty (60) days of an invoice, or within sixty (60) days of when it knew or should have known of an alleged Double Recovery.
- 5.2** Any dispute over costs shall first be addressed by a good faith effort by the Settling Parties to reach agreement. If that is not successful within a reasonable amount of time, then any of the Settling Parties may require that the Settling Parties involved in the dispute engage a mutually acceptable person with knowledge of the recoverability of costs incurred under CERCLA to render a recommendation. Costs for engaging the person shall be borne seventy-five percent (75%) by the Settling LDWG Parties involved in the dispute and twenty-five (25%) by the Settling Funding Party, unless the dispute is between the Settling Funding Party and only one of the Settling LDWG Parties in which case the costs for engaging the person would then be borne fifty percent (50%) by that single Settling LDWG Party and fifty percent (50%) by the Settling Funding Party.
- 5.3** The Settling Funding Party shall pay the full amount invoiced while the dispute proceeds, unless the Settling LDWG Parties agree otherwise.

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If a dispute is resolved in favor of the Settling Funding Party, the Settling Funding Party will be assigned a credit for the disputed amount that was paid, with twelve percent (12%) interest accrued on that amount from the date the dispute was initiated until the date of resolution.

**5.4** Settling Parties reserve the right to engage in litigation over disputes regarding this Agreement if good faith discussions and mediation are not successful in resolving the dispute.

**6. Financial Assurance.** The attached Guaranty of Lumen Technologies, Inc. and Level 3 Parent LLC ("**Guaranty**") forms a part of the consideration for this Agreement without which the Settling LDWG Parties would not have agreed to settle.

**7. Liability.** The Settling Funding Party will remain jointly and severally liable to the United States and the State of Washington as long as the Settling LDWG Parties are jointly and severally liable to the United States and the State of Washington.

**7.1** Settling Funding Party's joint and several liability under the Consent Decree will be as provided in the Consent Decree.

**7.2** As long as the Settling Funding Party or its Guarantors meet the Settling Funding Party's obligation under this Agreement and the Consent Decree to pay its 1.7406% FAR Share of Response Costs in accordance with the terms of this Agreement, the Settling Funding Party is not jointly and severally liable to the Settling LDWG Parties and will only be responsible to the Settling LDWG Parties for funding its own FAR Share of Response Costs, as provided in this Agreement.

**8. Insurance.** Whenever the Settling LDWG Parties execute a new contract after the Effective Date with a consultant or contractor and the Settling LDWG Parties are named as additional insured(s) or indemnified in policies by consultants or contractors retained

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for the Work, they will use commercially reasonable efforts to require their consultants or contractors to extend the insurance coverage or indemnity so that the Settling Funding Party is also named as an additional insured/indemnitee under the same policies.

**9. Consent Decree.** The Settling Funding Party shall sign the Consent Decree and shall not object to the Consent Decree.

**9.1** The Settling Funding Party agrees that its 1.7406% FAR Share may be included in the Consent Decree and/or an appendix thereto.

**10. Released Claims.**

**10.1** Subject to the reservations in Paragraph 11, the Settling Funding Party and the Settling LDWG Parties shall mutually release each other for the “**Matters Addressed,**” as defined in the Consent Decree (“**Released Claims**”); however, this mutual release is conditioned upon each individual Settling Party fulfilling its obligations under the Consent Decree and this Agreement. Any Settling Party that does not fulfill its obligations under the Consent Decree or this Agreement and does not cure its default within sixty (60) days or as otherwise mutually agreed, shall no longer benefit from the release.

**10.2** The release by the Settling Funding Party of claims against the Settling LDWG Parties shall take effect on the Effective Date. The release by the Settling LDWG Parties of the Settling Funding Party shall take effect upon payment by the Settling Funding Party of its FAR Share of Past Response Costs.

**10.3** The Settling Funding Party shall sign an Appendix to the settlement between the Settling LDWG Parties and the Settling Cash-Out Parties that is a release between the Settling Funding Party and the Settling Cash-Out Parties as described in Appendix F to the settlement between the Settling LDWG Parties and the Settling Cash-out Parties.

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**11. Reservations.** The Released Claims do not include the claims listed below and the Settling Parties to which the releases apply reserve all claims and defenses at law or in equity against each other for the claims listed below.

- 11.1** Breach or enforcement of the Allocation MOA, except for the reallocation of shared Allocation costs and database costs, which are being settled separately.
- 11.2** Breach of this Agreement.
- 11.3** Natural resource damages that a natural resource trustee has claimed or may claim against a Settling Party now or in the future.
- 11.4** Source control requirements imposed by Ecology or EPA, or the City or County consistent with Paragraph 11.10.
- 11.5** Personal injuries.
- 11.6** The presence of Waste Materials at any other CERCLA or MTCA site or area, including but not limited to the Harbor Island Superfund Site or any of its Operable Units, including Waste Materials that migrated to any other site or area from the Lower Duwamish Waterway Site.
- 11.7** As to each Settling Party, any release(s) of Waste Materials, including migration, to the Site initially occurring, and for which that Settling Party has potential liability, between the date that this Agreement is signed and the Effective Date.
- 11.8** Response Costs incurred by the Settling LDWG Parties for new or additional remedial actions due to the negligent, reckless or intentional disturbance of a remedial cap by the Settling Funding Party.
- 11.9** The releases provided in Paragraph 10 do not extend to any entity that: (1) is or becomes affiliated with the Settling Funding Party (such as through an indemnity, merger or acquisition); (2) meets the definition in CERCLA of a Potentially Responsible Party or the

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definition in MTCA of a Potentially Liable Party for the Lower Duwamish Waterway Site; (3) did not participate as a party in the Allocation; and (4) was not disclosed in the Allocation as a Potentially Liable Party or a Potentially Responsible Party (disclosure as a “Related Party” is insufficient).

**11.10** The City and County reserve their rights to enforce any federal, state or local laws, including but not limited to enforcement of laws regarding controlling sources of contamination, to the extent that they do not seek performance of the Work or recovery for past Response Costs or future Response Costs.

**11.11** The Settling LDWG Parties reserve their rights for breach of their separate settlement agreement among themselves.

**12. Bar Order.** The Settling Funding Party shall not object to and may join in a request that the court issue an order that bars all claims arising out of or related to Response Costs or Matters Addressed, as those terms are defined in the Consent Decree, that are brought against the Settling Parties or Settling Cash Out Parties by anyone, including claims by the United States and State of Washington (other than the claims reserved by the United States and the State of Washington in the Consent Decree) (“**Bar Order Claims**”). Bar Order Claims may be styled (without limitation) as claims for cost recovery, contribution, equitable indemnity, or damages under CERCLA, MTCA, other federal or state statutes, or the common law. Provided, however, that the Bar Order will not apply to bar claims that a Settling Party has breached this Agreement or has defaulted on its obligations under the Consent Decree. Further, the Bar Order shall not apply to settlement of the County’s claims in the Monsanto PCB class action settlement process in *City of Long Beach v. Monsanto Company*, U.S. District Court Central District of California – Western Division Case No. 2:16-cv-03493-FMO-AS, if still pending.

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**13. Disclosure.** The Settling Funding Party consents and will not object to the Settling LDWG Parties, in their sole discretion, disclosing in contribution or cost recovery litigation or settlement negotiations regarding the Site, all or portions of Axlors remedial cost estimate report, all or portions of the FAR and its appendices, the Allocation parties' respective Allocation shares, that the Settling Funding Party agrees to pay its FAR Share of the Settling LDWG Parties' past Response Costs, and that the Settling Funding Party agrees to pay its FAR Share of the Settling LDWG Parties' future Response Costs. The Settling LDWG Parties shall seek a protective order with respect to use of the FAR and/or any portion of the FAR appendices in litigation or any other proceeding and shall seek a confidentiality agreement before disclosing the FAR and its appendices with any party that did not participate in the Allocation.

**13.1** The Settling Funding Party consents to King County's disclosure to the State of Washington Department of Ecology, if needed for purposes of grant funding administration, only the portion(s) of the FAR addressing King County's insurance recovery and grant funding, with all other participant names or identifying information redacted, and made expressly on the condition that such disclosure is limited in scope and in no event effects any broader disclosure or waiver of the County's or other parties' mediation privilege as to the FAR otherwise.

**13.2** The Settling LDWG Parties consent and will not object to the Settling Funding Party's disclosure of the FAR and its appendices in defense to a contribution or cost recovery claim, whether in litigation or settlement negotiations under CERCLA or MTCA regarding the Site. If the Settling Funding Party wishes to disclose the FAR in such litigation, it shall seek a protective order prior to disclosing the FAR and/or any portion of the FAR appendices in such litigation.

**13.3** Nothing in this Agreement is intended to limit or restrict disclosure of the FAR as permitted by the Allocation MOA.

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**13.4** The Settling LDWG Parties and the Settling Funding Party agree nothing in this Agreement, including the limited, permitted disclosure of all or portions of the FAR and its appendices, constitutes a general waiver of the mediation privilege for the FAR and its appendices or for any other documentary or oral communication made in the context of the Allocation or in the related mediations and settlement negotiations, and further agree that they will not assert the mediation privilege has been waived more broadly than expressly allowed in this Agreement or in the Allocation MOA.

**14. Future Cash-Out Settlement.** The Settling Funding Party may seek a cash-out settlement with the Settling LDWG Parties in the future.

**15. Transfer of Claims.** The Settling Funding Party represents and warrants that no other person or entity has claimed or now claims any interest in the Released Claims, or any interest in the subject matter of this Agreement. The Settling Parties, and each of them, represent and warrant that they have not sold, assigned, transferred, conveyed, donated or otherwise set over to any person or entity any claim or demand relating to the matters covered by this Agreement. The Settling Funding Party agrees it will not transfer its obligations under this Agreement or under the Consent Decree to any other person or entity without the express written consent of the Settling LDWG Parties.

**16. Agreement Not An Admission.** This Agreement is made as a negotiated compromise and settlement of disputed claims. This Agreement shall not constitute, nor shall it be construed as or deemed to be evidence of, any admission of liability or wrongdoing or the truth of any allegations or correctness of any claims asserted by any of the Settling Parties. Nor shall this Agreement be deemed to be evidence of the existence, nature or amount of damages alleged by any Settling Party, as all payments made hereunder are in compromise only, and to avoid litigation.

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- 17. Represented By Counsel.** Each Settling Party acknowledges that it has been represented by legal counsel, and that each Settling Party has reviewed, and has had the benefit of legal counsel's advice concerning, all of the terms and conditions of this Agreement.
- 18. Ambiguity.** Each Settling Party acknowledges that this Agreement is the product of informed, arms-length negotiations among the Settling Parties, and if any part of this Agreement is deemed ambiguous or in conflict, it shall be construed as if it were drafted jointly by all Settling Parties.
- 19. Authority.** Each Settling Party represents and warrants that each person who has signed this Agreement in a representative capacity on that Settling Party's behalf is duly authorized to enter into this Agreement and to bind the Settling Party on whose behalf he or she is signing.
- 20. Representations and Warranties.** The Settling Parties, and each of them, represent and warrant that the representations made in this Agreement are true and correct, and that they have the sole right and exclusive authority to execute this Agreement and to receive the consideration therefor.
- 21. Attorneys' Fees and Costs.** The Settling Parties mutually waive their right to recover any of their respective costs, attorneys' fees, consultant fees, or expert fees from the other Settling Parties in connection with Released Claims. In the event of an action for breach of this Agreement, however, the prevailing party shall recover its attorneys' fees and costs from the non-prevailing party or parties.
- 22. Binding Effect.** This Agreement shall be binding on successors and assigns of the Settling Parties and shall inure to the benefit of each Settling Party's parent companies,



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subsidiaries, agents, heirs, successors, assigns, principals, officers, directors, members, governors, employees, and vessels.

- 23. Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to choice of law rules. Any claim to enforce this Agreement shall be brought in the United States District Court for the Western District of Washington. In the event the United States District Court for the Western District of Washington cannot or does not exercise jurisdiction, the Settling Parties agree that any disputes arising under this Agreement shall be heard in King County Superior Court in Seattle.
- 24. Notice.** Unless a different individual has been designated in writing by a Settling Party, any and all communication intended for them shall be directed to the designees of Settling Parties as indicated below and/or the designees of the Guarantors as indicated in Section 10 of the attached Guaranty. The Settling Parties will provide in writing changes or updates to their respective notice recipients as necessary.

Settling Party	Designated Notice Recipient	Co-Recipient of Written Communications
City of Seattle	Laura Wishik, Assistant City Attorney Seattle City Attorney’s Office 701 5th Avenue, Suite 2050 Seattle, WA 98104 (206) 684-8199 Laura.Wishik@seattle.gov	Megan Joplin, Assistant City Attorney Seattle City Attorney’s Office 701 5th Avenue, Suite 2050 Seattle, WA 98104 (206) 615-0885 Megan.Joplin@seattle.gov
King County	Kristie Elliott King County Prosecuting Attorney’s Office 701 Fifth Avenue, Suite 600 Seattle, WA 98104 (206) 477-6758 Kristie.Elliott@kingcounty.gov	Jeff Stern King County Wastewater Treatment Division KSC-NR-0512 201 S. Jackson Street Seattle, WA 98104-3855 (206) 477-5479 <a href="mailto:Jeff.Stern@kingcounty.gov">Jeff.Stern@kingcounty.gov</a>

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Settling Party	Designated Notice Recipient	Co-Recipient of Written Communications
		Debra Williston King County Wastewater Treatment Division KSC-NR-0512 201 S. Jackson Street Seattle, WA 98104-3855 (206) 477-4850 Debra.Williston@kingcounty.gov
The Boeing Company	Katie Page Perkins Coie LLP 1201 Third Avenue Suite 4900 Seattle, WA 98101 kpage@perkinscoie.com	Marc Luesebrink Senior Counsel EHS Law Group The Boeing Company PO Box 3707 MX-11XT Seattle, WA 98124-2207 Marc.d.luesebrink@boeing.com
Continental Holdings, Inc.	Marcy Heronimus Assistant Secretary 931 14 <sup>th</sup> Street, 9 <sup>th</sup> Floor Denver, CO 80202 Marcy.Heronimus@Lumen.com	Vann Ellerbruch Senior Attorney 931 14 <sup>th</sup> Street, 9 <sup>th</sup> Floor Denver, CO 80202 Vann.Ellerbruch@Lumen.com

**25. Entire Agreement; Amendment.** Except as otherwise stated in this Paragraph and in the attached Guaranty, this Agreement contains all of the terms and conditions agreed upon by the Settling Parties relating to its subject matter and supersedes any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and communications between or among the Settling Parties, whether oral or written, respecting the subject matter of this Agreement. This Agreement may be amended or modified only by a writing signed by the Settling Parties. It shall not be modified by any oral statement, communication, agreement, course of conduct, or by anything else other than a writing signed by the Settling Parties. **However**, nothing in this Agreement shall supersede, cancel, modify or otherwise amend: (1) any separate agreement(s) between the Settling LDWG Parties; (2) the Consent Decree; or (3) the Allocation MOA.


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**26. Counterparts.** This Agreement may be executed in counterparts and by facsimile or portable document format (.pdf) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

IN WITNESS WHEREOF, the Settling Parties have executed this Agreement as of the day and year indicated below.

DATED: December 20 2024

CONTINENTAL HOLDINGS INC.,  
The Settling Funding Party

By: 

Printed Name: Marcy Heronimus

Its: Assistant Secretary

DATED: \_\_\_\_\_, 2024

THE BOEING COMPANY,  
A Settling LDWG Party

By:

Printed Name:

\_\_\_\_\_  
\_\_\_\_\_  
Its:

**Settlement Agreement and Mutual Release**

**26. Counterparts.** This Agreement may be executed in counterparts and by facsimile or portable document format (.pdf) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

IN WITNESS WHEREOF, the Settling Parties have executed this Agreement as of the day and year indicated below.

DATED: \_\_\_\_\_, 2024

CONTINENTAL HOLDINGS INC.,  
The Settling Funding Party

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: January 9, 2025

THE BOEING COMPANY,  
A Settling LDWG Party

By: 

Meredith Weinberg

Printed Name: \_\_\_\_\_

Counsel (Perkins Coie LLP)

Its: \_\_\_\_\_

***Settlement Agreement and Mutual Release***

DATED: \_\_\_\_\_, 2024

CITY OF SEATTLE,  
A Settling LDWG Party

By:

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2024

KING COUNTY,  
A Settling LDWG Party

By:

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**GUARANTY OF LUMEN TECHNOLOGIES, INC. AND LEVEL 3 PARENT LLC**

This Guaranty of Lumen Technologies, Inc. and Level 3 Parent LLC (“Guaranty”) is made in connection with, and as part of the consideration for, the Settlement Agreement and Mutual Release Between Continental Holdings, Inc., The Boeing Company, the City of Seattle, and King County (“Settlement Agreement”) to which this Guaranty is attached.

**Definitions:**

1. The definitions in the Settlement Agreement shall apply to this Guaranty as if fully set forth herein.
2. “CHI” shall mean Continental Holdings, Inc., the Settling Funding Party under the Settlement Agreement;
3. “Guarantor” or “Guarantors” shall mean one or both of Lumen Technologies, Inc. (“Lumen”) and Level 3 Parent LLC (“Level 3”). Except as otherwise set forth in this Guaranty, the terms “Guarantor” and “Guarantors” are used interchangeably and in each case means each Guarantor separately and together;
4. “Party” or “Parties” as used in this Guaranty shall mean and include one or both of the Guarantors together with CHI and the Settling LDWG Parties.

**Guaranty:**

For and in consideration of the mutual promises set forth herein and in consideration of the mutual promises set forth in the Settlement Agreement, the Guarantors and each of them, separately and together, agree as follows:

***Settlement Agreement and Mutual Release***

1. The above definitions and the terms of the Settlement Agreement are incorporated into this Guaranty as if fully set forth herein.

2. Each Guarantor separately, and together, absolutely and unconditionally guarantees CHI's timely payment of its payment obligations under the Settlement Agreement. This Guaranty applies to and is for payment, not collection.

3. If CHI defaults on any payment obligation under the Settlement Agreement, or otherwise fails for any reason to make any payment in a timely fashion, Level 3 in its capacity as the primary Guarantor, within ten (10) business days of receipt of a written demand by the Settling LDWG Parties, will absolutely, unconditionally, and fully pay that amount and all future amounts to the Settling LDWG Parties in the manner described in the Settlement Agreement. Settling LDWG Parties must make commercially reasonable efforts to obtain payment under this Guaranty from Level 3 before making a written demand for payment under this Guaranty from Lumen. In the event that Level 3 does not respond to a written demand for payment by the Settling LDWG Parties by making such payment within thirty (30) days of a written demand or is otherwise unable to fulfill the obligations set forth in this Guaranty for any reason, including because of any voluntary or involuntary liquidation, insolvency, bankruptcy, or reorganization of, or any other such events with respect to Level 3, then Lumen in its capacity as the secondary Guarantor, within thirty (30) days of receipt of a written demand by the Settling LDWG Parties, will absolutely, unconditionally, and fully pay that amount and all future amounts to the Settling Parties in the manner described in the Settlement Agreement.

4. In any effort to enforce this Guaranty, the prevailing party under such action shall be paid its attorney fees and costs by the opposing party.

***Settlement Agreement and Mutual Release***

5. This Guaranty shall not be discharged, reduced in its scope, or otherwise affected by: (i) any waiver of, extension of time with respect to, or failure to enforce, any obligation of CHI and/or the Guarantor(s) to the Settling LDWG Parties together, or any of them individually, (ii) any failure of the Settling LDWG Parties, or any of them individually, to give notice after the initial notice of any subsequent default or failure to pay by CHI or any other notice, (iii) any transfer by CHI of its interest in the underlying obligations, (iv) any unilateral attempt by Guarantor(s) to discharge any of CHI's obligations, or any compromise, settlement, release, renewal, change in, or modification of such obligations, (v) any voluntary or involuntary liquidation, insolvency, bankruptcy, or reorganization of, or any other such events with respect to, CHI, (vi) any setoff or counterclaim that CHI may have, or (vii) any other circumstances which might otherwise constitute a legal or equitable defense or discharge of a guarantor or surety.

6. Guarantors shall not be entitled to and hereby waive any and all defenses available to Guarantors, sureties and other secondary parties at law or in equity. Upon CHI's failure to pay as set forth in Paragraph 3 above, in order to hold either or both of the Guarantors liable hereunder, the Settling LDWG Parties need not further demand or resort to payment or performance by CHI or demand or resort to payment from any other person or corporation, their properties or assets or to any security, property or other rights or remedies whatsoever. Settling LDWG Parties shall have the right to enforce this Guaranty irrespective of whether or not legal proceedings or other enforcement efforts against CHI are pending. Without limiting the foregoing, it is understood that repeated and successive demands may be made to either or both of the Guarantors and recoveries may be had hereunder and this Guaranty shall nevertheless



***Settlement Agreement and Mutual Release***

remain in force and effect and shall apply to each and every subsequent payment obligation under the Settlement Agreement.

7. This Guaranty shall be a continuing, absolute, and unconditional guaranty, and shall remain in full force and effect until all monies guaranteed have been paid in full. Each Guarantor acknowledges that the total amount of CHI's obligation under the Settlement Agreement is unknown at this time and each nevertheless agrees to guaranty the full amount of CHI's obligation whatever it may be.

8. The Settling LDWG Parties, separately or together, may enforce this Guaranty directly against either or both of the Guarantors as set forth in Paragraph 3, whether or not the Settling LDWG Party or Parties are taking or have taken any actions against or with respect to CHI. The failure of Settling LDWG Parties to take any action against CHI shall in no way impair the obligations of Guarantors under this Guaranty.

9. Guarantors hereby acknowledge that (i) each will be benefitted by this Guaranty; (ii) this Guaranty does not violate any other contracts or obligations of the Guarantors and is the legal, valid, and binding obligation of the Guarantors; and (iii) each Guarantor has independently reviewed the facts underlying the anticipated Response Costs under the Consent Decree, made its own assessment thereof, and has not relied upon any representation of the Settling LDWG Parties as to the total amount of Response Costs to which CHI is obligated to contribute.

10. Notices to the Guarantors shall be made by regular US Mail or by email to the following:

<b>Guarantor</b>	<b>Designated Notice Recipient</b>	<b>Co-Recipient of Written Communications</b>
Level 3 Parent LLC	Lumen Legal Department 931 14 <sup>th</sup> Street, 9 <sup>th</sup> Floor	Vann Ellerbruch Senior Attorney

**Settlement Agreement and Mutual Release**

<b>Guarantor</b>	<b>Designated Notice Recipient</b>	<b>Co-Recipient of Written Communications</b>
	Denver, CO 80202 Legalaffairs@Lumen.com	931 14 <sup>th</sup> Street, 9 <sup>th</sup> Floor Denver, CO 80202 Vann.Ellerbruch@Lumen.com
Lumen Technologies, Inc.	Lumen Legal Department 931 14 <sup>th</sup> Street, 9 <sup>th</sup> Floor Denver, CO 80202 Legalaffairs@Lumen.com	Vann Ellerbruch Senior Attorney 931 14 <sup>th</sup> Street, 9 <sup>th</sup> Floor Denver, CO 80202 Vann.Ellerbruch@Lumen.com

11. Each Party to this Guaranty acknowledges that it has been represented by legal counsel, and that each has reviewed, and has had the benefit of legal counsel's advice concerning, all of the terms and conditions of this Guaranty and all of the Work required under the Consent Decree and any estimated total amount of Response Costs.

12. Each Party acknowledges that this Guaranty is the product of informed, arms-length negotiations among the Parties, and if any part of this Guaranty is deemed ambiguous or in conflict, it shall be construed as if it were drafted jointly by all Parties.

13. Each Party represents and warrants that each person who has signed this Guaranty in a representative capacity on that Party's behalf is duly authorized to enter into this Guaranty and to bind the Party on whose behalf he or she is signing.

14. The Parties, and each of them, represent and warrant that the representations made in this Guaranty are true and correct, and that they have the sole right and exclusive authority to execute this Guaranty and to receive the consideration therefor.

15. This Guaranty shall be binding on successors and assigns of the Parties and shall inure to the benefit of each Party's parent companies, subsidiaries, agents, heirs, successors,

**Settlement Agreement and Mutual Release**

assigns, principals, officers, directors, members, governors, employees, and vessels. This Guaranty shall be governed by and construed in accordance with the laws of the State of Washington, without regard to choice of law rules. Any claim to enforce this Guaranty shall be brought in the United States District Court for the Western District of Washington. In the event the United States District Court for the Western District of Washington cannot or does not exercise jurisdiction, the Parties agree that any dispute arising under this Guaranty shall be heard in King County Superior Court in Seattle. This Guaranty may be executed in counterparts and by facsimile or portable document format (.pdf) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

DATED: Dec 20, 2024

LUMEN TECHNOLOGIES, INC.

By:



Printed Name: Andrea Genschaw

Its: Chief Accounting Officer and Controller

**Settlement Agreement and Mutual Release**

DATED: Dec 20, 2024

LEVEL 3 PARENT LLC

By: Agusluw

Printed Name: Andrea Genschaw

Its: Chief Accounting Officer and Controller

DATED: \_\_\_\_\_, 2024

THE BOEING COMPANY,  
A Settling LDWG Party

By:

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2024

CITY OF SEATTLE,  
A Settling LDWG Party

By:

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Settlement Agreement and Mutual Release**

DATED: \_\_\_\_\_, 2024

LEVEL 3 PARENT LLC

By:

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: January 9, 2025

THE BOEING COMPANY,  
A Settling LDWG Party

By: 

Meredith Weinberg

Printed Name: \_\_\_\_\_

Counsel (Perkins Coie LLP)

Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2024

CITY OF SEATTLE,  
A Settling LDWG Party

By:

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

***Settlement Agreement and Mutual Release***

DATED: \_\_\_\_\_, 2024

KING COUNTY,

A Settling LDWG Party

By:

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_