

Standby Letter of Credit Agreement (Standard Version)

To induce Wells Fargo Bank, National Association and/or any of its branches or affiliates (individually and collectively, “**Bank**”), in its sole discretion, to issue one or more standby letters of credit (as may be amended from time to time, each a “**Credit**” and collectively, the “**Credits**”) at the request of the undersigned (individually and collectively, “**Applicant**”; jointly and severally, if more than one) each of Bank and Applicant are sometimes referred to as a “**Party**” and collectively referred to as the “**Parties**”, and for the account of Applicant named in the Application, Applicant agrees that the following terms and conditions of this Standby Letter of Credit Agreement (this “**Agreement**”) shall apply to any Credit (and any related Application):

1. Applications/Instructions. The request to issue or amend a Credit (an “**Application**”) shall be irrevocable and in such form as Bank shall from time to time require or agree to accept (including any type of electronic form or means of communication and through Bank’s proprietary online system). Inquiries, communications and instructions (whether written, facsimile or in other electronic form approved by Bank) regarding a Credit, each Application and this Agreement are each referred to herein as “**Instructions**”. Bank’s records of the content of any Instruction will be conclusive.

2. Applicant’s Reimbursement and Payment Obligations and Terms.

(a) Dollar Drawings; Charges. For each Credit payable or purporting to be payable in Dollars, Applicant shall, as to clause (i) below, reimburse Bank, and as to all other clauses below, pay Bank:

- (i) the amount of each drawing paid by Bank under the Credit on the same Business Day such drawing is paid by Bank, if under a sight draft or demand presentation paid by Bank under such Credit, and at least one Business Day prior to the date when payment is to be made under a time draft (or acceptance relating thereto) or deferred payment obligation;
- (ii) for each Credit in any currency, Applicant shall pay to Bank commissions, fees and charges in respect of the Credit payable in Dollars (including, commissions and fees for issuance, correspondent bank fees, transfer, assignment of proceeds, amendments and drawings and of any adviser, confirming institution or entity or other nominated person), at such rates, amounts and times as Bank and Applicant shall mutually agree, including such agreed-upon issuance fees or commissions as may be set forth in **Schedule 1** hereto, which fees and commissions may be modified by Bank from time to time effective upon Bank’s delivery of a new Schedule 1 to Applicant and Applicant’s continued use of services; or if no agreement, the rates then customarily charged by Bank (the rates customarily charged by Bank as of the date of this Agreement are set forth in **Schedule 2** hereto, which rates are subject to change in Bank’s sole discretion without notice to Applicant; provided however, Applicant may request such customary rates from Bank at any time);
- (iii) interest on each amount payable under this Agreement for each day from and including the date such payment is due through the date of payment, on demand, at a rate per annum (calculated on the basis of a 360-day year for the actual number of days elapsed) equal to the lesser of (A) the Prime Rate plus 4% and (B) the highest rate permitted by applicable law;
- (iv) Bank’s charges, costs and expenses (including the reasonable legal fees, charges and disbursements of any counsel) to Bank incurred in connection with the protection or enforcement of Bank’s rights under this Agreement and any correspondent’s charges, with interest from the date paid or incurred by Bank through the date of payment by Applicant, on demand, at a rate per annum equal to the lesser of (A) the Prime Rate plus 4% and (B) the highest rate permitted by applicable law; and
- (v) if as a result of any Change in Law, Bank determines that the cost to Bank of issuing or maintaining any Credit is increased, or any amount received or receivable by Bank under this Agreement is reduced, or Bank is required to make any payment in connection with any transaction contemplated hereby, then such additional amount or amounts, on demand, as Bank determines will compensate Bank for such increased cost, reduction or payment.

(b) Foreign Currency Exchange Rates; Currency Equivalents; Drawings; Charges.

- (i) Bank shall compute the Dollar Equivalent of the maximum stated amount of each applicable Credit at the Applicable Rate of Exchange on certain dates, which may include on the issuance date and at such additional dates as customarily employed by Bank for such purposes.
- (ii) If the amount drawn or demanded to be paid under any Credit is not in Dollars, Applicant agrees to reimburse or pay under Section 2(a) above in the applicable non-Dollar currency of the Credit. Notwithstanding the foregoing, Bank may, at its sole and absolute discretion, require or permit Applicant to reimburse or pay under Section 2(a)

above in the Dollar Equivalent of such amount computed at Bank's Applicable Rate of Exchange. Applicant bears all risk of loss due to fluctuation of the Applicable Rate of Exchange from the time Bank issues a Credit until the time Applicant reimburses Bank for drawings paid under a Credit.

- (iii) Subject to 2(b)(i), fees, commissions and charges related to any Credit and are to be paid in Dollars. Bank may require or permit Applicant to pay such fees, commissions and charges in the Dollar Equivalent of such amount computed at Bank's Applicable Rate of Exchange.
- (c) **Immediately Available Funds; No Withholding.** All reimbursements and payments shall be made in immediately available funds, free and clear of and without deduction for any present or future Taxes, set-off or other liabilities, at such time and to such location as Bank may designate from time to time. Applicant shall pay all withholding, stamp and other Taxes imposed by any taxing authority in any jurisdiction on reimbursement or payment under any Credit and this Agreement, and shall indemnify Bank against all liabilities, costs, claims and expenses resulting from Bank having to pay or from any omission to pay or delay in paying any such Tax.
- (d) **Automatic Debit and Set-Off.** Bank is hereby authorized and may (but shall not be required to), without demand for reimbursement or payment or notice to Applicant, and in addition to any other right of set-off that Bank may have, debit any account or accounts maintained by Applicant with any office of Bank (now or in the future) and set-off and apply (i) any balance or deposits (general, special, time, demand, provisional, final, matured, unmatured, contingent or absolute) in the account(s) irrespective of any applicable early termination or other fees resulting from such liquidation, all of which Applicant shall bear and (ii) any sums due or payable from Bank, to the payment of any and all Obligations owed by Applicant to Bank.
- (e) **Obligations Absolute.** Applicant's reimbursement and payment obligations under this Section 2 are absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including:
 - (i) any lack of validity, enforceability or legal effect of any Application, Credit or amendment thereto, this Agreement, any guaranty, agreement or document relating to any of the foregoing or any term or provision therein or herein;
 - (ii) any payment against presentation of any draft, demand or claim for payment under any Credit or other document (including by electronic transmission such as SWIFT, electronic mail, facsimile, or computer generated telecommunication) presented for purposes of drawing under any Credit (individually, a "**Drawing Document**" and collectively, the "**Drawing Documents**") that fails to comply with the terms of the applicable Credit or which proves to be fraudulent, forged or invalid in any respect or any statement therein being untrue or inaccurate in any respect, or which is signed, issued or presented by a Person purporting to be a successor or transferee of the beneficiary of such Credit;
 - (iii) Bank acting based upon an Instruction that it in good faith believes to have been given by a Person authorized to give such Instruction;
 - (iv) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation;
 - (v) any delay in giving or failing to give notice (irrespective of whether notice is required);
 - (vi) Bank or any of its branches or affiliates being the beneficiary of any Credit;
 - (vii) any breach of contract between the beneficiary and Applicant or among any of the parties to the underlying transaction;
 - (viii) the existence of any claim, set-off, defense or other right that Applicant or any other Person may have at any time against any beneficiary or transferee beneficiary, any assignee of proceeds, Bank or any other Person;
 - (ix) payment to any presenting bank (designated or permitted by the terms of the applicable Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under Standard Letter of Credit Practice applicable to it;
 - (x) honor after the expiration date of a Credit of any presentation made thereunder on or prior to such expiration date;
 - (xi) honor of a presentation that is subsequently determined by Bank to have been made in violation of international, federal, state or local restrictions on the transaction of business with certain prohibited Persons;
 - (xii) Bank acting or failing to act as required or permitted under Standard Letter of Credit Practice applicable where it has issued, confirmed, advised or negotiated such Credit, as the case may be; or
 - (xiii) any other event, circumstance or conduct whatsoever, whether or not similar to any of the foregoing that might, but for this Section, constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, the Obligations, whether against Bank, the beneficiary or any other Person;

provided that subject to Section 4(b), the foregoing shall not release Bank from such liability to Applicant as may be finally

determined in a binding arbitration proceeding brought by Applicant pursuant to Section 11 below (or as may be judicially determined in a final, non-appealable judgment by a court of competent jurisdiction pursuant to the last sentence of Section 11 below) against Bank following reimbursement and/or payment of the Obligations.

3. Applicant's Responsibility. Applicant is responsible for the final text of the Credit as issued by Bank, irrespective of any assistance Bank may provide such as drafting or recommending text or by Bank's use or refusal to use text submitted by Applicant. Applicant understands that the final form of any Credit may be subject to such revisions and changes to the Credit language consistent with Bank's customary practices for letter of credit issuance as are deemed necessary or appropriate by Bank and Applicant hereby consents to such revisions and changes. Applicant is solely responsible for the suitability of the Credit for Applicant's purposes. If Applicant requests Bank to issue a Credit for an affiliated third party ("**Account Party**"), (a) Account Party shall have no rights against Bank; (b) Applicant shall be responsible for the Application and obligations under this Agreement; and (c) communications (including notices) related to the respective Credit shall be between Bank and Applicant. Applicant will examine the copy of the Credit and any other documents sent by Bank in connection with the Credit and shall promptly notify Bank (not later than three Business Days following Applicant's receipt of the applicable documents from Bank) of any non-compliance with Applicant's Instructions and of any discrepancy in any document under any presentment or other irregularity. Applicant's acceptance or retention beyond such period of any original documents presented under any Credit, or of any property for which title is conveyed by such documents or for which payment is made (in whole or in part) under such Credit, shall ratify Bank's honor of the applicable presentation. To the extent commercially reasonable and in accordance with applicable law and Standard Letter of Credit Practice, Bank will assist Applicant in correcting the Credit for any non-compliance with Applicant's Instructions and any other irregularity. Applicant understands and agrees that Bank is not required to extend the expiration date of any Credit for any reason. With respect to any Credit containing an "automatic amendment" to extend the expiration date of such Credit, Bank may give or refrain from giving notice of non-extension of such Credit. If Applicant does not at any time want the then current expiration date of such Credit to be extended, Applicant will so notify Bank at least 15 calendar days before Bank is required to notify the beneficiary of such Credit or any advising bank of such non-extension pursuant to the terms of such Credit.

4. Indemnification; Limitation of Liability.

(a) Indemnification. Applicant agrees to indemnify and hold harmless Bank (including Bank's branches and affiliates), its correspondents and each of their respective directors, officers, employees, attorneys and agents (each, including Bank, an "**Indemnified Person**") from and against any and all claims, suits, judgments, liabilities, losses, fines, damages, penalties, interest, costs and expenses (including expert witness fees and reasonable legal fees, charges and disbursements of any counsel and all expenses of arbitration or litigation and in preparation thereof), which may be incurred by or awarded against any Indemnified Person ("**Costs**"), and which arise out of or in connection with, or as a result of:

- (i) any Credit or any pre-advice of its issuance;
- (ii) any transfer, sale, delivery, surrender or endorsement (or lack thereof) of any Drawing Document at any time(s) held by any Indemnified Person in connection with any Credit;
- (iii) any action or proceeding arising out of, or in connection with, any Credit or this Agreement (whether administrative, judicial or in connection with arbitration), including any action or proceeding to compel or restrain any presentation or payment under any Credit, or for the wrongful dishonor of, or honoring a presentation under, any Credit;
- (iv) any independent undertakings issued by the beneficiary of any Credit;
- (v) any unauthorized Instruction or error, omission, interruption, or delay, whether transmitted by mail, courier, computer, electronic transmission, SWIFT, or any other telecommunication including communications through a correspondent;
- (vi) an adviser, confirmer or other nominated person seeking to be reimbursed, indemnified or compensated;
- (vii) any third party seeking to enforce the rights of an applicant, beneficiary, nominated person, transferee, assignee of Credit proceeds or holder of an instrument or document;
- (viii) the fraud, forgery or illegal action of parties other than the Indemnified Person;
- (ix) any prohibition on payment or delay in payment of any amount payable by Bank to the appropriate party of a Credit arising out of Financial Crime Laws;
- (x) Bank's performance of the obligations of a confirming institution or entity that wrongfully dishonors a confirmation;
- (xi) any foreign language translation provided to Bank in connection with any Credit;
- (xii) any foreign law or usage as it relates to Bank's issuance of a Credit in support of a foreign guaranty including the expiration of such guaranty after the related Credit expiration date and any resulting drawing paid by Bank in connection thereto; or
- (xiii) the acts or omissions, whether rightful or wrongful, of any present or future *de jure* or *de facto* governmental or regulatory authority or cause or event beyond the control of such Indemnified Person;

provided that such indemnity shall not be available to any Person claiming indemnification under clauses (i) through

(xiii) above to the extent that such Costs are found in a binding arbitration proceeding brought by Applicant pursuant to Section 11 below (or as may be judicially determined in a final, non-appealable judgment by a court of competent jurisdiction pursuant to the last sentence of Section 11 below) to have resulted directly from the gross negligence or willful misconduct of the Indemnified Person claiming indemnity. Applicant agrees to pay Bank on demand from time to time all amounts owing under this Section. If and to the extent that the Obligations of Applicant under this Section are unenforceable for any reason, Applicant agrees to make the maximum contribution to the Costs permissible under applicable law. This indemnity provision shall survive termination of this Agreement and all Credits.

- (b) Limitation of Liability; Direct Damages.** The liability of Bank (or any other Indemnified Person) under, in connection with and/or arising out of this Agreement, any Application, or any Credit (or pre-advice), regardless of the form or legal grounds of the action or proceeding, shall be limited to direct damages suffered by Applicant that are caused directly by Bank's gross negligence or willful misconduct in (i) honoring a presentation under a Credit that on its face does not at least substantially comply with the terms and conditions of such Credit; (ii) failing to honor a presentation under a Credit that strictly complies with the terms and conditions of such Credit; or (iii) wrongfully retaining Drawing Documents presented under a Credit. Applicant's aggregate remedies against Bank and any Indemnified Person for wrongfully honoring a presentation under any Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by Applicant to Bank in respect of the honored presentation in connection with such Credit under Section 2, plus interest.
- (c) No Punitive Damages.** Notwithstanding anything to the contrary in this Agreement, neither Bank nor any other Indemnified Person shall, under any circumstances whatsoever, be liable in contract, tort or otherwise for any punitive, exemplary, consequential, indirect or special damages or losses of any nature whatsoever regardless of whether or not Bank or any other Indemnified Person shall have been advised of the possibility thereof or the form of action in which such damages or losses may be claimed. Applicant shall take action to avoid and mitigate the amount of any damages claimed against Bank or any other Indemnified Person, including by enforcing its rights in the underlying transaction. Any claim by Applicant under or in connection with this Agreement or any Credit shall be reduced by an amount equal to the sum of (X) the amount (if any) saved by Applicant as a result of the breach or alleged wrongful conduct complained of and (Y) the amount (if any) of the loss that would have been avoided had Applicant taken all reasonable steps to mitigate any loss, and in case of a claim of wrongful dishonor, by specifically and timely authorizing Bank to effect a cure.
- (d) No Responsibility or Liability.** Without limiting any other provision of this Agreement, Bank and each other Indemnified Person (if applicable) shall not be responsible to Applicant for, and/or Bank's rights and remedies against Applicant and the Obligations shall not be impaired by:
- (i) honor of a presentation under any Credit that on its face substantially complies with the terms and conditions of such Credit, even if the Credit requires strict compliance by the beneficiary;
 - (ii) honor of a presentation of any Drawing Document that appears on its face to have been signed, presented or issued (A) by any purported successor or transferee of any beneficiary or other Person required to sign, present or issue such Drawing Document or (B) under a new name of the beneficiary;
 - (iii) acceptance as a draft of any written or electronic demand or request for payment under a Credit, even if nonnegotiable or not in the form of a draft, and/or Bank may disregard any requirement that such draft, demand or request bear any or adequate reference to the Credit;
 - (iv) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness or legal effect of any Drawing Document (other than Bank's determination that such Drawing Document appears on its face substantially to comply with the terms and conditions of the Credit);
 - (v) acting upon any Instruction that it in good faith believes to have been given by a Person authorized to give such Instructions;
 - (vi) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation;
 - (vii) any delay in giving or failing to give notice (irrespective of whether or if notice is required) to Applicant;
 - (viii) any acts, omissions or fraud by, or the solvency of, any beneficiary, any nominated person or entity or any other Person;
 - (ix) any breach of contract between the beneficiary and Applicant or among any of the parties to the underlying transaction;
 - (x) assertion or waiver of any provision of the ISP, UCP or eUCP that primarily benefits an issuer of a letter of credit, including any requirement that any Drawing Document be presented to it at a particular hour or place;
 - (xi) payment to any presenting bank (designated or permitted by the terms of the applicable Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under Standard Letter of Credit Practice applicable to it;

- (xii) acting or failing to act as required or permitted under Standard Letter of Credit Practice applicable to where it has issued, confirmed, advised or negotiated such Credit, as the case may be;
- (xiii) honor of a presentation after the expiration date of any Credit notwithstanding that a presentation was made prior to such expiration date and dishonored by Bank if subsequently Bank or any court or other finder of fact determines such presentation should have been honored;
- (xiv) dishonor of any presentation that does not strictly comply or that is fraudulent, forged or otherwise not entitled to honor; or
- (xv) honor of a presentation that is subsequently determined by Bank to have been made in violation of international, federal, state or local restrictions on the transaction of business with certain prohibited Persons.

5. Representations and Warranties. Applicant hereby represents and warrants to Bank that the following matters are true and correct in all respects (all of which representations and warranties will be repeated as true and correct as of the date of each new Application submitted by Applicant to Bank and as of the date of issuance of any Credit requested in each such Application):

- (a) Legal Status.** If not a natural person, Applicant is duly organized or formed, validly existing and (to the extent applicable under the laws of the relevant jurisdiction) in good standing under the laws of the jurisdiction of its organization or formation, and is duly qualified or licensed to do business (and in good standing as a foreign corporation or entity, if applicable) in all jurisdictions in which such qualification or licensing is required or in which the failure to so qualify or to be so licensed could have a material adverse effect on Applicant.
- (b) Power and Authority.** Applicant has the requisite power and authority to execute and deliver this Agreement and each Application and to perform and observe the terms and conditions stated herein and therein, and, if not a natural person, Applicant has taken all necessary corporate or other action to authorize its execution, delivery and performance of this Agreement and each Application.
- (c) Valid and Binding Obligation.** This Agreement constitutes, and each Application when signed and delivered by Applicant to Bank will constitute, its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency and similar laws of general application affecting the rights of creditors and to general principles of equity.
- (d) No Violation or Breach.** Applicant's execution, delivery and performance of this Agreement and each Application and the payment of all sums payable hereunder and thereunder do not and will not: (i) violate or contravene (A) if Applicant is not a natural person, its charter, bylaws or other organizational documents; (B) any order, writ, law, treaty, rule, regulation or determination of any Governmental Authority (domestic or foreign), in each case applicable to or binding upon it or any of its property; or (ii) result in the breach of any provision of, or in the imposition of any lien or encumbrance under, or constitute a default or event of default under, any agreement or arrangement to which it is a party or by which it or any of its property is bound, the contravention of which agreement or arrangement would have a material adverse effect on Applicant.
- (e) Approvals.** With respect to each Application for a Credit to cover the shipment or sale of goods, Applicant has obtained or will obtain, prior to submission of such Application to Bank, all import, export and/or shipping licenses and other governmental approvals required in connection with the transaction(s) contemplated thereby. No authorization, approval or consent of, or notice to or filing with, any Governmental Authority is required to be made in connection with the execution and delivery by Applicant of this Agreement or any Application or the issuance by Bank of any Credit for the account of Applicant pursuant to this Agreement and related Application.
- (f) Compliance with Laws.** No Application, Credit, party (including any Account Party), transaction, payment, or reimbursement under any Application and/or Credit will contravene any laws, treaties, rules or regulations of any Governmental Authority, including, any foreign exchange control laws or regulations, or currency reporting laws and regulations, now or hereafter applicable. Applicant is in compliance with all applicable laws and regulations, except for any noncompliance that could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the business, operations, property or financial condition of Applicant.
- (g) Financial Crime Laws.** Applicant, any Account Party, and any officer, director, or agent acting on behalf of the foregoing are not a Sanctioned Person. Applicant and any Account Party are in compliance with Financial Crime Laws and no Application, Credit or transaction under any Application and/or Credit will contravene any Financial Crime Laws. To the best of Applicant's knowledge, based on due care and inquiry, there is no action, suit, proceeding or investigation against Applicant or any Account Party with respect to an alleged breach of Financial Crime Laws. Applicant has implemented and maintained and complies with policies, procedures and controls reasonably designed to ensure that both Applicant and any Account Party are in compliance with Financial Crime Laws. Applicant shall not reimburse or pay Bank with proceeds, or provide as collateral any property, that is directly or indirectly derived from any transaction or activity that is prohibited by Financial Crime Laws, or that otherwise could cause Bank to be in violation of Financial Crime Laws.
- (h) No Default Under Applicant's Other Agreements.** Applicant is not in default under any agreement, obligation or

duty to which it is a party or by which it or any of its property is bound, which could have a material adverse effect on Applicant.

- (i) **No Arbitration Proceeding or Litigation.** There is no pending or to the knowledge of Applicant, threatened arbitration proceeding, litigation or action which may materially adversely affect its financial condition or business or which purports to affect the validity or enforceability of this Agreement, any Application, or any Credit or any transaction related to any Credit.
- (j) **Filed All Tax Returns and Paid All Taxes.** Applicant has filed all required tax returns, and all Taxes, assessments and other governmental charges due from it have been fully paid, except for Taxes which are being contested in good faith. Applicant has established on its books reserves adequate for the payment of all federal, state and other income tax liabilities, including those being contested in good faith.
- (k) **Financial Statements.** The financial statements most recently furnished to Bank (if required to be furnished to Bank) by Applicant are complete and correct and fairly present in all material respects the financial condition of Applicant as at the date of such financial statements in accordance with generally accepted accounting principles, and there has been no material adverse change in Applicant's business, condition (financial or otherwise) or results of operation since the date of Applicant's most recent annual financial statements.

6. **Covenants.** Applicant hereby agrees and covenants to do the following:

- (a) **Compliance with Laws.** Comply with all federal, state and foreign exchange regulations and other laws and regulations of any Governmental Authority, including all Financial Crime Laws now or hereafter applicable to Applicant, this Agreement, any Application or any party (including any Account Party), transactions, payments, or reimbursement under or in connection with any Application and/or Credit.
- (b) **Use of Proceeds.** Applicant will not request that Bank issue a Credit to a Sanctioned Person. Applicant will not, directly or indirectly, use or facilitate the use by any other Person (including any Account Party) of any Credit (i) to fund any activities or business of, or with, any Sanctioned Person or that would be prohibited by Financial Crime Laws or (ii) in any other manner that would cause Bank to be in breach of any Financial Crime Laws. Applicant and Guarantor will not pay amounts to Bank hereunder with proceeds derived from any transaction that would be prohibited by Financial Crime Laws or would otherwise cause Bank to be in breach of any Financial Crime Laws. Applicant shall notify Bank in writing not more than one Business Day after first becoming aware of any breach of this section.
- (c) **Keep Adequate Books and Records.** Keep adequate records and books of account in which complete entries will be made in accordance with accounting principles acceptable to Bank, consistently applied, reflecting all of Applicant's financial transactions.
- (d) **Permit Visits by Bank.** Permit Bank's employees or representatives from time to time, during customary business hours and after giving reasonable prior written notice, to visit and inspect Applicant's properties, inspect, review and make copies of such books, records and files as reasonably requested by Bank, and discuss with Applicant, or if Applicant is not a natural person, Applicant's executives, Applicant's business, assets, liabilities, indebtedness, financial condition and results of operations.
- (e) **Agreement to Deliver Evidence of Authority.** Duly complete, execute and promptly deliver to Bank concurrent with the execution of this Agreement, duly executed evidence of authority, in a form deemed acceptable to the Bank, certifying Applicant's capacity and authority to execute this Agreement and the transactions contemplated hereby on behalf of Applicant.
- (f) **Quarterly Financial Statements.** As soon as available and in any event within 90 days after the end of each fiscal quarter, deliver to Bank (if requested to be delivered to Bank) Applicant's unaudited quarterly balance sheet/financial statement as of the end of such fiscal quarter.
- (g) **Annual Financial Statements.** As soon as available and in any event within 120 days after the end of each fiscal year, deliver to Bank (if requested to be delivered to Bank) Applicant's audited year-end balance sheet/financial statement as of the end of such fiscal year.
- (h) **Other Information.** Deliver to Bank such other information (financial or otherwise) as Bank may from time to time request.
- (i) **Further Assurances.** At Applicant's costs and expense, execute and deliver to Bank such additional certificates, instruments, documents and/or agreements and take such additional action as may be reasonably requested by Bank to enable Bank to issue any Credit pursuant to this Agreement and related Application, to protect, exercise and/or enforce Bank's rights and interests under this Agreement and/or to give effect to the terms and provisions of this Agreement or any Application.

7. **Events of Default.** Each of the following shall be an "Event of Default" under this Agreement:

- (a) **Failure to Reimburse or Pay.** The failure by Applicant or any Person that has guaranteed or provided credit or collateral support for all or any part of the Obligations (each such Person, a "Guarantor") to reimburse or pay any

principal, interest, fee or other amount when due under or in connection with this Agreement or any Credit.

- (b) Breach of Representation and Warranty.** Any representation, warranty, certification or statement made or furnished by Applicant or Guarantor under or in connection with this Agreement or any Application or as an inducement to Bank to issue a Credit shall be false, incorrect or incomplete in any material respects when made.
- (c) Failure to Perform or Observe Covenants.** Applicant's or Guarantor's failure to perform or observe any term, covenant or agreement contained in this Agreement (other than those referred to in subsections (a) and (b) of this Section), or the breach of any other obligation owed by Applicant or Guarantor to Bank, and with respect to any such failure or breach that by its nature can be cured, such failure or breach shall continue or remain unremedied for 30 calendar days after such failure or breach occurs.
- (d) Defaults with Other Bank Agreements.** The occurrence and continuance of any default or defined event of default under any other agreement, document or instrument signed or made by Applicant or Guarantor with or in Bank's favor.
- (e) Insolvency Proceedings, Etc.** Applicant or Guarantor institutes or consents to the institution of any proceeding under any Bankruptcy Law; or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of Applicant or such Guarantor, as the case may be, and the appointment continues undischarged, undismissed or unstayed for 60 calendar days; or any proceeding under any Bankruptcy Law relating to Applicant or Guarantor or to all or any material part of its property is instituted without the consent of Applicant or such Guarantor, as the case may be, and continues undischarged, undismissed or unstayed for 60 calendar days; or an order for relief is entered in any such proceeding.
- (f) Inability to Pay Debts.** Applicant or Guarantor becomes unable or admits in writing its inability or fails generally to pay its debts as they become due.
- (g) Death; Legal Incompetency, etc.** If Applicant or Guarantor or any general partner or member of Applicant or any such Guarantor is a natural person, the death or judicial declaration of incompetency of Applicant, any such Guarantor or any such general partner or member.
- (h) Sale of Assets; Reorganization or Merger; Dissolution.** There shall occur in one or a series of transactions: (i) the sale, assignment or transfer of all or a substantial portion of the assets of Applicant or of Guarantor; (ii) a reorganization, merger, consolidation, change in any ownership of more than 25% of the voting capital stock (or partnership capital, net worth or such similar applicable equivalent), or acquisition (directly or indirectly) of the power to direct or cause the direction of the management or policies of Applicant or Guarantor (or the making of any agreement therefor) shall occur without the prior written consent of Bank; or (iii) the dissolution, cancellation or termination of Applicant or Guarantor.
- (i) Default of Third Party Indebtedness.** Applicant's or Guarantor's failure to pay or perform when due any indebtedness or other obligation Applicant or such Guarantor has to any Person other than Bank if such failure gives the payee of such indebtedness or the beneficiary of the performance of such obligation the right to accelerate the time of payment of such indebtedness or the performance of such obligation.
- (j) Material Adverse Change.** Any material adverse change occurs in Applicant's or Guarantor's business, assets, financial condition or prospects.
- (k) Levy or Attachment.** The service of a notice of levy and/or of a writ of attachment or execution, or other like process, against the assets of Applicant or Guarantor.
- (l) Judgment.** The filing of a notice of judgment lien against Applicant or Guarantor; or the recording of any abstract of judgment against Applicant or Guarantor in any county in which Applicant or such Guarantor has an interest in real property; or the entry of a judgment against Applicant or Guarantor.
- (m) Detriment to Collateral.** Any party with a material interest in any collateral given to secure the reimbursement or other payment obligations subject to this Agreement shall fail to comply with the requirements of the laws, rules, regulations and orders of any Governmental Authority applicable to and materially affecting such collateral, or any officer, director, or agent acting on behalf of Applicant or Guarantor is a Sanctioned Person, or performs or engages in any act or series of acts that Bank reasonably believes could constitute a violation of Financial Crime Laws.

8. Remedies. Upon the occurrence and during the continuance of any Event of Default:

- (a)** On the Business Day following the date on which Applicant receives notice from Bank demanding deposit of cash collateral, Applicant will deposit into an account (which may be non-interest bearing) established and maintained with Bank ("**Collateral Account**") an amount in cash equal to 105% of the undrawn amounts and any amounts drawn but not reimbursed of all outstanding Credits on such date and shall execute such other agreements in form and substance satisfactory to Bank as Bank may deem advisable to give Bank a first priority perfected security interest therein; *provided* that the obligation to deposit such cash collateral will become effective immediately, without any demand or notice of any kind, upon the occurrence of the Event of Default described in Section 7(e) above. Applicant hereby grants to Bank, for

its benefit, and as collateral security for the Obligations and performance by Applicant of all the terms, covenants and agreements to be performed under this Agreement or any document delivered in connection with this Agreement, a security interest in, all of Applicant's right, title and interest in, to and under, whether now or hereafter existing or arising, any such Collateral Account established by Bank pursuant to this clause (a) and all amounts on deposit therein and all certificates and instruments, if any, from time to time evidencing any of the foregoing, together with all proceeds of and all amounts received or receivable under any and all of the foregoing.

- (b) The full undrawn amount of each Credit, together with any additional amounts payable hereunder, shall, at Bank's option, become due and payable immediately without demand upon or notice to Applicant; provided that in the case of any Event of Default specified in Sections 7(e) or (f), the amount of each Credit, together with any additional amounts payable hereunder, shall, automatically and without any notice to Applicant or any other act by Bank, become immediately due and payable; and
- (c) Bank may exercise from time to time any of the rights, powers and remedies available to Bank under this Agreement, under any other documents now or in the future evidencing or securing any of the Obligations or under applicable law, and all such remedies shall be cumulative and not exclusive.

With respect to Bank's exercise of any of the foregoing rights, powers and/or remedies, Applicant hereby waives presentment, protest, dishonor, notice of dishonor, demand, notice of protest, notice of non-payment, notice of acceptance of this Agreement and any other notice or demand of any kind from Bank.

9. Subrogation. Bank, at its option, shall be subrogated to Applicant's rights against any Person who may be liable to Applicant on any transaction or obligation underlying any Credit, to the rights of any holder in due course or Person with similar status against Applicant, and to the rights of any beneficiary or any successor or assignee of any beneficiary.

10. Governing Law; ISP; UCP; eUCP; Standard Letter of Credit Practice. This Agreement and each Credit shall be governed by and construed in accordance with (a)(i) in the case of each Credit, the substantive laws of the jurisdiction specified in the applicable Credit, or if no governing law is so specified, the substantive laws of the jurisdiction of the office of Bank that issued the applicable Credit and (ii) in the case of this Agreement, the substantive laws of the jurisdiction of the office of Bank that issued the applicable Credit (as applicable, the "**Jurisdiction**"), in either case, including the Uniform Commercial Code as in effect from time to time in such Jurisdiction (the "**UCC**"), but excluding any choice of law rules that would apply the law of a different jurisdiction and (b) the ISP or UCP, as set forth in each Credit, which is, as applicable, incorporated herein by reference into this Agreement and which shall control (to the extent not prohibited by the law of the Jurisdiction) in the event of any inconsistent provisions of such law. Unless Applicant specifies otherwise in its Application for a Credit, Applicant agrees that Bank may issue a Credit subject to the ISP, UCP or eUCP. Any Credit issued subject to eUCP is also subject to UCP. Bank's privileges, rights and remedies under the ISP or UCP shall be in addition to, and not in limitation of, its privileges, rights, and remedies expressly provided for herein. The ISP and UCP shall serve, in the absence of proof to the contrary, as evidence of Standard Letter of Credit Practice with respect to matters covered therein. Bank shall be deemed to have acted with due diligence and reasonable care if Bank's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement. To the extent permitted by applicable law, (i) this Agreement shall prevail in case of conflict between this Agreement, the UCC and/or Standard Letter of Credit Practice; (ii) the ISP shall prevail in case of conflict between the ISP and the UCC or other Standard Letter of Credit Practice if the Credit is governed by the ISP; (iii) the UCP and the eUCP shall prevail in case of a conflict between the UCP or eUCP, as applicable, and the UCC or other Standard Letter of Credit Practice if the Credit is governed by the UCP or eUCP, as applicable; and (iv) the eUCP shall prevail in the event of a conflict between the eUCP and the UCP if the Credit is governed by the eUCP.

11. Arbitration. Applicant and Bank hereby agree, upon demand by either Party, whether made before the institution of a judicial proceeding or not more than 60 calendar days after service of a complaint, third party complaint, cross-claim, counterclaim or any answer thereto or any amendment to any of the above, to submit to binding arbitration of all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise arising out of, or relating in any way to, (a) any Credit, any Application or this Agreement and their negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination or (b) either Party's performance and/or obligations thereunder or in connection therewith; provided, however, Applicant and Bank hereby agree that, notwithstanding the foregoing, each Party retains the right to pursue in small claims court any dispute within that court's jurisdiction. Such arbitration shall be administered by the American Arbitration Association ("**AAA**") under its rules applicable to arbitration and judgment on the award rendered may be entered in any court having jurisdiction thereof. The parties agree that this Agreement is a "contract evidencing a transaction involving commerce" within the meaning of the Federal Arbitration Act (Title 9 of the United States Code), and any arbitration shall be governed by the provisions of such Federal Arbitration Act. The arbitrator(s) shall resolve all disputes in accordance with the UCP, ISP, Standard Letter of Credit Practice and governing law specified in Section 10 above, and may grant any remedy or relief allowed under such governing law except as limited by Section 4(b) above. The arbitration shall take place in any city located in the Jurisdiction, notwithstanding any AAA rule to the contrary. This arbitration provision shall survive termination of this Agreement or any Credit or Application related thereto. Any dispute that is required to be brought in court must be brought in state or federal court located in the Jurisdiction.

12. Consent to Jurisdiction and Venue. For the sole purpose of the last sentence of Section 11 above, and without waiving or modifying any of the mandatory arbitration provisions set forth in Section 11 above, in any proceeding involving, directly or

indirectly, any matter arising out of or related to this Agreement or any Credit issued in connection with this Agreement and Applicant's Application with respect to such Credit, Applicant hereby irrevocably submits to the nonexclusive jurisdiction of any state or federal court located in any county in the Jurisdiction and agrees not to raise any objection to the Jurisdiction or to the laying or maintaining of the venue of any such proceeding in the Jurisdiction. Applicant agrees that service of process in any such proceeding may be duly effected upon it by mailing a copy thereof, by certified mail, postage prepaid, to it at its address set forth in Section 16.

13. Judgment Currency.

- (a) If, for the purpose of obtaining or enforcing judgment against Applicant in any court in any jurisdiction, it becomes necessary to convert into any other currency (such other currency being hereinafter referred to as the "**Judgment Currency**") an amount due under this Agreement or any Credit in any currency (the "**Obligation Currency**") other than the Judgment Currency, the conversion shall be made at the Applicable Rate of Exchange prevailing on the Business Day immediately preceding the date of actual payment of the amount due, in the case of any proceeding in the courts of any other jurisdiction that will give effect to such conversion being made on such date, or the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the applicable date as of which such conversion is made being hereinafter referred to as the "**Judgment Conversion Date**").
- (b) If, in the case of any proceeding in the court of any jurisdiction referred to in clause (a) above, there is a change in the Applicable Rate of Exchange prevailing between the Judgment Conversion Date and the date of actual receipt for value of the amount due, Applicant shall pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the Applicable Rate of Exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the Applicable Rate of Exchange prevailing on the Judgment Conversion Date.

14. WAIVER OF JURY TRIAL. FOR THE SOLE PURPOSE OF THE LAST SENTENCE OF SECTION 11 ABOVE, AND WITHOUT WAIVING OR MODIFYING ANY OF THE MANDATORY ARBITRATION REQUIREMENTS AND PROVISIONS SET FORTH IN SECTION 11 ABOVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, APPLICANT AND WHEN IT ISSUES ANY CREDIT, BANK KNOWINGLY AND VOLUNTARILY WAIVE ALL RIGHTS TO TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED ON, ARISING OUT OF, OR RELATING TO THIS AGREEMENT OR ANY CREDIT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (ORAL OR WRITTEN) OR ACTIONS OF APPLICANT OR BANK WITH RESPECT THERETO. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BANK TO ISSUE ANY CREDIT.

15. Bankruptcy and Forfeiture Reinstatement. If any consideration transferred to Bank in payment of, or as collateral for, or in satisfaction of the Obligations, shall be voided in whole or in part as a result of (a) a subsequent bankruptcy or insolvency proceeding; (b) any forfeiture or seizure action or remedy; (c) any fraudulent transfer or preference action or remedy; or (d) any other civil, criminal or equitable proceeding or remedy, then Bank's claim to recover the voided consideration shall be a new and independent claim arising under this Agreement and shall be jointly and severally due and payable immediately by Applicant.

16. Notices. Unless otherwise expressly provided herein, all notices, Instructions, approvals, requests, demands, consents and other communications provided for hereunder (collectively, "**Notices**") shall be in writing (including by facsimile or other electronic transmission approved by Bank). All Notices shall be sent by regular U.S. mail or certified mail prepaid, by facsimile or other electronic transmission approved by Bank, by hand delivery, by *Federal Express* (or other comparable domestic or international delivery service) prepaid to the applicable address, facsimile number or electronic mail address set forth on the signature page hereof in the case of Applicant. All Notices to Bank shall be directed to the office of Bank issuing the applicable Credit and, if Bank approves of receiving Notices by email, to the email address of Bank provided from time to time by Bank to Applicant. Bank may, but shall not be obligated to, require authentication of any electronic transmission. Notices sent by hand, *Federal Express* (or other comparable domestic or international delivery service) or certified mail shall be deemed to have been given when received; Notices sent by regular U.S. mail shall be deemed to have been received five days after deposit into the U.S. mail; and Notices sent by facsimile or other electronic transmission shall be deemed to have been given when sent and receipt has been confirmed. Applicant or Bank may change its address for Notices by notifying the other of the new address in any manner permitted by this Section.

17. Waiver and Amendments. No modification, amendment or waiver of, or consent to any departure by Applicant from, any provision of this Agreement will be effective unless made in a writing signed by Bank, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Bank's consent to any amendment, waiver or modification does not mean that Bank will consent or has consented to any other or subsequent Instruction to amend, modify or waive a term of this Agreement or any Credit. No delay by Bank in exercising any of its rights or remedies shall operate as a waiver, nor shall any single or partial waiver of any right or remedy preclude any other further exercise of that right or remedy, or the exercise of any other right or remedy.

18. Successors and Assigns. This Agreement will be binding on Applicant's heirs, executors, administrators, legal representatives, successors and permitted assigns, and shall inure to the benefit of and be enforceable by Bank and its successors and assigns. Bank may assign this Agreement and its rights to reimbursement regarding any Credit, in whole or in part, without Applicant's consent. Applicant may not assign or transfer any of its interests, rights or remedies related to this Agreement or any

Credit, in whole or in part, without the prior written consent of Bank. This Agreement shall not be construed to confer any right or benefit upon any Person other than Bank, any Indemnified Person and Applicant and their respective successors and permitted assigns, and no such Person shall be deemed a third-party beneficiary hereof.

19. Severability. Whenever possible, each provision of the Agreement shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision of the Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Agreement.

20. Multiple Role Disclosure. Bank and its respective affiliates are engaged in a broad range of financial services and may be acting in multiple roles that may involve interests that differ from those of Applicant and its respective affiliates. Such transactions and roles may involve Applicant, any of its affiliates as well as entities or persons and their affiliates which may be involved in transactions arising from or relating to any Credit issued under this Agreement and may be customers or competitors of Applicant or any of its affiliates. Applicant acknowledges and accepts that Bank and its affiliates may perform more than one role in relation to any Credit or transactions related to any Credit.

21. Existing Credits. All Credits, other than Direct Pay Credits, that were issued prior to the date of this Agreement for the account of Applicant (“**Existing Credits**”) shall be deemed Credits under and subject to the terms of this Agreement, and this Agreement shall supersede any previous reimbursement agreements (however titled) that otherwise had governed or applied in respect of any Existing Credits.

22. Entire Agreement. This Agreement, Schedule 1, Schedule 2, any Application(s) accepted by Bank, and any other agreement, fee letter or fee schedule, document or instrument referred to herein, constitute the final, exclusive and entire agreement and understanding of, and supersede all prior or contemporaneous, oral or written, agreements, understandings, representations and negotiations between, the Parties relating to the subject matter of this Agreement, provided that this Agreement shall not supersede any reimbursement agreement (however titled) that has been entered into specifically with respect to any “direct pay” standby letter of credit or other similar standby letter of credit where the terms of such reimbursement agreement have been drafted to specifically address the particular attributes of, or the particular circumstances of the underlying transaction supported by, such standby letter of credit (“**Direct Pay Credits**”).

23. Continuing Agreement. This Agreement is a continuing agreement and may not be terminated by Applicant except upon (a) 30 days’ prior written notice of such termination by Applicant to Bank at the address set forth on the most recent Credit issued hereunder; (b) reimbursement and/or payment of all Obligations; and (c) the expiration or cancellation of all Credits issued hereunder. Notwithstanding the foregoing sentence, if a Credit is issued in favor of a sovereign or commercial entity, which is to issue a guarantee or undertaking on Applicant’s behalf in connection therewith, or is issued as support for such a guarantee, Applicant shall remain liable with respect to such Credit until Bank is fully released in writing by such entity.

24. Cross-Collateralization Exclusion. Applicant acknowledges and agrees no deed of trust, mortgage, security deed or similar real estate collateral agreement, nor any security agreement, pledge, assignment or similar personal property collateral agreement provided to Bank by Applicant or any other party (collectively defined herein as “**Collateral Documents**” and each individually, a “**Collateral Document**”) shall now or hereafter secure the Obligations of Applicant to Bank subject to this Agreement by reason of any cross-collateralization or similar provision purporting to generally expand the scope of obligations secured thereby to include the Obligations subject to this Agreement. For the elimination of doubt, unless specifically described as being secured thereby, no such Collateral Document shall secure the Obligations subject to this Agreement. Notwithstanding the foregoing, a statement in a Collateral Document specifically stating that it secures any letter of credit reimbursement obligations is sufficient for the Obligations subject to this Agreement to be secured thereby.

25. Joint and Several Liability. If this Agreement is signed by two or more Applicants:

- (a) each shall be deemed to make to Bank all the representations, warranties and covenants contained herein, and each shall be jointly and severally liable under this Agreement; and
- (b) each Applicant hereby waives any defense to its liability for reimbursement, payment and/or performance of the Obligations based upon or arising by reason of: (i) principles of suretyship or any disability or other defense of any other Applicant or any other Person; (ii) the cessation or limitation from any cause whatsoever, other than reimbursement and/or payment in full, of the liability of the other Applicant(s) or any other Person for the Obligations; (iii) any lack of authority of any officer, director, partner, agent or other Person acting or purporting to act on behalf of the other Applicant(s) or any defect in the formation of the other Applicant(s); (iv) any act or omission by Bank which directly or indirectly results in or aids the discharge of the other Applicant(s) by operation of law or otherwise, or which in any way impairs or suspends any rights or remedies of Bank against the other Applicant(s); (v) any impairment of the value of any interest in any security for the payment and performance under this Agreement, including the failure to obtain or maintain perfection or recordation of any interest in any such security, the release of any such security without substitution, and/or the failure to preserve the value of, or to comply with applicable law in disposing of, any such security; or (vi) any modification of the obligations or liabilities of the other Applicant(s) for the Obligations, including the renewal, extension, acceleration or other change in time for reimbursement or payment of, or other change in the terms of, the indebtedness of any Applicant for the Obligations, including increase or decrease of the rate of interest thereon.

Until all Obligations shall have been paid in full, no Applicant shall have any right of subrogation. Each Applicant hereby waives all rights and defenses it may have arising out of (A) any election of remedies by Bank, even though that election of remedies, such as a non-judicial foreclosure with respect to any security for the Obligations, destroys its rights of subrogation or its rights to proceed against the other Applicant(s) for reimbursement, or (B) any loss of rights it may suffer by reason of any rights, powers or remedies of the other Applicant(s) in connection with any anti-deficiency laws or any other laws limiting, qualifying or discharging any Applicant's indebtedness for the Obligations. Until all Obligations shall have been paid in full, each Applicant hereby waives any right to enforce any remedy which Bank now has or may hereafter have against the other Applicant(s) or any other Person, and waives any benefit of, or any right to participate in, any security now or hereafter held by Bank. Unless otherwise agreed by Bank, Bank in its discretion may accept an Application or seek or receive Instruction from, or give or send notice to, any Applicant regarding a Credit, including any amendment thereto or waiver of any discrepancy thereunder, and until Bank at the office at which the relevant Credit is issued actually receives written notice of revocation, each Applicant shall be bound by and hereby affirms the Instructions of the other.

26. Confidentiality.

- (a) Each of the Parties hereto agrees to keep this Agreement, Schedule 1, Schedule 2, any Application(s) accepted by Bank, any other agreement, fee letter or fee schedule, any documents provided hereunder and the services described herein confidential and not to disclose such information to any other individual or entity unless and only to the extent, (i) the prior written consent of the other Parties hereto is received; (ii) disclosure is mandated by applicable law, rule, order or regulation or required by Bank's examiners or regulators; (iii) required, in the sole judgment of Bank, in order for Bank to perform its obligations hereunder including to any correspondent bank, advising bank, nominated bank, negotiating bank, confirming bank and use of SWIFT in each case solely to process the Credits or to a party Bank sells, assigns, transfers or participates any rights and/or obligations hereunder; (iv) required by a Party to prevent illegal or fraudulent activities or in connection with the defense of any legal, arbitral, or comparable proceeding relating to this Agreement or the services performed hereunder; or (v) such information to be disclosed is generally available to the public other than as a result of the breach of this Agreement; provided, that nothing in this Section 26(a) shall prevent either Party from disclosing, subject to the terms and requirements of this Section 26, such information to such Party's subsidiaries, affiliates, officers, directors, employees, advisors, service providers, insurers, agents or auditors.
- (b) The Parties' obligations of confidentiality under this Section shall survive termination of this Agreement.
- (c) In the event disclosure is to be made subject to Sections 26(a)(ii) or (iv), above, prior to making any such disclosure the disclosing Party shall notify the other Party of the required disclosure, if allowed to do so pursuant to applicable law.

27. Interpretation. In this Agreement: (a) headings are included only for convenience and are not interpretative; (b) the term "including" means "including without limitation"; (c) references to actions Bank "may" take or omit to take mean "may in its sole discretion"; (d) unless the context requires otherwise, references herein to Sections or Schedules shall be construed to refer to sections of or schedules to this Agreement; and (e) references to any laws or rules include any amendments thereto or successor or replacement laws or rules.

28. Copies/Electronic Records. Bank may, in its sole discretion, accept a photocopy, facsimile, electronically transmitted, or other reproduction of a signed copy of this Agreement and/or any Application (including a PDF version received via email) or an electronically executed copy of this Agreement and/or any Application (including via SWIFT or DocuSign) as the binding and effective record of this Agreement and/or any Application, in each case with the same effect as an original manually signed Agreement and/or any Application, whether or not an original manually signed Agreement and/or any Application is also received by Bank from Applicant. Applicant represents to Bank that the signature (whether a photocopy, facsimile, electronically transmitted copy or reproduction of an ink signature or an electronic signature) that appears on the Agreement and/or any Application that is transmitted by Applicant to Bank in any manner is intended by Applicant to authenticate the Agreement and/or any Application and evidence Applicant's agreement with its terms notwithstanding that such signature may not be an original manual signature. Applicant further agrees that any such Agreement and/or any Application received by Bank shall constitute an original document for all purposes, including establishing the provisions of the Agreement and/or any Application, shall be binding on and enforceable against Applicant, and shall be legally admissible under the best evidence rule.

29. Definitions. As used in this Agreement, in addition to the terms defined elsewhere in this Agreement, the following capitalized terms have the meanings ascribed to such terms:

"Anti-Corruption Laws" means: (a) the U.S. Foreign Corrupt Practices Act of 1977; (b) the U.K. Bribery Act 2010; and (c) any other applicable anti-corruption laws, regulations or ordinances in any jurisdiction where Applicant, any Account Party, or Guarantor is located or doing business.

"Anti-Money Laundering Laws" means applicable laws or regulations in any jurisdiction in which Applicant, any Account Party, or Guarantor is located or doing business that relates to money laundering, any predicate crime to money laundering, or any financial record-keeping and reporting requirements related thereto.

"Applicable Rate of Exchange" means, with respect to a particular transaction, the applicable rate of exchange as determined in Bank's discretion. The applicable rate of exchange may be inclusive of mark-up. Mark-up is the spread that may be included as part of the rate in order to compensate Bank for a number of considerations, which might include risks taken, costs incurred, and services rendered, as well as the amount of revenue it expects to earn on the transaction. Bank may consider various pricing factors in determining mark-up, including the nature of the specific transaction, and those associated with the broader customer relationship, as well as any relevant operating costs.

“Bankruptcy Law” means the United States Bankruptcy Code (11 U.S.C. §101 *et seq.*), and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the United States or any state thereof, or any other foreign or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks are authorized or required to close at the place where Bank is obligated to honor a presentation or otherwise act under a Credit.

“Change in Law” means the occurrence after the date of this Agreement of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application by any Governmental Authority of any law, rule, regulation or treaty; or (c) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the US or foreign regulatory authorities shall, in each case, be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Dollar” or “Dollars” means, at any time, the lawful currency of the United States of America.

“Dollar Equivalent” means for any amount, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount and (b) if such amount is expressed in a currency other than Dollars, the equivalent of such amount in Dollars as determined by Bank at such time in its sole discretion by reference to the most recent Applicable Rate of Exchange for such currency for the purchase of Dollars with such currency.

“eUCP” means the Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation, Version 2.0, supplementing UCP 600 and any version or revision thereof accepted by Bank for use.

“FATCA” means Sections 1471 through 1474 of the Internal Revenue Code of 1986 (**“Code”**), as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulation legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

“Financial Crime Laws” means collectively, Anti-Corruption Laws, Anti-Money Laundering Laws, and Sanctions.

“Governmental Authority” means the government of any nation or any political subdivision thereof, whether at the national, state, territorial, provincial, municipal or any other level, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of, or pertaining to, government (including any supra-national bodies such as the European Union or the European Central Bank).

“ISP” means, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any version or revision thereof accepted by Bank for use.

“Obligations” means all obligations and liabilities (including any interest and fees accruing after the filing of a petition or commencement of a case by or with respect to any Applicant seeking relief under any applicable Bankruptcy Laws and any fraudulent transfer and fraudulent conveyance laws, whether or not the claim for such interest or fees is allowed in such proceeding), including reimbursement and other payment obligations and liabilities, of Applicant to Bank arising under, or in connection with, this Agreement, including Section 4, any Application or any Credit, whether matured or unmatured, absolute or contingent, now existing or hereafter incurred.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

“Prime Rate” means the rate of interest most recently announced within Bank at its principal office as its “Prime Rate”, with the understanding that the Prime Rate is one of Bank’s base rates and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto, and is evidenced by the recording thereof after its announcement in such internal publication or publications as Bank may designate. Each change in the Prime Rate shall be effective from and including the date such change is announced as being effective. If the Prime Rate as provided above would be less than zero percent (0.0%), then the Prime Rate shall be deemed to be zero percent (0.0%).

“Sanction” or “Sanctions” means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes, and anti-terrorism laws imposed, administered, or enforced from time to time by: (a) the United States of America, including those administered by the U.S. Treasury Department Office of Foreign Assets Control (OFAC), the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future statute or a signed, written, and published directive from the President of the United States that manages operations of the federal government; (b) the United Nations Security Council; (c) the European Union; (d) the United Kingdom; or (e) any other Governmental Authority with jurisdiction over Applicant, any Account Party, or Guarantor.

“Sanctioned Person” means any Person that is a target of Sanctions, including a Person that is, or is owned or controlled by a Person or acting on behalf of a Person that is: (a) listed on any list of the targets identified or designated pursuant to any Sanctions or (b) a Sanctions target pursuant to any territorial or country-based Sanctions program.

“Standard Letter of Credit Practice” means, for Bank, any domestic or foreign law or letter of credit practices applicable in the city in which Bank issued the applicable Credit or for its branch or correspondent, such laws and practices applicable in the city in which it has advised, issued, confirmed or negotiated such Credit, as the case may be. Such practices shall be (a) of banks that regularly issue Credits in the particular city and (b) required or permitted under the ISP, UCP or eUCP as chosen in the applicable Credit.

“Taxes” means all present and future taxes, fees, duties, levies, imposts, deductions, charges or withholdings of any kind (other than federal and state income taxes and franchise taxes imposed on Bank), and includes withholdings pursuant to or in connection with FATCA.

“UCP” means, the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any version or revision thereof accepted by Bank for use.

**Schedule 1 to Standby Letter of Credit Agreement
(Standard Version)**

Unless otherwise agreed in writing among Applicant and Bank with respect to different commissions, fees and charges for certain Credits, the commissions, fees and charges for Bank's issuance of a Credit, payable by Applicant to Bank pursuant to Section 2(a)(ii) shall include the non-refundable fees and commissions specified in the boxes checked below for the issuance, and if such Credit is extended or increased by Bank (whether by amendment, automatic increase or auto-extension), then such commissions, fees and charges shall be subject to possible modification at such time in Bank's sole discretion, in each case subject to Bank's standard minimum Dollar amount then in effect for any such activity and payable at such times indicated below or by such later date as may be specified in a bill if sent by Bank to Applicant (the "Commissions"). Capitalized terms not otherwise defined herein shall have the meanings assigned in the Agreement.

(Choose Upfront or In Arrears)

X **Upfront.** Upfront Commissions in an amount equal to **(choose ONE of the following)** 2% per annum (computed on the basis of a 360 day year, actual days projected to elapse) of the maximum amount available for drawings under such Credit, calculated over the projected term thereof (up to the scheduled expiration date of such Credit or any extension thereof), **-OR-** flat Commissions equal to \$ _____, **-OR-** _____ % of the maximum amount available for drawings under such Credit, with such Commissions payable at the time of issuance, extension or increase.*

In Arrears. In arrears Commissions in an amount equal to the daily maximum amount available to be drawn under such Credit times _____ % (computed on a per annum basis, based on a 360-day year, actual days elapsed), with such Commissions determined by Bank in arrears on a **(enter "quarterly" or "semi-annual")** basis, calculated from the Credit issuance date (the "Commission Period")* and payable on **(enter "first" or "last")** day of the calendar Commission Period (first day of the calendar Commission Period is January, April, July or October**; last day of the calendar Commission Period is March, June, September or December**).

*Minimum as of the date of the Agreement is \$1,000 each year or portion of the year, as applicable. The specification of a minimum rate does not preclude an agreement between Bank and Applicant for a higher rate.

**If semi-annual is chosen then only two of the four months are applicable.

**Schedule 2 to Standby Letter of Credit Agreement
(Standard Version)**

As referenced in Section 2(a)(ii), set forth below are rates customarily charged by Bank for certain activities or transactions as of the date of the Agreement, which customary rates apply unless otherwise agreed by Bank and Applicant. These rates are subject to change by Bank in its sole discretion without notice to Applicant, including increases or decreases in the rates and changes in the types of activities or transactions to which the rates apply, and the addition or deletion of an activity or transaction or a change in its description. Applicant may request current rates from Bank at any time. The specification of a minimum rate does not preclude an agreement between Bank and Applicant for a higher rate.

Standby Commission (Issuance)	By arrangement, \$1,000.00 minimum per annum
Amendment	\$300.00, plus issuance commission as applied to increased amount of Credit or extended expiration date
Auto-Extension	By arrangement, \$1,000.00 minimum per annum
Reissuance	\$300.00
Confirmation	By arrangement, \$300.00 minimum
Advising	\$300.00
Transfer	1/4%, \$250.00 minimum, \$1,500.00 maximum (plus standard SWIFT, telex or courier charges)
Assignment of Proceeds	1/4%, \$250.00 minimum, \$1,500.00 maximum
Special Handling/Multiple Drafting	By arrangement, \$250.00 minimum
Drawing	1/4%, \$300.00 minimum, \$1,500.00 maximum
VRDB Payment	By arrangement, \$300.00 minimum
Cancellation & Non-extension	\$150.00

APPLICANT: San Bernardino County Flood Control District

By: _____

Name: Dawn Rowe, Chairman

Title: Board of Supervisors

Address:

825 3rd St, Room 207

San Bernardino, CA

92415

Facsimile: (909) 387-4855

E-mail: supervisor.rowe@bos.sbcounty.gov

By: _____

Name:

Title:

Address:

Facsimile: ()

E-mail:

Date:

APPLICANT:*(Corporation or Firm)*

(complete this section if there is more than one Applicant)

By: _____

Name:

Title:

Address:**Facsimile:** ()**E-mail:**

By: _____

Name:

Title:

Address:**Facsimile:** ()**E-mail:****Date:**