

**APPLICATION AND AGREEMENT  
FOR COMMERCIAL LETTER OF CREDIT  
(Long Form)**

**FOR BANK USE ONLY**

**Letter of Credit No.** \_\_\_\_\_

**Variable Interest Rate:**

Interest shall accrue at the variable rate of \_\_\_\_\_ percentage points above the highest Prime Rate as published from time to time in the Money Rates table of *The Wall Street Journal*.

**DESIGNATED DEPOSIT ACCOUNT TO DEBIT**

*Deposit Account Owner must complete and sign this section prior to issuance.*

Please debit Deposit Account No. \_\_\_\_\_, which is titled in the name indicated below, from time to time for all sums owed to you under this Application and Agreement:

Account Owner (Entity):

Account Owner (Individual):

\_\_\_\_\_  
*Name of Account Owner*

\_\_\_\_\_  
*Signature of Account Owner*

By: \_\_\_\_\_  
*Signature of Authorized Signer on behalf of Account Owner*

\_\_\_\_\_  
*Print or Type Name*

\_\_\_\_\_  
*Print or Type Name and Title*

**To: First-Citizens Bank & Trust Company  
PO Box 27131  
Raleigh, NC 27611-7131**

**Date:** \_\_\_\_\_

**Attn: International Banking Services - DAC44  
Telephone: 919.716.2887  
Facsimile: 919.772.1037**

As used in this Application and Agreement for Commercial Letter of Credit (this "Agreement"), the terms "we," "us," and "our" refer jointly and severally to the undersigned Applicant(s), whether one or more, and to their respective heirs, personal representatives, successors and assigns. The terms "you" and "your" refer to First-Citizens Bank & Trust Company, a North Carolina banking corporation, and its successors and assigns.

Please issue or arrange for the issuance of an **IRREVOCABLE COMMERCIAL LETTER OF CREDIT** (hereafter called the "Credit") substantially as specified below and transmit the Credit in the following manner (*choose one*):

SWIFT

Courier

In issuing the Credit, you are expressly authorized to make such changes from the terms set forth below as you, in your sole discretion, may deem advisable, provided the resulting Credit is not materially inconsistent with the principal terms requested. The Credit will be subject to the "Uniform Customs & Practice for Documentary Credits" (2007 Revision), International Chamber of Commerce Publication No. 600 (hereafter called "UCP600").

<b>ADVISING BANK</b> <i>(Name and address)</i>	<b>FOR ACCOUNT OF</b> <i>(Legal Name and physical address of Applicant)</i>
<b>IN FAVOR OF</b> <i>(Name and address of Beneficiary)</i>	<b>CURRENCY AND AMOUNT</b> <hr/> <i>(Specify currency and indicate amount in words and figures)</i>  <b>EXPIRY DATE</b> <hr/> <i>(Unless otherwise specified, drafts must be presented for negotiation on or before the Expiry Date in the country of the beneficiary.)</i>

**To be available by drafts at**  Sight  \_\_\_\_ Days Sight  \_\_\_\_ Days Date (being the date of the transport document), drawn, at your option, on you or your correspondent for \_\_\_\_% (100%, unless otherwise stated) of the Commercial Invoice value, and indicating the name of the issuing bank and the Credit number.

**When accompanied by the following documents:** *(Check boxes and fill in blanks, as applicable)*

**A. Primary Documents:**

- |  |  |
|--|--|
| <input type="checkbox"/> Commercial Invoice: Original and ____ copies    | <input type="checkbox"/> Special Customs Invoice: Original and ____ copies |
| <input type="checkbox"/> Certificate of Origin: Original and ____ copies | <input type="checkbox"/> Packing List: Original and ____ copies            |

**B. Insurance Documents:** Insurance Policy or Certificate in negotiable form for 110% of Commercial Invoice value, covering:

- marine risks     
 air risks     
 war risks     
 all risks
- Other risks: *(Specify)* \_\_\_\_\_

**C. Other Documents:** *(Specify)* \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**D. Transport Documents:**

Air Waybill consigned to: \_\_\_\_\_  
and marked "Notify: \_\_\_\_\_."

Full Set Clean "On Board" Ocean Bill of Lading                       Combined Transport Document

issued To Order of FIRST CITIZENS BANK, RALEIGH, NORTH CAROLINA, USA,

issued To Order of \_\_\_\_\_

and marked "Notify: \_\_\_\_\_."

[Note: If more than one original is issued, all are required.]

**E. Transport Document to Indicate Freight**     Prepaid                       Collect

**Covering:** Purporting to cover merchandise described as: *(describe only in generic terms, omitting details as to grade, quality, etc.)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Shipping Terms:** *(Check one)*                       FAS                       FOB                       CFR                       CIF                       Other: (Specify) \_\_\_\_\_

Shipment from: \_\_\_\_\_

Shipment to: \_\_\_\_\_

Latest Shipping Date: \_\_\_\_\_

Partial Shipments are:                       Permitted                       Prohibited

Transshipments are:                       Permitted                       Prohibited

**Charges:**

All banking charges (other than those of First Citizens Bank) are for     our (Applicant's) account     beneficiary's account.

All discount charges (if any) are for     our (Applicant's) account     beneficiary's account.

**Miscellaneous:** *(Check box or boxes only if applicable)*

Documents must be presented to negotiating or paying bank within \_\_\_\_ days after the issuance of documents evidencing shipment or dispatch or being taken in charge (shipping documents) but within validity of the Credit *(will be 21 days if left blank)*.

Insurance to be effected by us. We agree to keep insurance coverage in force until this transaction is completed.

We request that the Credit be **Transferable**.

**Other Instructions:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**In consideration of your issuing or arranging for the issuance of the Credit substantially in accordance with the foregoing terms, we hereby agree with you as follows:**

**1. Applicant’s Reimbursement/Payment Obligation.**

(a) We promise and agree to reimburse you on demand all amounts paid from time to time by you, your agent, or any party on your behalf in settlement of your obligations under the Credit, together with interest thereon from and including the dates of such payments until your receipt of our reimbursement. Interest shall accrue at the variable rate of three percentage points above the highest Prime Rate as published from time to time in the Money Rates table of *The Wall Street Journal* unless you designate a lower rate in the “For Bank Use Only” box at the beginning of this form, in which case that lower rate shall apply. The interest rate is subject to change on a daily basis with changes becoming effective on the calendar day the Prime Rate changes. Interest will be calculated on an “actual/360” daily simple interest basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding sums we owe, multiplied by the actual number of days the sums are outstanding.

(b) In addition, we promise to pay you on demand the following:

(i) All applicable commissions and fees specified in your regularly adopted fee schedule, as amended from time to time (including, but not limited to, commissions and fees for issuing, extending, increasing, amending, drawings under, banker’s acceptances given pursuant to, or transfers of, the Credit).

(ii) Your correspondents’ commission charges when applicable, and all other charges and expenses paid or incurred by you in connection with the Credit.

(iii) All charges and expenses, including reasonable attorneys’ fees and legal expenses, paid or incurred by you in connection with (a) the issuing of the Credit, (b) your performance under the Credit and this Agreement, (c) your enforcement of this Agreement, and (d) all transactions related to or contemplated by this Agreement (including, without limitation, the creation, perfection, maintenance, protection, exercise, enforcement, or realization of or upon your interests, rights, and remedies as a secured party).

(iv) Any documentary, stamp, intangibles, or other taxes that may be payable in connection with the execution or delivery of this Agreement, the issuance of the Credit, or the issuance of any other instrument or document provided for herein or delivered or to be delivered hereunder or in connection herewith.

(c) We will pay all sums we owe you from time to time in United States currency at your office in Raleigh, North Carolina. In the case of drafts under or purporting to be under the Credit that are payable in a currency other than United States currency, we promise to reimburse you on demand the equivalent in United States currency of the amount paid by you at the same rate of exchange that applied to the settlement of your payment. We bear all risks arising from fluctuations in currency exchange rates.

2. **Payment.** To facilitate our prompt payment to you of sums we owe you from time to time under this Agreement and to minimize our obligation under this Agreement to pay you interest, we expressly authorize you to collect such sums from time to time by debiting the deposit account (the "Account to Debit") identified in the box entitled "Designated Deposit Account to Debit" at the beginning of this form. We further authorize you to debit any deposit account(s) we or any of us maintain with you or any of your affiliates (i) if no "Account to Debit" is designated, (ii) if for any reason you are unable to debit the "Account to Debit" for sums we owe you, or (iii) if there are insufficient funds in the "Account to Debit" when you attempt to debit the account. You may debit the "Account to Debit" or any other account without prior notice to us and without first having made any demand on us for payment. This authorization is in addition to your right of setoff and any security interest you may have in any such deposit account.

3. **Bank's General Obligations.** Upon the issuance of the Credit, your obligations to us relative to the Credit include good faith and observance of general banking usage, but do not include liability or responsibility of any kind arising out of or in connection with: (i) performance of the underlying contract for sale or other transactions between us and the beneficiary; (ii) acts, errors, neglects, defaults, or omissions of any person other than you; (iii) loss or destruction of any telegram, cable, letter, instrument, or document while in transit or in the possession of others; (iv) knowledge or lack of knowledge of any custom or usage of any particular trade; (v) transmission, translation, or interpretation of any message; (vi) insufficiency, lack of authorization of, invalidity of, or error or fraud in, any instructions purporting to be ours or your correspondent's and pertaining to the Credit; (vii) validity or correctness of any transfer or proper identity of any transferee (if the Credit is issued in transferable form); (viii) payment in accordance with cable or other advice of negotiation or payment, where it develops the terms of the Credit were not complied with or the documents failed to arrive; (ix) waiver of any requirement that exists for your protection and not ours, or which waiver does not in fact materially prejudice us; or (x) any other act or omission for which banks are relieved of responsibility under UCP600.

4. **Bank's Obligations Concerning Documents.**

(a) Your obligations to us relative to the Credit include your examination of documents with care so as to ascertain that on their face they appear to comply with the terms of the Credit, but do not include liability or responsibility of any kind arising out of or in connection with: (i) genuineness or effect of documents which appear on your examination to be regular on their face; (ii) honor of drafts or demands for payment which appear on your examination to be regular on their face; (iii) the ultimate correctness of your decision regarding documentary compliance, where your decision is based on your examination of the documents, or your exercise of judgment, in a manner not manifestly unreasonable. You may accept documents that substantially or reasonably comply with the terms of the Credit, and you may, in your discretion and without notice to us, accept an indemnity to induce honor applicable to defects in the documents.

(b) Unless otherwise specified in the Credit, you may in your discretion accept or honor as complying with the Credit: (i) drafts or documents otherwise in order signed or issued by an administrator, executor, trustee in bankruptcy, debtor in possession, assignee for benefit of credits, liquidator, receiver, or other legal representative of the party authorized under the Credit to draw or issue such instruments or other documents; (ii) drafts relative to partial shipments, shipments in excess of the quantity called for, or timely shipments of installments subsequent to a nonconforming shipment (provided that our liability for payments made or obligations incurred on such drafts shall be limited to the amount of the Credit); (iii) bills of lading, insurance documents, and other documents whose description of the property or other terms may vary from the invoice, if the invoice itself sufficiently complies with the Credit; (iv) bills of lading issued by an ocean carrier as "ocean bills of lading," whether or not the entire transportation is by water (and the date of the on-board notation shall be deemed the date of shipment); (v) bills of lading permitting transshipment and bills of lading not marked "notify applicant" notwithstanding anything to the contrary in this Agreement; (vi) drafts which fail to bear any or adequate reference to the Credit, or notation to be made on the Credit, or the Credit to be surrendered, or documents to be forwarded apart from the draft, whether or not required by the Credit; (vii) drafts or documents which comply under laws, rules, regulations, and general banking or trade customs and usages of the place of drawing, negotiation or presentation; (viii) drafts or documents which comply with UCP600.

(c) You and your correspondent may accept as a "Bill of Lading" any document issued or purporting to be issued by or on behalf of any carrier that acknowledges receipt of property for transportation, regardless of the specific provision of the document. The date of each such document shall be deemed the date of shipment, and all stamped, written or typewritten provisions shall be deemed authorized and made at the time of signing and issuance. You may receive and accept as document of insurance either insurance policies or insurance certificates.

(d) If the Credit states that it is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication presently in effect, the Credit shall be subject to the "Uniform Customs & Practice for Documentary Credits" (2007 Revision), International Chamber of Commerce Publication No. 600, in all respects. If the Credit does

not state that it is subject to UCP600, you and your correspondents may, without limiting the type of document acceptable according to any other provisions of this Agreement, accept documents of any character that comply with UCP600.

(e) Unless otherwise specified in the Credit, we agree that partial shipments may be made under the Credit and that you may honor the relative drafts without inquiry, regardless of any apparent disproportion between the quantity shipped and the amount of the relative draft and the total amount of the Credit and the total quantity to be shipped under the Credit.

#### **5. Matters for Which Bank Is Not Responsible.**

(a) Users of the Credit shall not be deemed your agents. Should the beneficiary under the Credit, upon receipt of advice of the issuance of the Credit (by cable or otherwise), but prior to its actual receipt, negotiate drafts by virtue of such advice, such negotiation shall be considered a proper one and shall be included under the terms and subject to all conditions thereof. We assume all risks arising from the acts or omissions of the users of the Credit and all the risks arising from the misuse of the Credit.

(b) Neither you nor your correspondents shall be responsible for (i) the existence, character, description, quality, quantity, weight, condition, packing, value, or delivery of any property purporting to be represented by documents; (ii) any difference in character, description, quality, quantity, weight, condition, packing or value of any property from that expressed in documents; (iii) the form, validity, sufficiency, accuracy, genuineness or legal effect of documents, even if such documents should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent, or forged; (iv) the time, place, manner or order in which shipment is made, for partial or incomplete shipment, or failure or omission to ship any or all of the property referred to in the Credit, (v) the character, adequacy, validity, or genuineness of any insurance, for the solvency or responsibility of any insurer, or for any other risk connected with insurance; (vi) any deviation from instructions, delay, default, or fraud by the shipper or anyone else in connection with the property or the shipping thereof; (vii) the solvency, responsibility or relationship to the property of any party issuing any documents in connection with the property, for delay in arrival or failure to arrive of either the property or any or all of the documents relating thereto, for failure to arrive of any draft and documents which have been sent to you in one mailing by a negotiating bank, or for delay in giving or failure to give notice of arrival or any other notice; (viii) any breach of contract between the shippers or vendors and ourselves or any of us; (ix) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign the Credit or the rights of benefits thereunder or proceeds thereof in whole or in part, which may prove to be invalid or ineffective for any reason; (x) failure of any draft to bear any reference or adequate reference to the Credit, or failure of documents to accompany any draft at negotiation, or failure of documents to accompany any draft at payment if sent by duplicate mail, or failure of any person to note the amount of any draft on the reverse of the Credit or to surrender or take up the Credit or to send forward documents apart from drafts as required by the terms of the Credit, each of which provisions, if contained in the Credit itself, it is agreed may be waived by you, or (xi) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, wireless, telex, SWIFT or otherwise, whether or not they be in cipher.

(c) You shall not be responsible for (i) any error, neglect, default, suspension or insolvency of any of your correspondents, (ii) errors in translation or errors in interpretation of technical terms, (iii) any loss or delay in the transmission or otherwise of documents or drafts or of proceeds thereof or for any consequences arising from causes beyond your control. You shall have the right to transmit the terms of the Credit without translating them.

(d) We shall protect you and any other drawee in paying any draft dated on or before the expiration of any time limit expressed in the Credit, regardless of when drawn and when or whether negotiated.

(e) If the Credit provides that payment is to be made by your correspondent, neither you nor such correspondent shall be responsible for the failure of any or all of the documents specified in the Credit to come into your hands or for any delay in connection therewith, and our obligation to reimburse you for payments made or obligations incurred shall not be affected by such failure or delay in the receipt by you of any or all of such documents, whether sent to you in one or multiple mailings.

(f) You shall not be liable for any failure by you or anyone else to pay or accept any draft or acceptance under the Credit resulting from any censorship, law, control or restriction rightfully or wrongfully exercised by any de facto or de jure domestic or foreign government or agency or from any other cause beyond your control or the control of your correspondents, agents or sub-agents, or for any loss or damage to us or anyone else resulting from any such failure to pay or accept, all such risks being expressly assumed by us.

(g) In furtherance and extension (and not in limitation) of the specific provisions set forth above, we agree that any action taken by you or by any correspondent of yours, under or in connection with the Credit or the related drafts, documents, or property, if taken in good faith, shall be binding on us and shall not put you or your correspondent under any resulting liability to us, and we make like agreement as to any inaction or omission, unless in breach of good faith.

6. **Applicant's Duty to Examine.** We will promptly examine (i) any copy of the Credit (and of any amendments thereof) that you send us and (ii) all instruments and documents delivered to us from time to time, and, if we have any claim of noncompliance with our instructions or other irregularity, we will immediately notify you thereof in writing. We will be conclusively deemed to have waived any such claim against you and your correspondents unless such notice is given as aforesaid. We agree that any action, inaction, or omission on your part or on the part of any of your correspondents, under or in connection with the Credit or the relative instruments, documents, or property, if in good faith and in conformity with such foreign or domestic laws, regulations, or customs as you or any of your correspondents may deem to be applicable thereto, shall be binding upon us and shall not place you or any of your correspondents under any liability to us.

7. **Collateral; Applicant's Obligations.**

(a) We expressly recognize and admit your ownership in and unqualified right to the possession and disposal of all property shipped or warehoused in connection with the Credit or any drafts drawn thereon, whether or not released to us on trust or bailee receipt or otherwise, and also in and to all shipping documents, warehouse receipts, documents of title, policies or certificates of insurance, and other documents accompanying or relative to drafts drawn under the Credit, and in and to the proceeds of each and all of the foregoing, until such time as all of our obligations and liabilities and the obligations and liabilities of each of us to you at any time existing under or with reference to the Credit or this Agreement, or any other credit or any other obligation or liability to you now existing or arising in the future, have been fully paid and discharged, all as security for such obligations and liabilities. All or any of such property and documents, and the proceeds of any thereof, coming into your possession or the possession of any of your correspondents may be held and disposed of by you as provided in this Agreement.

(b) We hereby grant to you as security for all of our obligations to you, whether absolute or contingent, due or to become due, now or hereafter arising from this or any other agreement we or any of us may have with you, a continuing security interest in all of the following (the "Collateral"), whether now or hereafter owned or acquired and whether now existing or hereafter arising: (i) all property shipped or warehoused in connection with the Credit or any drafts drawn thereon, (ii) all shipping documents, warehouse receipts, documents of title, policies or certificates of insurance and other documents attached to or relative to the drafts under the Credit, (iii) all property (including deposit accounts and other credits), merchandise, and documents, of any nature, now or hereafter in your actual or constructive possession or that of your correspondents or in transit to you or your correspondents from or for us, and (iv) all proceeds of all the foregoing. You shall have all the rights of a secured party under the Uniform Commercial Code in the Collateral, and in addition all of the rights specified in this Agreement, including the right to apply any of the Collateral to any of our obligations to you at any time, without notice to us, in any order, manner, and amount you may determine.

(c) We further pledge to you and give you a general lien upon, security interest in, and right of setoff against, any interest we and each of us have or may hereafter acquire in and to every deposit account, now or at any time hereafter existing, established, or maintained with you, and any other claims we or any of us have or may hereafter have against you.

(d) Upon your release of documents or any property to us or to our agents, we will execute any trust receipts, bailee receipts, or other documents you may request. Upon release of any property under trust or bailee receipt, we agree to settle payment for such property within 21 days of such release. We will sign and deliver to you such security agreements as you may from time to time reasonably request, and you may file at our expense such financing statements and other documents as you deem appropriate in order to perfect, maintain, protect, enforce, or realize on your security interest in the Collateral.

(e) We will (i) procure promptly all import, export, shipping, exchange, and other licenses required in connection with any of the Collateral, (ii) comply with all foreign and domestic laws and regulations with respect thereto, and (iii) insure all Collateral at all times in such amounts, against such risks, and with such insurers as you may designate, making all losses and adjustments payable to you, all at our expense. We will furnish you, upon demand, with satisfactory evidence of our compliance with the requirements of the preceding sentence. If the insurance upon any Collateral is or becomes for any reason unsatisfactory to you, you may obtain at our expense insurance that is satisfactory to you.

**8. Bank's Right to Demand Additional Security; Procedure When Documents Given to Applicant.**

(a) Upon request by you, we will deposit with you such additional security for our liabilities to you as you may in good faith deem necessary for your protection.

(b) In the event you deliver to us, or to anyone else at our request, any of the documents of title in which you have a security interest hereunder prior to receiving payment in full of all our liabilities to you, we agree either (i) to obtain possession of any goods represented by such documents within 21 days from the date of such delivery, or (ii) to cause those documents to be returned to you prior to the expiration of that 21-day period.

**9. Default; Remedies.**

(a) We will be in default under this Agreement upon the occurrence of any of the following: (i) any failure to perform any of our obligations or undertakings under this Agreement or any other agreement with you or instrument delivered to you, including without limitation our obligation promptly to pay all sums due you; (ii) any failure to furnish you upon demand additional security satisfactory to you; (iii) any default under, or any failure to maintain insurance required by, any instrument securing the payment and performance of our obligations under this Agreement, (iv) any act or event evidencing or reasonably appearing to evidence our insolvency or financial instability (including, but not limited to, the commencement of bankruptcy or similar proceedings by or against us); (v) any failure to furnish upon demand any financial information you may request from us or to permit at a reasonable time your inspection of our books, records, and accounts; (vi) any material misrepresentation made by us or on our behalf in connection with the Credit; or (vii) any other act, event, or occurrence which in your sole but good faith judgment impairs your security or increases your risk.

(b) Upon default, all of our liabilities to you, of whatever nature, whether contingent or absolute, shall at your option become immediately due and payable without notice or demand, and you shall have all of the rights and remedies of a secured party under the Uniform Commercial Code. In addition to the foregoing, (i) you may take or retake immediate possession of all Collateral without demand, notice or legal process (and for this purpose we will at your request assemble the Collateral at a reasonably convenient place designated by you and permit you to enter upon our premises without legal process and remove the Collateral or render it unusable, all without any liability to us whatever), and (ii) you may require us to make immediate partial payment supplemented by our delivery to you of additional Collateral satisfactory to you as security for all our obligations to you. Any notice of disposition or other intended action with respect to any of the Collateral shall be deemed reasonable if in writing and mailed by you to us at least 10 days in advance of such disposition or other intended action.

**10. Assumption of Risk; Indemnification; Subrogation.**

(a) Any user of the Credit and any drawer of any draft shall be deemed our agents, and we assume all risk, loss, liability, charges, and expenses with respect to their acts or omissions and also with respect to any error, delay, misdelivery, or loss in or arising out of the transmission of telegrams, cables, letters, or other communications or documents or items forwarded in connection with the drafts of the Credit. We shall not be relieved from any obligation or liability, nor shall the terms of this Agreement be affected, by the occurrence of any of the foregoing, by your acceptance or payment of overdrafts or irregular drafts or of drafts with irregular documents attached, by your substitution of Collateral, or by your extension of any time limit specified in the Credit or in any instruction from us. You shall not be liable for any delay in giving, or failure to give, notice of the arrival of any goods or any other notice (other than such notice as may affirmatively be required of a secured party exercising remedies upon default under the terms of the Uniform Commercial Code), and we expressly waive any such notice. Any action or inaction taken in good faith by you or your correspondents in connection with the Credit or with instructions, drafts, documents, or merchandise relative to the Credit, shall be conclusively deemed to have been authorized by us, and you shall have no liability therefor. In no event will you be liable for incidental, consequential, or special damages.

(b) We will indemnify you, your affiliates, and your correspondents (and your and their respective officers, directors, employees and agents) and defend and hold you and all of them harmless from and against (i) all loss, claim, expense, or damage arising out of the issuance of the Credit or any other action taken or not taken by any such indemnified party in connection with the Credit, including any loss or damage arising in whole or in part from the negligence of the party seeking indemnification, but excluding any loss or damage resulting from the gross negligence or willful misconduct of the party seeking indemnification, and (ii) all costs and expenses (including reasonable attorneys' fees and legal expenses) of all claims or legal proceedings arising out of the issuance of the Credit, actions taken or not taken by any such indemnified party in connection with the Credit, or incident to the collection of amounts we owe you under this Agreement or your enforcement of your rights under this Agreement, including, without limitation, legal proceedings related to any court order, injunction, or other process or decree restraining or seeking to restrain you



from paying any amount under the Credit. Additionally, we will indemnify and hold you and them harmless from and against all claims, losses, damages, suits, costs or expenses (including reasonable attorneys' fees and legal expenses) arising out of (i) your acceptance of telecommunication instructions in connection with the Credit, including, but not limited to, telephonic instructions in connection with any waiver of discrepancies, or (ii) our failure to procure licenses in a timely manner or to comply with applicable laws, regulations, or rules, or any other failure on our part relating to or affecting the Credit. Each of these indemnities shall constitute an obligation separate and independent from the other obligations contained in this Agreement.

(c) We will pay all of the reasonable attorneys' fees and other legal expenses you actually incur in connection with this Agreement or the Credit, including, without limitation, your defense of any proceeding initiated by us to enjoin or restrain any drawing, payment, or negotiation of the Credit, even if we are awarded such relief, provided only that you have acted in good faith in defending such action.

(d) Whenever appropriate to prevent unjust enrichment and to the end that we shall bear substantially all of the risks relative to the Credit and the underlying transactions, you shall be subrogated (for purposes of defending against our claims and proceeding against others to the extent of your liability to us) to (i) our rights against any person who may be liable to us on any underlying transaction, (ii) the rights of any holder in due course or person with similar status against us, and (iii) the rights of the beneficiary or his assignee or person with similar status against us.

11. **Waiver; Acts Not Affecting Agreement.** You shall have no duty to exercise any of your rights hereunder, and you shall not be liable for any failure to do so or delay in doing so. No such failure or delay on the part of you or your correspondents shall operate as a waiver, and no notice to or demand upon us by you or your correspondents shall be deemed a waiver of your right to take any other or further action without notice or demand. Your rights and liens and our obligations and liabilities under this Agreement shall continue unimpaired and this Agreement shall remain binding upon us, notwithstanding (i) release or substitution of any Collateral or any right or interest therein; (ii) extension of the maturity or time for presentations of drafts, acceptances, or documents; (iii) any other modification of the terms of the Credit at the request of us or any of us, with or without notification to the others; or (iv) any increase in the amount of the Credit at our request or at the request of any of us. No delay, extension of time, renewal, compromise, or other indulgence which you may permit in connection with any of your rights hereunder shall impair those rights, and you shall not be deemed to have waived any of those rights unless such a waiver is in writing and signed by you or your authorized agent. No such waiver shall constitute a waiver of any other right or of the same right at any future time.

12. **Notices.** Notices and demands required or permitted by this Agreement must be given in writing (including facsimile and electronic transmission, which shall be considered original writings). Notices and demands to us or any of us (i) sent by mail shall be deemed to have been given three days after mailed by first class, registered, or certified mail to us or to any one or more of us at the address stated below our signature to this Agreement or at any other address you have for us in your records; (ii) sent by facsimile or electronic transmission shall be deemed to have been given when sent; and (iii) sent by any other means shall be deemed to have been given when received (or when delivery is refused). Notice to any one or more of us shall constitute notice to all of us. Any notice to you shall be (i) delivered or mailed to you at your address stated at the beginning of this Agreement, or (ii) transmitted to you by facsimile and electronic transmission; however, no such notice will be deemed "given" until the notice is actually received by your International Banking Services Department at its office in Raleigh, North Carolina.

13. **Financial Information.** For purposes of this section, "Financial Information" means information relating to our finances. We covenant and agree with you that, so long as this Agreement is in effect, we will furnish you with such Financial Information at such times and in such detail as you may reasonably request, including, but not limited to, the following: (a) personal financial statements (if we are individuals); (b) quarterly and year-end balance sheet and profit and loss statements (if we are engaged in business activities); (c) copies of our federal and state tax returns and all schedules relating thereto, including Schedule K-1 (if applicable); and (d) such additional information and statements, lists of assets and liabilities, aging of receivables and payables, inventory schedules, budgets, forecasts, tax returns, and other reports with respect to our financial condition and business operations as you may reasonably request from time to time.

We warrant and represent that (a) all Financial Information we have provided and that has been provided on our behalf to date is true and accurate in all material respects and fairly presents our financial condition and business transactions as of the date of the Financial Information provided, and (b) Financial Information we provide and that is provided on our behalf in the future will be true and accurate in all material respects and will fairly present our financial condition and business transactions as of the date of the Financial Information provided. We further warrant and represent that, except as specifically disclosed in the Financial Information, (a) we have no direct or contingent liabilities; (b) title to all assets listed in the Financial Information is solely in our name, and no other person or entity has an interest in such assets; (c) there exist no liens, encumbrances, or defects in or upon the assets listed in the Financial Information; (d) all taxes owed by us have been fully paid and discharged, except taxes not then due and payable without

penalty; (e) there are no claims, actions, or proceedings pending or threatened against us or any of our property; and (f) there are no judgments or liens against us or any of our property. With respect to each copy of our tax returns given to you, we warrant and represent that (a) the copy is a true and accurate copy of the return, as filed; (b) the original of the return was properly signed or electronically authenticated by us or on our behalf and submitted to the appropriate tax authority; and (c) the return accurately states our income, deductions and tax liability for the period stated. We acknowledge that you have relied and will rely on our Financial Information.

We covenant and agree to send written notice to you within five (5) business days after the occurrence of any change that is both material and adverse in (a) our financial condition or business transactions, (b) our ability to perform our obligations to you, or (c) Financial Information previously given.

We authorize you and your affiliates to make such credit, employment, and investigative inquiries about us from time to time as you and your affiliates deem appropriate to evaluate our financial strength, character, and credit history, to administer the Credit, and to collect any sums owing. You are authorized to verify information about us and obtain consumer report(s) about each individual who signs this Agreement as an Applicant or in a representative capacity on behalf of an Applicant.

14. **Affiliates and Agents.** You may issue the Credit yourself or you may arrange for your affiliate or agent to issue the Credit. If issued by your affiliate or agent, all references to “you” and “your” herein or in any related document shall include your affiliate or agent. The Credit may identify you as the issuing bank or your affiliate or agent as the issuing bank. Your obligations under this Agreement may be performed by you, your affiliate, or your agent. Your affiliate or agent may act in your name or in its own name, either disclosing or not disclosing that it is acting as your affiliate or agent. When acting as your affiliate or your agent on your behalf, your affiliate or agent shall be entitled to all of the rights, benefits and protections you have under this Agreement and is a third party beneficiary of this Agreement. We agree to indemnify you and hold you harmless for any liability you may have to your affiliate or agent arising from or relating to the Credit, including any obligation you may have to reimburse your affiliate or agent for honoring the Credit.

15. **Agreement Binding Upon Successors.** This Agreement shall be binding upon us and our heirs, executors, administrators, successors, and assigns and shall inure to the benefit of and be enforced by you and your respective successors, transferees, and assigns. This Agreement shall not be revoked or impaired by the death of any party hereto, by the revocation or release of any obligations hereunder of any one or more parties hereto, or (if any party hereto shall be a partnership) by any change in the individuals composing the partnership.

16. **Miscellaneous Provisions.**

(a) We certify that neither the shipment of the goods nor the origin thereof is such as would render shipment or the issuance of the Credit in violation of the laws or regulations of the United States, including, but not limited to, the Foreign Assets Control Regulations of the United States Treasury Department.

(b) The word “Applicant” in this Agreement refers to each signer of this Agreement (other than First-Citizens Bank & Trust Company). If this Agreement is signed by more than one Applicant, their obligations and liability under this Agreement shall be joint and several. If there is more than one Applicant, the Credit will be issued in the name of the “For Account Of” party (hereafter called the “Account Party”) listed on the second page of this Agreement (or, if more than one is listed, the first Applicant named as a “For Account Of” party on the second page of this Agreement). The Account Party shall have the exclusive right to issue all instructions relating to the Credit (including, without limitation, instructions as to the disposition of documents and the waiver of discrepancies) and to agree with you as to any amendments, modifications, extensions, renewals, or increases in or to the Credit or the further financing or refinancing of any transaction effected thereunder, irrespective of whether the same may now or hereafter affect the rights of any co-Applicant or those of its legal representatives, heirs, successors or assigns. Notice to the Account Party shall for all purposes constitute notice to each Applicant, and you may give any notices to the Account Party without notice to any other co-Applicant.

(c) The final form of the Credit may vary from the wording specified in this Agreement, and we authorize you to make such changes, not materially inconsistent with this Agreement, as you in your discretion deem necessary or appropriate.

(d) Issuance of the Credit applied for herein shall constitute your acceptance of this Agreement.

(e) In the event of any increase in the amount of the Credit, any extension of the maturity or time for presentation of drafts, acceptances or documents, any waiver of noncompliance of any such instruments with the terms of the Credit, or any other modification of the terms of the Credit made at our request or with our consent, this Agreement shall be binding upon us with regard to (i) the Credit so increased, extended, or otherwise modified, (ii) all drafts, documents and property covered thereby, and (iii) any action taken by you or any of your agents or correspondents in accordance with such increase, extension, or other modification.

(f) A copy of this signed Agreement transmitted to you by facsimile or other electronic means shall have full legal effect and the same effect as our pen-and-ink signature on an original paper copy of this Agreement physically delivered to you, and we shall be fully bound thereby. We further agree that signatures (including but not limited to stamps and typewritten representations of signatures) transmitted to you by facsimile or other electronic means that you in good faith (and without any requirement of investigation) believe are transmitted by us or on our behalf, shall have full legal effect and the same effect as a pen-and-ink signature physically delivered to you, and we shall be fully bound thereby. We agree to indemnify you and hold you harmless from any loss arising from a third party's refusal or failure to accept such facsimile or electronic signature, and we agree to take all reasonable actions requested by you to cure or alleviate any such refusal or failure.

(g) You may rely on any writing (including any facsimile, any electronic transmission or any information on a computer disk or similar medium which may be reduced to writing), or any telephonic or other oral message or instruction (including, without limitation, any oral waiver of any discrepancy with respect to any draft, order, instrument, demand, or other document), that you believe in good faith to have been received from or authorized by us or any of our officers, employees or representatives, and you shall not be liable for any action taken in good faith with respect to any such writing, message or instruction. You shall not be under any duty to verify the identity or authority of any person submitting any such writing, message or instruction.

(h) Any facsimile copy, photocopy, microfilm, microfiche or optical image of this Agreement may be presented as evidence in lieu of the original in any legal proceeding to enforce the terms of this Agreement and shall have the same validity as the original.

17. **Governing Law.** The Credit shall be subject to UCP600, the terms of which are incorporated herein by reference, except as modified by the terms of this Agreement. This Agreement shall be a contract made under, governed by, and construed in accordance with the laws of the State of North Carolina without reference to its provisions regarding conflicts of laws, except when the laws of North Carolina conflict with UCP600, in which event the provisions of UCP600 shall govern.

18. **Client Bank Transaction.** *This section applies only if a "Client Bank" is identified by name in this section and this Agreement is signed on behalf of Client Bank by an officer of Client Bank.*

The "Client Bank" is \_\_\_\_\_ . Client Bank is co-Applicant for the Credit. Each of the other undersigned Applicants is a banking customer of Client Bank. To secure its payment obligations to you under this Agreement, Client Bank shall, at your request, immediately provide such collateral, execute and deliver such pledge and/or security agreements, and provide such stand-by letters of credit to you as you may reasonably request. If Client Bank is required to reimburse you under this Agreement, to pay you in the event of any default under this Agreement, to indemnify you under this Agreement, or to provide collateral as security to you under this Agreement, then each of the undersigned Applicants (other than Client Bank) jointly and severally agree to reimburse, pay or indemnify Client Bank for the entire amount of those payments made by Client Bank and collateral provided by Client Bank. By signing below, Client Bank acknowledges that (i) it is co-Applicant for the Credit, (ii) it is fully and completely bound as a co-Applicant under the terms and conditions of this Agreement, and not as a surety, guarantor, or accommodation party, and (iii) it has a bona fide economic interest in this transaction. To facilitate the prompt payment to you of sums owed to you from time to time under this Agreement and to minimize any obligation under this Agreement to pay you interest, Client Bank expressly authorizes you to collect such sums as are owed to you by Client Bank from time to time under this Agreement by debiting any deposit account or inter-bank clearing account Client Bank then has or maintains with you or any of your affiliates and to realize on and apply to the sums owed any collateral given by Client Bank to secure its payment obligations under this Agreement.

19. **Telephone Recording.** We acknowledge, agree and consent, on behalf of ourselves, and our agents, that you may monitor and record any telephone conversations between you and us at any time without further notice. The decision to record any conversation shall be solely in your discretion, and you shall have no liability for recording or not recording any conversation.

## STATE-SPECIFIC DISCLOSURES

California: The following disclosure applies.

I acknowledge that I have read and understand the following disclosures required by California law:

- A credit applicant, if married, may apply for a separate credit account.
- Information about me from this application may be shared internally within First-Citizens Bank & Trust Company.

Kansas: The following disclosures apply.

**NOTICE TO CONSUMER:** 1. Do not sign this agreement before you read it. 2. You are entitled to a copy of this agreement. 3. You may prepay the unpaid balance at any time without penalty.

**NO ORAL AGREEMENTS.** This written agreement is the final expression of the credit agreement between the parties and may not be contradicted by evidence of any prior oral credit agreement or of a contemporaneous oral credit agreement between the parties.

**NONSTANDARD TERMS.** The following space contains all nonstandard terms, including all previous oral credit agreements, if any, between the parties:

By accepting this Agreement, Applicant affirms that no unwritten oral credit agreement between the parties exists.

Missouri: The following disclosures apply.

**For Consumer Transactions:** Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect you (borrower(s)) and us (creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it.

**For Commercial Transactions:** Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable, regardless of the legal theory upon which they are based that are in any way related to the credit agreement. To protect you (borrower(s)) and us (creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it.

Texas: The following disclosures apply.

**This Agreement represents 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.**

Oregon: The following disclosure applies unless Applicant is a natural person and this Agreement is primarily for personal, family or household purposes.

**Under Oregon law, most agreements, promises and commitments made by us concerning loans and other credit extensions which are not for personal, family or household purposes or secured solely by the borrower's residence must be in writing, express consideration and be signed by us to be enforceable.**

Washington: The following disclosure applies unless Applicant is a natural person and this Agreement is primarily for personal, family or household purposes.

**Oral agreements or oral commitments to loan money, to extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law.**

*The remainder of this page has been left blank intentionally.  
The signature page follows.*

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement under seal as of the date of this Agreement.

**BUSINESS ENTITY APPLICANT:**

**INDIVIDUAL APPLICANT(S):**

\_\_\_\_\_  
*Legal Name of Business Entity*

\_\_\_\_\_  
(Seal)

By: \_\_\_\_\_ (Seal)

Print or Type Name: \_\_\_\_\_

Name and Title: \_\_\_\_\_

\_\_\_\_\_  
(Seal)

By: \_\_\_\_\_ (Seal)

Print or Type Name: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Contact Address for Business Entity:

Contact Address for Applicant(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

Phone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

**CLIENT BANK CO-APPLICANT:**

\_\_\_\_\_  
*Legal Name of Bank*

By: \_\_\_\_\_ (Seal)  
(Authorized Signer)

Name and Title: \_\_\_\_\_

Contact Address for Bank Co-Applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

**FOR BANK USE ONLY:**

Relationship Manager's signature below indicates his or her confirmation that each Applicant and Co-Applicant (and individuals signing on their behalf) have authority pursuant to properly adopted resolutions or otherwise to sign this Agreement and thereby obligate and bind the Applicant and Co-Applicant:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Responsibility Center