

APPLICATION AND AGREEMENT FOR IRREVOCABLE STANDBY LETTER OF CREDIT

TERMS AND CONDITIONS

1. Definitions. As used herein:

“Agreement” means the Application and Agreement for Irrevocable Standby Letter of Credit, the terms and conditions set out above and below, and the Credit together with any and all modifications, amendments and extensions of any thereof.

“Applicable Interest Rate” means, unless otherwise defined in and governed by a separate agreement between Bank and Applicant, the lesser of the maximum lawful rate permitted by applicable law or a per annum rate (calculated on the basis of a 360 day year) equal to the sum of the prime rate of interest established by Bank from time to time (which is not necessarily the lowest or best rate of interest charged by Bank to any of its customers) plus five percent.

“Applicant” means, singularly or collectively and, if more than one, jointly and severally, each person or entity who has executed the Application as Applicant or as Account Party.

“Application” means the foregoing application of Applicant relating to the Credit as such application may be amended or modified from time to time in accordance herewith.

(e) “Bank” means Amegy Bank National Association

“Credit” or “Letter of Credit” means the letter of credit issued pursuant to the Application as may be amended or modified from time to time in accordance herewith.

“Instrument” means the Credit or any draft, receipt, acceptance or written demand (which shall include teletransmissions) for payment under the Credit

“Property” means goods and any and all documents related thereto, securities, funds, choses in action, and any and all other forms of property, whether real, personal or mixed and any right or interest therein.

2. Promise to Pay. (a) As to instruments drawn under or purporting to be drawn under the Credit, which are payable in United States currency; (i) in the case of each sight instrument, Applicant will reimburse Bank, at the address specified by Bank to Applicant, on demand, in United States currency, the amount paid thereon, or, if so demanded by Bank, will pay to Bank in advance the amount required to pay the same; and (ii) in the case of each time instrument, Applicant will pay to Bank, at the address specified by Bank to Applicant, in United States currency, the amount thereof, on demand but in any event not later than one business day prior to maturity of such time instrument at the place specified by the Credit for payment.

(b) As to instruments drawn under or purporting to be drawn under the Credit, which are payable in currency other than United States currency: (i) in the case of each sight instrument, Applicant will reimburse Bank, at the address specified by Bank to Applicant, on demand, in United States currency, the equivalent of the amount paid under the instrument at Bank’s then current selling rate of exchange for teletransmission to the place of payment in the currency in which such instrument is payable, or, if so demanded by Bank, will pay to Bank, in advance, in United States currency the equivalent of the amount required to pay the same; and (ii) in the case of each time instrument, Applicant will pay to Bank, at the address specified by Bank to Applicant, on demand but in any event sufficiently in advance of maturity of such time instrument to enable Bank to arrange for cover to reach the place of payment not later than three (3) business days prior to maturity, the equivalent of the time instrument in United States currency at Bank’s then current selling rate of exchange for teletransmission to the place of payment in the currency in which such instrument is payable. In the event there exists at the time in question no prevailing rate of exchange, Bank may obtain the non-United States currency from any commercially reasonable source, and immediately upon demand therefor, Applicant shall reimburse Bank for the entire amount expended by Bank in so acquiring such funds, inclusive of all expenses, in United States currency.

(c) Bank may accept or pay any instrument presented to it, regardless of when drawn and whether or not negotiated, if such instrument, the other required documents and any transmittal advice are dated on or before the expiration date of the Credit, and Bank may honor, as complying with the terms of the Credit and of the Agreement, any instruments or other documents otherwise in order signed or issued by any person who is, or is in good faith believed by Bank to be, an administrator, executor, trustee in bankruptcy, debtor in possession, conservator, assignee for the benefit of creditors, liquidator, receiver or other legal representative or successor by operation of law of the party authorized under the Credit to draw or issue such instruments or other documents.

3. Promise to Pay Interest and Fees. (a) Applicant will pay Bank, on demand: (i) Bank’s commission at such rate as Bank may determine to be proper, (ii) all charges and expenses paid or incurred by Bank in connection with the Credit, including, without limitation, all costs and expenses incurred by Bank, including attorneys fees, (A) in collecting amounts advanced under the Credit or otherwise remaining unpaid hereunder, (B) for the enforcement of any rights hereunder, and (C) in connection with any action relating to this Agreement or the Credit to which the Bank is made a party, and (iii) interest on any amounts due by Applicant to Bank hereunder from the date due to the date of payment at the Applicable Interest Rate.

(b) No provision of the Agreement shall require the payment or permit the collection of interest in excess of the maximum rate permitted by applicable law.

4. Promissory Note. In the event that Applicant has executed a promissory note payable to the order of Bank in connection with the Credit, Applicant hereby authorizes Bank, at Bank’s discretion, to pay instruments drawn under the Credit by making advances under such note, and such advances shall be repayable and bear interest in accordance with the terms of such note, notwithstanding any provision of this Agreement to the contrary.

5. Set Off; Pledge. Applicant authorizes Bank to charge any deposit account or other funds in Bank’s possession for the payment of Applicant’s liabilities hereunder at any time without notice. In addition, Applicant pledges to Bank any and all funds or securities of Applicant in the possession or control of Bank as collateral security for the obligations of Applicant hereunder (excluding any deposits subject to tax penalty).

6. Additional Collateral; Provisions Related to Collateral. (a) As additional collateral for the payment of any and all obligations of Applicant to Bank under this Agreement, Applicant hereby pledges, assigns and grants to Banks security interest in (i) any and all property (including all monies) of Applicant now or at any time hereafter in the possession or control of Bank or of any third party acting in Bank’s behalf for any purpose, including such property as may be in transit by mail to or from Bank and (ii) any and all documents of title, policies or certificates of insurance and other documents accompanying or related to instruments drawn under the Credit, and any and all other property shipped under or in connection with the Credit or in any way related thereto or to any of the instruments drawn thereunder (whether or not such documents or property are released to or upon the order of Applicant in trust or otherwise) any and all proceeds and products of the foregoing.

b) Bank is authorized at its option at anytime and with or without notice to Applicant, to transfer to or register in its name or the name of any Bank’s nominees all or any part of the property subject to any of the security interests granted under this Agreement. Bank is also authorized, at its option, to file financing statements without the signature of Applicant with respect to all or any part of such property. Applicant will pay the cost of any such filing and, upon Bank’s request, sign such instruments, documents or other papers, and take such other action, as Bank may reasonably require to perfect such security interests.

7. Representations and Warranties. Applicant represents and warrants that (a) if applicable, it is duly organized and validly existing with full power and authority to enter into this Agreement and perform its obligations hereunder, (b) if applicable, the execution of this Agreement has been authorized by all necessary action on the part of Applicant and does not violate or contravene any law, regulation, order or decree or the articles of incorporation, bylaws, partnership agreement or any other organizational document of Applicant, (c) any financial statements delivered to Bank fairly present the financial condition and results of operations of the subject thereof as of the dates set forth therein and no material adverse change has occurred since the such dates, and (d) Applicant has filed all tax returns and paid all taxes when due. Applicant certifies that transactions in the merchandise covered by this Agreement are not prohibited under the Foreign Assets Control Regulations of the United States Treasury Department or the Department of Commerce, Export Administration Regulations and that any importation covered by this Agreement conforms in every respect with all existing United States Government and other applicable regulations.

8. Default; Remedies. (a) The occurrence of any of the following shall constitute an “Event of Default”: (i) the nonpayment of any obligation of Applicant to Bank (under this Agreement or otherwise), (ii) the failure of Applicant to perform or observe any other term or covenant of this Agreement or of any other agreement between Applicant and Bank, or (iii) the death, dissolution or termination of existence of Applicant, or (iv) the institution by or against Applicant of

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any proceeding seeking to adjudicate Applicant a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of Applicant or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian, or other similar official for Applicant or for any substantial part of its property, (v) the attachment of or restraint as to any funds or other property which may be in, or come into, the possession or control of Bank, or of any third party acting on Bank's behalf, for the account or benefit of Applicant, or the issuance of any order of court or other legal process against the same, or (vi) the occurrence of any of the above events with respect to any person or entity which has guaranteed any obligations of Applicant to Bank (under this Agreement or otherwise).

(b) Upon the occurrence of an Event of Default Bank may declare the amount of the Credit together with all other obligations of Applicant under this Agreement to be immediately due and payable, and such amount shall become immediately due and payable (whether or not otherwise then due and payable) without demand upon or notice to Applicant; provided that upon the occurrence of an event listed in clause (iv) of paragraph (a) above, the amount of the Credit and all such other obligations of Applicant shall automatically become immediately due and payable.

(c) Upon the occurrence of any Event of Default Bank is hereby authorized, without notice or demand, to set off and apply against any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by Bank or any subsidiary or affiliate of Bank to or for the credit or the account of Applicant against any and all of Applicant's obligations to Bank under this Agreement, irrespective of whether or not Bank shall have made any demand under the Agreement and although such deposits, indebtedness or obligations may be unmatured or contingent. Bank's rights under this paragraph (c) are in addition to other rights and remedies (including, without limitation, other rights of set-off) which Bank may have.

(d) If an Event of Default shall have occurred Bank may exercise in respect of the property subject to any of the security interests granted under this Agreement all the rights and remedies of a secured party under the applicable Uniform Commercial Code or any other applicable law, and also may, without notice except as specified below, sell such property or any part thereof in one or more parcels at public or private sale, at any Bank office or elsewhere, for cash, on credit or for future delivery, and upon such other terms as Bank may deem commercially reasonable. To the extent notice of sale of such property shall be required by law, reasonable notification shall be satisfied by written notice mailed or delivered to Applicant at the address specified above at least five business days prior to the date of public sale or prior to the date after which private sale is to be made. Applicant will pay to Bank on demand all costs and expenses (including, without limitation, reasonable attorney's fees and legal expenses) related or incidental to the custody, preservation or sale of, or collection from, or other realization upon, any of such property or related or incidental to the establishment, preservation or enforcement of Bank's rights in respect of any such property. In the event of sale of, collection from, or other realization upon all or any part of such property, Bank may, in its discretion, hold the proceeds thereof as additional collateral hereunder or then or at any time thereafter apply the proceeds thereof to the payment of such of the costs and expenses referred to above and such of the obligations of Applicant under this Agreement whether or not then due, as Bank may determine in its discretion, any surplus to be paid over to Applicant or to whomever may be lawfully entitled to receive such surplus.

9. No Waiver. No failure or delay on the part of Bank to exercise any right or remedy shall constitute a waiver by Bank of any right or remedy. Bank shall not be deemed to have waived any of its options, powers or rights (including those hereunder) unless the Bank or its authorized agents shall have given such waiver in writing and no such waiver shall be effective as to any transaction which occurs subsequent to the date of such waiver, nor to any continuance of any breach after such waiver.

10. Indemnity; Exculpation. (a) Applicant will indemnify and hold Bank (such term to include for purposes of this paragraph Bank's affiliates and correspondents and its and its affiliates' and correspondents' officers, directors, employees and agents) harmless from and against (i) all loss or damage arising, directly or indirectly, out of Bank's issuance of, or any other action taken or omitted by Bank in connection with, the Credit, and (ii) all costs and expenses (including reasonable attorney's fees, legal expenses, judgments and amounts paid in settlement) of all claims or legal proceedings arising, directly or indirectly, out of Bank's issuance, amendment, negotiation, payment or attempted payment of the Credit, any other action taken or omitted by Bank in connection with the Credit, or incident to the collection of amounts owed by Applicant hereunder or the enforcement of Bank's rights hereunder, including, without limitation, legal proceedings related to any court order, injunction, or other process or decree restraining or seeking to restrain Bank from paying any amount under the Credit, provided that applicant shall not be liable to Bank under this paragraph (a) if such losses, damages, costs and expenses shall have arisen solely from the gross negligence of Bank. Additionally, Applicant will indemnify and hold Bank harmless from and against all claims, losses, damages, suits costs or expenses arising out of Applicant's failure to timely procure licenses or comply with applicable laws, regulations or rules, or any other conduct or failure of Applicant relating to or affecting the Credit.

(b) Bank and its correspondents shall not be liable or responsible to Applicant in any respect for (i) any error, loss, omission, interruption or delay in transmission, dispatch or delivery of any message or advice in connection with the Credit, no matter how transmitted, (b) any action, inaction, waiver or omission which may have been taken by Bank or its correspondents in good faith and in conformity with applicable foreign or domestic laws, regulations or customs, (c) the validity, sufficiency or genuineness of any document even if such document should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged, (d) any act, error, neglect, default, omission or failure of business of any of Bank's correspondents, (e) the failure of the beneficiary of the Credit to comply fully with conditions required in order to draw upon the Credit, (f) the validity or sufficiency of any instrument purporting to transfer the Credit, (g) the failure of any draft, demand or acceptance to bear any reference or adequate reference to the Credit, or failure of documents to accompany any draft, demand or acceptance at negotiation, (h) errors in interpretation of technical terms, (i) any consequences arising from causes beyond the control of the Bank or (j) the existence, character, quality, quantity, condition, packing, value, shipment or delivery of the property purported to be represented by the documents. The happening of any one or more of the events referred to in the preceding sentence shall not affect, impair or prevent the vesting of any of the Bank's rights or powers hereunder if the Credit or this Agreement shall be terminated or revoked by operation of law as to the Applicant or if payments of the Credit shall be restrained or attempted to be restrained by court order or any other means, and Applicant shall indemnify Bank in connection therewith as provided above. Bank shall not be responsible for any act, error, neglect, default, omission, insolvency or failure in business of its correspondents. Without limiting the foregoing, Bank and its correspondents may act in reliance upon any written, oral, telephonic, telegraphic, facsimile or other request or notice, believed in good faith to have been authorized, whether or not given or signed by an authorized person and any such written, oral, telephonic, telegraphic, facsimile or other request or notice shall be binding on Applicant. Bank may honor, as complying with the terms of the Credit and of this Agreement any instruments or other documents otherwise in order signed or issued by an administrator, executor, trustee in bankruptcy, debtor in possession, assignee for benefit of creditors, liquidator, receiver or other legal representative of the party authorized under the Credit to draw or issue such instruments or other documents. Applicant assumes all risks of loss due to the acts or omissions of any beneficiary or transferee of the Credit.

11. Designated Party. Applicant agrees that the person, if any, listed as Designated Party on the face of the Credit shall have the exclusive right to issue all instructions relating to the Credit, including instructions as to the disposition of documents and any unutilized funds and waiver of discrepancies.

12. Financial Institution Applicant. If Account Party is a financial institution, (the "Financial Institution") the Financial Institution hereby requests the issuance of the Credit for its customer, the Applicant, who has also executed the Application as Applicant. In consideration of such issuance and as a direct and primary obligation, the Financial Institution agrees to pay to Bank all amounts owed by the Applicant under this Agreement when due, and to pay to Bank its fees and expenses according to its fee schedule from time to time in effect. The Financial Institution hereby grants to Bank a security interest in all of the property in which the Applicant has heretofore granted or may hereafter grant to the Financial Institution to secure the obligations of the Applicant to the Financial Institution arising out of the execution of the Application by the Financial Institution.

13. Increased Costs. If any law, treaty, regulation or the interpretation thereof by any court or administrative or governmental authority shall impose, modify or deem applicable any capital, reserve, insurance premium or similar requirement against letters of credit issued by Bank and the result thereof shall be to increase the cost to Bank of making any payment under or issuing or maintaining the Credit or to reduce the yield to Bank in connection with the Credit or this Agreement, then, on demand, Applicant will pay to Bank, from time to time, such additional amounts as Bank may in good faith determine to be necessary to compensate Bank for such increased cost or reduced yield.

14. Amendment. Except as provided in Paragraph 10(b), the Credit may be amended, modified or revoked only upon receipt by Bank from Applicant of a written request therefor, and then only upon such terms and conditions as Bank may prescribe in writing and the Beneficiary and any confirming Bank may accept in writing.

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15. Assigns. This Agreement shall be binding upon Applicant, its successors and assigns, and shall inure to the benefit of Bank, its successors, transferees and assigns; provided that any assignment by Applicant of any of its rights or obligations under the Agreement without the prior written consent of Bank shall be void.

16. Foreign Laws. In the event the Credit is governed by the laws of a foreign jurisdiction, the Credit may require the Bank to pay funds as the Bank's primary obligation. In the event the Bank is obligated to advance funds to the beneficiary hereof, Applicant hereby expressly agrees to reimburse Bank for all such advances made even though Applicant may have an unresolved controversy with a third party or the beneficiary related to the transaction for which the Credit is being sought, including the proper interpretation of the law of a foreign jurisdiction. In the event Applicant has a dispute with beneficiary or a third party, Applicant is required to reimburse Bank as provided above, and Applicant's remedy is to seek reimbursement from beneficiary or the third party. Bank is expressly authorized to presume that all demands for payment made by the beneficiary of the Credit are made in accordance with applicable foreign law.

17. Nature of Obligations. If one or more persons or entities have signed this Application as Applicant, the obligations of each such Applicant and each Account Party under this Agreement shall be joint and several.

18. Notices. Any notice from Bank to Applicant shall be deemed given when mailed, postage paid, or when delivered to a courier, fee paid by shipper, addressed to Applicant at the last business address furnished by Applicant to Bank, or when confirmed by electronic confirmation to Bank as having been delivered via facsimile or other teletransmission. Any notice from Applicant to Bank shall be sent to the address of Bank specified by Bank to Applicant and shall be effective upon receipt by Bank. Applicant shall promptly give Bank notice of any change in Applicant's address. Demand shall be deemed made at the time Bank mails, telephones or otherwise sends notification to Applicant.

19. Severability. Each provision of the Agreement shall be interpreted in such 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 the remaining provisions of the Agreement.

20. Payments Free of Taxes. Any and all payments made to Bank hereunder shall be made free and clear of and without deduction for any present or future taxes, levies, imposts, deductions, charges, or withholdings, and all liabilities with respect thereto, excluding taxes imposed on net income and all income and franchise taxes of the United States and any political subdivisions thereof and any foreign country and any political subdivision thereof.

21. Wording of Credit. Applicant hereby authorizes Bank, in Bank's discretion, to set forth the terms of the Application in the Credit in such language as Bank deems appropriate, with variations not materially inconsistent with the Application in Bank's discretion.

22. Survival. Applicant's payment and indemnity obligations under this Agreement shall survive payment under or expiration of the Credit or termination of this Agreement. If the Credit is issued in favor of any commercial entity which is to issue a commitment on Applicant's behalf in connection herewith, Applicant shall remain liable hereunder until Bank is fully released by such entity.

23. Uniform Customs and Practice; Applicable Laws. The Credit shall be subject to and incorporate fully the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce as adopted at the time of execution of this Agreement, hereinafter referred to as the "Uniform Customs", or the International Standby Practices 1998 as adopted at the time of execution of this Agreement, hereinafter referred to as the "ISP98". This Agreement (excluding the Credit) and the rights of Applicant and Bank hereunder shall be subject to and governed by the laws of the State of Texas, without regard to rules regarding conflicts of laws, except where such laws conflict with the Uniform Customs or ISP98, in which event the provisions of the Uniform Customs or ISP98, as applicable, shall govern.

24. Preference. In the event any payment by Bank or Applicant under or in connection with the Credit or this Agreement is held to be a preference under the bankruptcy laws, or if for any reason the Bank is required to refund such payment or pay the amount thereof to any other party, such payment by the Bank or by such Applicant to the Bank shall not constitute a release of Applicant from any liability respecting payment of the Credit or its obligations under this Agreement and Applicant agrees to pay such amount to the Bank upon demand.

25. Acceptance. Issuance of the Credit shall constitute acceptance by Bank of this Agreement.

26. Underlying Contract. Although the Credit may refer to a particular agreement or other obligations to the beneficiary executed by Applicant, the terms of such agreement are not in any manner incorporated herein. Any payment by Bank under the Credit shall be made without regard to performance by any contracting party of the terms of any agreement, and the Bank shall not be liable for any obligation of any contracting party thereunder.

27. Jurisdiction and Waiver. Except as provided in Paragraph 28 Applicant hereby irrevocably submits to the non-exclusive jurisdiction of any state or federal court sitting in the city, county, or district in which the principal office of Bank is located over any action or proceeding arising out of or relating to this Agreement, and Applicant hereby irrevocably agrees that all claims in respect to such action or proceeding may be heard and determined in such State or Federal court. **Except as provided in Paragraph 28, Applicant hereby irrevocably waives to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding and the lack of personal jurisdiction. To the fullest extent it may lawfully and effectively do so, each of Applicant and Bank waives the right to trial by jury.** Applicant irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to Applicant at the last business address furnished by Applicant to Bank. Applicant agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing, however, shall affect the right of Bank to serve legal process in any other manner permitted by law or affect the right of Bank to bring any action or proceeding against Applicant or its property in the courts of any other jurisdiction. Moreover, to the extent that Applicant has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution or otherwise) with respect to itself or its property, Applicant hereby irrevocably waives such immunity in respect of its obligations under this Agreement.

28. Binding Arbitration. Applicant and Bank agree that all disputes, claims and controversies between them, whether individual, joint or class in nature, arising from this Agreement, the Credit, any document executed in connection herewith or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association, upon request of either party. No act to take or dispose of any collateral securing this Agreement shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right concerning any collateral securing this Agreement, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral securing this Agreement shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction; provided, however, that nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 USC § 91, Texas Banking Code art. 342-609 or 342-705, or any other protection provided banks by the laws of Texas or the United States. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision. If the Federal Arbitration Act is inapplicable to any such claim or controversy for any reason, such arbitration shall be conducted pursuant to the Texas General Arbitration Act and in accordance with this Arbitration Agreement and the Commercial Arbitration Rules of the American Arbitration Association.

THIS APPLICATION AND AGREEMENT REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.