

**EXPORT-IMPORT BANK OF THE UNITED STATES  
WORKING CAPITAL GUARANTEE PROGRAM  
TRANSPORTATION FREIGHT FINANCE PROGRAM**

**MASTER GUARANTEE AGREEMENT**

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Master Guarantee Agreement No.: \_\_\_\_ -TFMGA-06-\_\_\_\_

**EXPORT-IMPORT BANK OF THE UNITED STATES  
WORKING CAPITAL GUARANTEE PROGRAM**

**TRANSPORTATION FREIGHT FINANCE PROGRAM**

**MASTER GUARANTEE AGREEMENT**

THIS MASTER GUARANTEE AGREEMENT (this "Agreement") is made and entered into by and between the institution identified as Lender on the signature page hereof ("Lender") and the Export-Import Bank of the United States ("Ex-Im Bank"). This Agreement includes the general terms and conditions set forth below (including defined terms identified by initial capitals) and the specific terms and conditions set forth in each Loan Authorization Agreement and, to the extent applicable, in the Delegated Authority Letter Agreement and the Fast Track Lender Agreement, all of which together comprise the complete agreement of the parties with respect to Ex-Im Bank's Guarantee.

**RECITALS**

Lender may from time to time establish Loan Facilities that provide working capital financing to providers of Export Services.

It is a condition to the establishment of such Loan Facilities that Ex-Im Bank guarantee the payment of the Guaranteed Percentage of the Guaranteed Amount, subject to the terms and conditions of this Agreement, the Loan Authorization Agreement and, to the extent applicable, the Delegated Authority Letter Agreement and the Fast Track Lender Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the parties agree as follows:

**ARTICLE I**

**DEFINITIONS**

1.01 Definitions of Terms. As used in this Agreement, including the Recitals to this Agreement and each Loan Authorization Agreement, the following terms shall have the following meanings:

"Accounts Receivable" shall mean all of a Borrower's now owned or hereafter acquired (a) "accounts" (as such term is defined in the UCC), other receivables, book debts and other forms of obligations, arising out of services rendered or from any other transaction; (b) rights in, to and under all purchase orders or receipts for goods or services; (c) moneys due or to become due to such Borrower under all purchase orders and contracts for the performance of services by such Borrower (whether or not yet earned by performance on the part of such Borrower), including the proceeds of the foregoing; (e) any notes, drafts, insurance proceeds or other instruments, documents and writings evidencing or supporting the foregoing; and (f) all

collateral security and guarantees of any kind given by any other Person with respect to any of the foregoing.

“Accounts Receivable Aging Report” shall mean a report detailing the Export-Related Accounts Receivable and Export-Related Overseas Accounts Receivable for a Loan Facility, and the applicable terms for the relevant time period.

“Actualized Claim Payment” shall have the meaning set forth in Section 5.06(a)(i).

"Additional Claim Documentation" shall have the meaning set forth in Section 5.03(a).

"Advance Rate" shall mean, with respect to a Loan Facility, the rate specified in Section 5.(B.) of the Loan Authorization Agreement for each category of Primary Collateral except for Export-Related General Intangibles and Other Collateral. Unless otherwise set forth in writing by Ex-Im Bank, in no event shall the Advance Rate exceed (i) ninety percent (90%) for Eligible Export-Related Accounts Receivable and (ii) seventy percent (70%) for Eligible Export-Related Overseas Accounts Receivable.

“Affiliated Foreign Person” shall have the meaning set forth in Section 4.11.

"Annual Facility Fee Percentage" shall mean one and one-half percent (1.50%), subject to reduction as set forth in Section 3.01(b).

"Assignment Agreement" shall mean an assignment agreement executed by Lender in favor of Ex-Im Bank in form and substance satisfactory to Ex-Im Bank.

“Bill of Lading” shall mean an ocean carrier freight bill of lading or a non vessel operating common carrier bill of lading attached to the relevant ocean carrier’s bill of lading or an air bill or other document establishing export of goods out of the U.S.

"Borrower" shall mean each Eligible Person specified in each Loan Authorization Agreement as a Borrower and each permitted successor and assign of such Borrower. An Affiliated Foreign Person approved in accordance with Section 4.11 is deemed a Borrower.

"Borrower Agreement" shall mean with respect to a Loan Facility, the agreement executed by a Borrower in the form of Annex A.

“Borrower’s Certificate” shall mean the Borrower’s certificate in the form set forth in Annex E hereto.

"Business Day" shall mean any day on which the Federal Reserve Bank of New York is open for business.

"Buyer" shall mean a Person who is an obligor on Export-Related Accounts Receivable or Export-Related Overseas Accounts Receivable.

"Claim" shall have the meaning set forth in Section 5.01(a).

"Claim Date" shall mean the Business Day on which Lender has delivered to Ex-Im Bank a Claim in accordance with Section 5.01.

"Claim Documents" shall have the meaning set forth in Section 5.01(b).

"Claim Disposition Notice" shall have the meaning set forth in Section 5.03(a).

"Claim Payment" shall mean a payment made by Ex-Im Bank with respect to a Claim or a portion thereof.

"Claim Payment Date" shall mean the date on which Ex-Im Bank makes a Claim Payment.

"Collateral" shall mean all property and interest in property in or upon which Lender has been granted a Lien as security for the payment of all Loan Facility Obligations including the Primary Collateral, the Secondary Collateral and the Guarantor Collateral, and all products and proceeds (cash and non cash) thereof.

"Collateral Protection Costs" shall mean, with respect to a Loan Facility, all reasonable out-of-pocket costs and expenses incurred by Lender or Ex-Im Bank after the occurrence of an Event of Default in connection with the protection of the Primary Collateral, such as the costs of storage, insurance and security guards.

"Costs Maximum Amount" shall mean the lesser of (a) the sum of the actual Collateral Protection Costs, Enforcement Costs and Realization Costs incurred by Lender for which Lender has not been reimbursed by a Borrower, any Guarantor or any other Person or from the proceeds of Collateral; (b) five percent (5%) of the outstanding principal balance of the Loan Facility on the date Borrower fails to pay when due any outstanding amount of principal or accrued interest payable under the Loan Documents that becomes the basis for a Payment Default on which a Claim is filed.; or (c) \$50,000, unless otherwise permitted in writing by Ex-Im Bank.

"Country Limitation Schedule" shall mean the schedule published from time to time by Ex-Im Bank setting forth on a country by country basis whether and under what conditions Ex-Im Bank will provide coverage for the financing of Export Services to the countries listed therein.

"Credit Accommodation Amount" shall mean, with respect to a Loan Facility, the aggregate outstanding amount of Credit Accommodations, which may not exceed the Maximum Amount.

"Credit Accommodations" shall mean an advance or disbursement of a working capital loan from Lender to a Borrower under a Loan Facility.

"Criteria For Reduced Facility Fee" shall have the meaning set forth in Section 3.01(b).

"Delegated Authority Letter Agreement" shall mean the Delegated Authority Letter Agreement, if any, between Ex-Im Bank and Lender.

"Dollars" or "\$" shall mean the lawful currency of the United States.

"Effective Date" shall mean, with respect to a Loan Facility, the date by which (a) all of the Loan Documents have been executed by Lender, the applicable Borrower, any Guarantor and, if applicable, Ex-Im Bank, and (b) all of the conditions to the making of the initial Credit Accommodations under the Loan Documents or any amendments thereto have been satisfied.

"Eligible Export-Related Accounts Receivable" shall mean, with respect to a Loan Facility, those Export-Related Accounts Receivable which are Eligible Export-Related Accounts Receivable as such term is defined in the applicable Borrower Agreement.

"Eligible Export-Related Overseas Accounts Receivable" shall mean, with respect to a Loan Facility, those Export-Related Accounts Receivable which are Eligible Export-Related Accounts Receivable as such term is defined in the applicable Borrower Agreement.

"Eligible Export Services" shall mean with respect to a Loan Facility, those Export Services specified on an Invoice: (a) for which the Borrower is designated as the provider of such Export Services (as exporter, freight forwarder or U.S. ocean carrier) on the corresponding Bill of Lading, (b) that are U.S. Content Export Services (as certified on a Borrower's Certificate), (c) provided for goods being shipped to a country where Ex-Im Bank is not prohibited from doing business as designated in the Country Limitation Schedule, (d) provided for goods that are not defense articles or otherwise designed primarily for military use (regardless of the nature or actual use of the goods) and are neither directly nor indirectly destined for use by any military organization (as certified on a Borrower's Certificate), and (e) provided for Goods that will not be used in the construction, alteration, operation or maintenance of nuclear power, enrichment, reprocessing, research or heavy water production facilities, unless with Ex-Im Bank's prior written consent (as certified on a Borrower's Certificate).

"Eligible Person" shall mean a sole proprietorship, partnership, limited liability partnership, corporation or limited liability company which (a) is domiciled, organized or formed, as the case may be, in the United States, whether or not such entity is owned by a foreign national or foreign entity; (b) is in good standing in the state of its formation or otherwise authorized to conduct business in the United States; (c) is not currently suspended or debarred from doing business with the United States government or any instrumentality, division, agency or department thereof; (d) provides Export Services (e) operates and has operated as a going concern for at least one (1) year; (f) has a positive tangible net worth determined in accordance with GAAP; and g) has revenue generating operations relating to its core business activities for at least one year. An Affiliated Foreign Person that meets all of the requirements of the foregoing definition of Eligible Person other than subclause (a) thereof shall be deemed to be an Eligible Person.

"Enforcement Costs" shall mean, with respect to a Loan Facility, all reasonable out-of-pocket costs and expenses, including reasonable attorney fees, incurred by Lender or Ex-

Im Bank after the occurrence of an Event of Default in collecting any of the Loan Facility Obligations or in prosecuting any suit, litigation, arbitration or proceeding against a Borrower or any Guarantor with respect to the enforcement of all or part of the Loan Facility Obligations. For purposes of computing Enforcement Costs with respect to a Loan Facility, costs and expenses directly and exclusively relating to the Primary Collateral for and collection of payments from Borrower or Guarantor or otherwise towards such Loan Facility shall be included; costs and expenses directly and exclusively relating to another loan or credit facility shall be excluded; and costs and expenses directly relating to Guarantor Collateral or to Collateral and payments that cannot be clearly attributed to Loan Facility Obligations shall be included at the Pro Rata Guarantor Collateral or Pro Rata Percentage, as applicable, in the latter case such percentage determined based on the earlier of (a) the date such expense is incurred and (b) the date Borrower fails to pay when due any outstanding amount of principal or accrued interest payable under the Loan Documents that becomes the basis for a Payment Default on which a Claim is filed.

"Event of Default" shall have the meaning set forth in Section 4.09.

"Export-Related Accounts Receivable" shall mean those Accounts Receivable arising from the sale of Eligible Export Services which are due and payable to a Borrower in the United States.

"Export-Related Accounts Receivable Value" shall mean, with respect to a Loan Facility, at the date of determination thereof, the aggregate face amount of Eligible Export-Related Accounts Receivable of a Borrower less taxes, discounts, credits and allowances except to the extent otherwise permitted by Ex-Im Bank in writing.

"Export-Related Borrowing Base" shall mean, at the date of determination thereof, the sum of (a) the Export-Related Accounts Receivable Value multiplied by the Advance Rate applicable to Eligible Export-Related Accounts Receivable set forth in Section 5.(B.)(2) of the Loan Authorization Agreement, plus (b) if permitted by Ex-Im Bank in writing, the Export-Related Overseas Accounts Receivable Value multiplied by the Advance Rate applicable to Eligible Export-Related Overseas Accounts Receivable set forth in Section 5.(B.)(4) of the Loan Authorization Agreement, plus (c) the Other Assets Value set forth in Section 5.B.(4.) of the Loan Authorization Agreement multiplied by the Advance Rate agreed to in writing by Ex-Im Bank, plus less (d) such reserves and in such amounts deemed necessary and proper by Lender from time to time.

"Export-Related Borrowing Base Certificate" shall mean a certificate in the form provided or approved by Lender, executed by a Borrower and delivered to Lender pursuant to the Loan Documents detailing the Export-Related Borrowing Base supporting the Credit Accommodations which reflects, to the extent included in the Export-Related Borrowing Base, Export-Related Accounts Receivable, Eligible Export-Related Accounts Receivable, Export-Related Overseas Accounts Receivable, Eligible Export-Related Overseas Accounts Receivable and Other Assets balances that have been reconciled with such Borrower's general ledger and Accounts Receivable Aging Report.



"Export-Related General Intangibles" shall mean the Pro Rata Percentage of General Intangibles determined as of the earlier of: (i) the date such General Intangibles are liquidated and (ii) the date Borrower fails to pay when due any outstanding amount of principal or accrued interest payable under the Loan Documents that becomes the basis for a Payment Default on which a Claim is filed.

"Export-Related Overseas Accounts Receivable" shall mean those Accounts Receivable arising from the sale of Eligible Export Services which are due and payable outside of the United States either to a Borrower or an Affiliated Foreign Person (also a Borrower).

"Export-Related Overseas Accounts Receivable Value" shall mean, with respect to a Loan Facility, at the date of determination thereof, the aggregate face amount of Eligible Export-Related Overseas Accounts Receivable less taxes, discounts, credits and allowances, except to the extent otherwise permitted by Ex-Im Bank in writing.

"Export Services" shall mean with respect to a Loan Facility, services that are directly related to the logistics involved in the export of goods from the United States. These services could include transportation, the arrangement of ocean freight, cargo insurance, crating and packing, port drayage, terminal fees, forwarder fees, customs broker fees, and similar services as identified in Section 4.A. of the Loan Authorization Agreement.

"Extension" shall mean, with respect to a Loan Facility, an amendment to the Loan Authorization Agreement extending the Final Disbursement Date on the same terms and conditions as the Loan Facility for an aggregate period not to exceed one hundred and twenty (120) days beyond the original Final Disbursement Date, either as agreed to in writing by Ex-Im Bank or, in the case of Delegated Authority, as notified by Lender to Ex-Im Bank pursuant to its authority under the Delegated Authority Letter Agreement.

"Facility Fee" shall mean, with respect to a Loan Facility, the fee payable by Lender to Ex-Im Bank as calculated pursuant to Section 3.01(a) and more particularly described in the Facility Fee Schedule.

"Facility Fee Schedule" shall mean the schedule in the form attached to the Loan Authorization Agreement as Schedule A.

"Fast Track Lender Agreement" shall mean the Fast Track Lender Agreement, if any, between Ex-Im Bank and Lender.

"Fast Track Loan Authorization Agreement" shall mean, with respect to a Loan Facility, the Fast Track Loan Authorization Agreement in the form of Annex B entered into between Lender and Ex-Im Bank in accordance with the terms of the Fast Track Lender Agreement, setting forth certain terms and conditions of each Loan Facility.

"Final Disbursement Date" shall mean, with respect to a Loan Facility, the last date on which Lender may make a Credit Accommodation set forth in Section 10 of the Loan Authorization Agreement (including as amended by an Extension) or, if such date is not a Business Day, the next succeeding Business Day.

"GAAP" shall mean the generally accepted accounting principles in the United States.

"General Intangibles" shall mean all intellectual property and other "general intangibles" (as such term is defined in the UCC).

"Guarantee" shall have the meaning set forth in Section 2.01.

"Guaranteed Amount" shall mean, with respect to a Loan Facility, the sum of (a) the outstanding principal balance of the Credit Accommodations at the Claim Date, (b) all unpaid interest on the Credit Accommodations described in (a) above at the Guaranteed Interest Rate accrued to the Claim Payment Date, subject to Sections 5.03(a) and 5.04(a), and (c) the sum of the Collateral Protection Costs, Enforcements Costs and Realization Costs incurred by Lender to the Claim Payment Date in an aggregate amount not to exceed the Costs Maximum Amount.

"Guaranteed Interest Rate" shall mean, with respect to a Loan Facility, a per annum rate equal to the interest rate set forth in the applicable Loan Documents with respect to a Credit Accommodation earning interest at (a) a fixed rate or (b) a floating rate determined in accordance with the interest rate formula set forth in the applicable Loan Documents; provided, however, the Guaranteed Interest Rate shall not include any amount attributable to or based upon any post-default, post-maturity or post-demand increase in the interest rate.

"Guaranteed Percentage" shall have the meaning set forth in Section 2.02 herein.

"Guarantor" shall mean, with respect to a Loan Facility, any Person which is identified in Section 3 of the Loan Authorization Agreement who shall guarantee (jointly and severally if more than one) the payment and performance of all or a portion of the Loan Facility Obligations.

"Guarantor Collateral" shall mean, with respect to a Loan Facility, all assets of a Guarantor or other third party in which Lender is granted a Lien to secure any financial accommodations provided by Lender to Borrower.

"Guarantee Agreement" shall mean, with respect to a Loan Facility, a valid and enforceable agreement of guaranty executed by each Guarantor in favor of Lender.

"Invoice" shall mean an invoice from a Borrower to the purchaser of Eligible Export Services.

"ISP" shall mean the International Standby Practices – ISP98, International Chamber of Commerce Publication No. 590 and any amendments and revisions thereof.

"Lender Obligations" shall mean all of Lender's obligations under this Agreement, the Loan Authorization Agreement, to the extent applicable, the Delegated Authority Letter Agreement and the Fast Track Lender Agreement and any other agreement between Ex-Im Bank and Lender.

"Lien" shall mean any mortgage, security deed or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, security title, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the UCC or comparable law of any jurisdiction) by which property is encumbered or otherwise charged.

"Loan Agreement" shall mean a valid and enforceable agreement between Lender and a Borrower setting forth, with respect to each Loan Facility, the terms and conditions of such Loan Facility.

"Loan Authorization Agreement" shall mean, with respect to a Loan Facility, as applicable, the duly executed Loan Authorization Agreement in the form of Annex C, Fast Track Loan Authorization Agreement, or the Loan Authorization Notice, setting forth certain terms and conditions of each Loan Facility.

"Loan Authorization Notice" shall mean the Loan Authorization Notice in the form of Annex D executed by Lender and delivered to Ex-Im Bank in accordance with the Delegated Authority Letter Agreement, setting forth certain terms and conditions of each Loan Facility.

"Loan Documents" shall mean, with respect to a Loan Facility, the Loan Authorization Agreement, the Loan Agreement, the Borrower Agreement, each promissory note (if applicable), each Guarantee Agreement, and all other instruments, agreements and documents now or hereafter executed by the applicable Borrower, any Guarantor, Lender or Ex-Im Bank evidencing, securing, guaranteeing or otherwise relating to the Loan Facility or any Credit Accommodations made thereunder.

"Loan Facility" shall mean a Revolving Loan Facility, a Transaction Specific Loan Facility or a Transaction Specific Revolving Loan Facility established by Lender in favor of a Borrower under the Loan Documents.

"Loan Facility Anniversary Date" shall mean, with respect to a Loan Facility, each one (1) year anniversary of the Effective Date.

"Loan Facility Obligations" shall mean, with respect to a Loan Facility, all loans, advances, debts, expenses, fees, liabilities, and obligations, including any accrued interest thereon, for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or amounts are liquidated or determinable) owing by a Borrower to Lender, of any kind or nature, present or future, arising in connection with the Loan Facility.

"Loan Facility Term" shall mean, with respect to a Loan Facility, the number of months or portion thereof from the Effective Date to the Final Disbursement Date as set forth in the Loan Authorization Agreement as amended.

"Material Adverse Effect" shall mean, with respect to a Loan Facility, a material adverse effect on (a) the business, assets, operations, prospects or financial or other condition of a Borrower or any Guarantor, (b) any Borrower's ability to pay or perform the Loan Facility Obligations in accordance with the terms thereof, (c) the Collateral or Lender's Liens on the Collateral or the priority of such Lien or (d) Lender's rights and remedies under the Loan Documents.

"Maximum Amount" shall mean the maximum Credit Accommodations that may be outstanding at any time under each Loan Facility, specified in Section 5.A. of the Loan Authorization Agreement.

"Non-Guaranteed Percentage" shall mean the difference between 100% and the Guaranteed Percentage.

"Other Assets" shall mean, with respect to a Loan Facility, such other assets of a Borrower to be included in Primary Collateral, which may include cash and marketable securities, or such other assets as Ex-Im Bank agrees to in writing, and disclosed as Primary Collateral in Section 6.A. of the Loan Authorization Agreement. The applicable Advance Rate (to be multiplied by the Other Asset Value) shall be as agreed to by Ex-Im Bank in writing case by case and set forth in Section 5.B.(4) of the Loan Authorization Agreement.

"Other Asset Value" shall mean, with respect to a Loan Facility, at the date of determination thereof, the value of the Other Assets as determined in accordance with GAAP.

"Other Collateral" shall mean any additional collateral that Lender customarily would require as security for loan facilities on its own account and risk where the permitted borrowing level is based principally on a borrowing base derived from a borrower's accounts receivable, but where such additional collateral does not enter into the borrowing base calculation.

"Payment Default" shall have the meaning stated in Section 2.01 herein.

"Permitted Liens" shall mean, with respect to a Borrower, (a) Liens for taxes, assessments or other governmental charges or levies not delinquent, or, being contested in good faith and by appropriate proceedings and with respect to which proper reserves have been taken by such Borrower; provided that, the Lien shall have no effect on the priority of the Liens in favor of Lender or the value of the assets in which Lender has such a Lien and a stay of enforcement of any such Lien shall be in effect; (b) deposits or pledges securing obligations under worker's compensation, unemployment insurance, social security or public liability laws or similar legislation; (c) deposits or pledges securing bids, tenders, contracts (other than contracts for the payment of money), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the ordinary course of such Borrower's business; (d) judgment Liens that have been stayed or bonded; (e) mechanics', workers', materialmen's or other like Liens arising in the ordinary course of Borrower's business with respect to obligations which are not due; (f) Liens placed upon fixed assets hereafter acquired to secure a portion of the purchase price thereof, provided, that, any such Lien shall not encumber any other property of Borrower; (g) security interests being terminated concurrently with the execution of the Loan

Documents; and (h) Liens disclosed in Section 6.D. of the Loan Authorization Agreement, provided that, except as otherwise permitted by Ex-Im Bank in writing, such Liens in Section 6.D. shall be subordinate to the Liens in favor of Lender on Primary Collateral.

"Permitted Overadvances" shall mean Credit Accommodations to a Borrower in an amount which exceeds the Export-Related Borrowing Base of such Borrower, provided that (i) the aggregate amount of such Permitted Overadvances does not exceed five percent (5%) of the Maximum Amount; (ii) the aggregate amount of all Credit Accommodations including Permitted Overadvances does not exceed the Maximum Amount; and (iii) such Permitted Overadvances are not outstanding for more than ninety (90) consecutive days.

"Person" shall mean any individual, sole proprietorship, partnership, limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, entity or government (whether national, federal, provincial, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof), and shall include such Person's successors and assigns.

"Primary Collateral" shall have the meaning set forth in Section 4.02(b).

"Pro Rata Guarantee Percentage" shall mean, with respect to a Loan Facility as of the Effective Date, the Maximum Amount as a percentage of the maximum amount of all loan facilities including the Loan Facility made available by Lender to Borrower.

"Pro Rata Percentage" shall mean, with respect to a Loan Facility, as of the date of determination thereof, the principal balance of the Credit Accommodations outstanding as a percentage of the combined principal balance of all loans from Lender to such Borrower including the then outstanding principal balance of the Credit Accommodations.

"Realization Costs" shall mean, with respect to a Loan Facility, the reasonable out-of-pocket costs and expenses incurred by Lender or Ex-Im Bank after the occurrence of an Event of Default in connection with sale or collection of the Collateral, such as the fees and expenses of auctioneers, brokers and collection agents.

"Recovery Proceeds" shall mean the difference between (a) proceeds received after Claim Payment from the foreclosure upon, the liquidation of, or the exercise of any other rights or remedies, with respect to the Collateral and the exercise of any other rights and remedies with respect to any assets of a Borrower or a Guarantor or any other source of payment on the Loan Facility and (b) the sum of the Collateral Protection Costs, Enforcement Costs and Realization Costs incurred by Ex-Im Bank, all to the extent not reimbursed by a Borrower, any Guarantor or any other Person, as well as the Collateral Protection Costs, Enforcement Costs and Realization Costs (in an aggregate amount not to exceed the Costs Maximum Amount) incurred by Lender and not reimbursed by a Borrower, any Guarantor or any other Person, when Ex-Im Bank does not request assignment of the applicable Loan Documents upon Claim Payment in accordance with Section 5.04(b) or otherwise.

"Renewal" shall mean, with respect to a Revolving Loan Facility, the agreement of Lender, Borrower and, if applicable, Ex-Im Bank, subject to satisfaction of the conditions set

forth in Section 4.13 of this Agreement, to continue the Guarantee beyond the Loan Facility Term or any Extension thereon whether or not upon the same terms and conditions as the original Loan Facility.

"Revolving Loan Facility" shall mean a credit facility or portion thereof established by Lender in favor of a Borrower for the purpose of providing working capital in the form of loans to finance the Export Services pursuant to Loan Documents under which Credit Accommodations may be made and repaid on a continuous basis based solely on credit availability on the Export-Related Borrowing Base during the term of such credit facility.

"Secondary Collateral" shall have the meaning set forth in Section 4.02(c) herein.

"Special Conditions" shall mean those conditions, if any, set forth in Section 13 of the Loan Authorization Agreement.

"UCC" shall mean the Uniform Commercial Code, as the same may be in effect from time to time in the relevant United States jurisdiction.

"UCP" shall mean the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 and any amendments and revisions thereof.

"U.S." or "United States" shall mean the United States of America including any division or agency thereof (including United States embassies or United States military bases located overseas), and any United States Territory (including Puerto Rico, Guam or the United States Virgin Islands).

"U.S. Content" shall mean with respect to Export Services all the costs, including labor, materials, services and overhead, but not mark up, which are of U.S. origin or manufacture (including freight charges on a U.S. Flag Vessel), and which are incorporated into the Export Services in the United States.

"U.S. Content Export Services" shall mean with respect to Export Services billed on an Invoice, the full value of such Invoice, provided that at least 50% of the value of such Invoice is U.S. Content.

"U.S. Flag Vessel" shall mean an ocean carrier vessel registered in the United States.

"Workout/Restructuring" shall mean any modification of the terms of a Borrower's Loan Facility Obligations that involves changes to the financial terms, including changes in the interest rate, principal or interest repayment schedule or total amount of the Loan Facility Obligations.

1.02 Rules of Construction. For purposes of this Agreement, the following additional rules of construction shall apply, unless specifically indicated to the contrary: (a) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include

the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter; (b) the term "or" is not exclusive; (c) the term "including" (or any form thereof) shall not be limiting or exclusive; (d) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations; (e) the words "this Agreement", "herein", "hereof", "hereunder" or other words of similar import refer to this Agreement as a whole including the schedules, exhibits, and annexes hereto, as the same may be amended, modified or supplemented; (f) all references in this Agreement to sections, schedules, exhibits, and annexes shall refer to the corresponding sections, schedules, exhibits, and annexes of or to this Agreement; and (g) all references to any instruments or agreements, including references to any of the Loan Documents, the Delegated Authority Letter Agreement or the Fast Track Lender Agreement shall include any and all modifications, amendments and supplements thereto and any and all extensions or renewals thereof to the extent permitted under this Agreement.

1.03 Incorporation of Recitals. The Recitals to this Agreement are incorporated into and shall constitute a part of this Agreement.

## **ARTICLE II THE GUARANTEE**

2.01 The Guarantee. Subject to the terms of this Agreement, if a Borrower fails to pay when due any outstanding amount of principal or accrued interest payable under the Loan Documents with respect to a particular Loan Facility, and such failure continues for more than thirty (30) consecutive calendar days (a "Payment Default"), Ex-Im Bank guarantees (the "Guarantee") the payment of and shall pay to Lender in Dollars an amount equal to the Guaranteed Percentage (as defined in Section 2.02 below) of the Guaranteed Amount.

2.02 Guaranteed Percentage.

a) If the goods for which the Eligible Export Services are provided on a given Invoice are shipped on a U.S. Flag Vessel, then the guaranteed percentage ("Guaranteed Percentage") shall be equal to 95%; or

b) If the goods for which the Eligible Export Services are provided on a given Invoice are not shipped on a U.S. Flag Vessel, then the Guaranteed Percentage shall be equal to 90%.

c) Lender shall determine the applicable Guarantee Percentage Invoice by Invoice. Lender shall insure that Borrower certifies on the Borrower's Certificate that the goods for which Eligible Export Services are provided on a given Invoice were shipped on a U.S. Flag Vessel to claim the 95% Guarantee Percentage.

2.03 Continued Effectiveness upon Rescission of Payment. The Guarantee shall continue to be effective or be reinstated, as the case may be, with respect to the Guaranteed Percentage of any payment, or any part thereof, of principal or interest (at the Guaranteed Interest Rate) on any Credit Accommodation which is rescinded or must otherwise be returned by Lender; provided, that such rescission or return of payment has been compelled by law as the

result of the bankruptcy or insolvency of the applicable Borrower, or as a result of any law, regulation or decree applicable to such Borrower or Lender now or hereinafter in effect.

### **ARTICLE III FACILITY FEE**

#### 3.01 Calculation and Payment of Facility Fee.

(a) (i) For each Loan Facility with a Loan Facility Term of twelve (12) months or less Lender shall pay to Ex-Im Bank within ten (10) Business Days of the Effective Date, a Facility Fee in an amount equal to the product of (x) the Maximum Amount, (y) the Annual Facility Fee Percentage and (z) a fraction, the numerator of which is the greater of six (6) and the number of months (rounded to the next higher month) in the Loan Facility Term, and the denominator of which is twelve (12).

(ii) For each Loan Facility with a Loan Facility Term of more than twelve (12) months, Lender shall pay to Ex-Im Bank within ten (10) Business Days of the Effective Date and on each Loan Facility Anniversary Date, a Facility Fee in an amount equal to the product of (x) the Maximum Amount, (y) the Annual Facility Fee Percentage and (z) a fraction, the numerator of which is the number of months (rounded to the next higher month) from the Effective Date or Loan Facility Anniversary Date, as applicable, until the earlier of the next Loan Facility Anniversary Date or the Final Disbursement Date (not to exceed twelve (12) months), and the denominator of which is twelve (12).

(iii) Upon each amendment of a Loan Authorization Agreement for a Revolving Loan Facility that increases the Maximum Amount, Lender shall pay to Ex-Im Bank within ten (10) Business Days of the effective date of such amendment, a Facility Fee in an amount equal to the product of the (x) the new Maximum Amount minus the old Maximum Amount, (y) the Annual Facility Fee Percentage and (z) a fraction corresponding to the relevant time period in accordance with the formulas in subsections 3.01(a)(i)-(iii) above.

(iv) Upon each Extension of a Loan Facility Term, Lender shall pay to Ex-Im Bank within ten (10) Business Days of the effective date of such Extension, a Facility Fee in an amount equal to the product of (x) the Maximum Amount, (y) the Annual Facility Fee Percentage and (z) a fraction the numerator of which is the number of days in such Extension and the denominator of which is three hundred and sixty (360).

(v) Lender shall submit, with each Facility Fee payment made on each Loan Facility Anniversary Date, each Extension and each amendment to the Maximum Amount, a completed Facility Fee Schedule executed on behalf of Lender.

(b) Notwithstanding Subsection 3.01(a), if the criteria set forth in Exhibit 1 and in all amendments, supplements and replacements of such Exhibit delivered to Lender at least ten (10) days prior to the effectiveness thereof (the "Criteria For Reduced Facility Fee") are satisfied, the Annual Facility Fee Percentage shall be reduced to 1.00%; provided, however, if the Loan Facility Term exceeds (12) months or is subject to an Extension or if the Maximum Amount is amended, the Criteria For Reduced Facility Fee must be met on each Loan Facility Anniversary Date or the date of such Extension or amendment to the Maximum Amount.



(c) Upon the failure of Lender to pay the Facility Fee to Ex-Im Bank within ten (10) Business Days of the Effective Date (and, if applicable, each Loan Facility Anniversary Date or the effective date of each Extension or amendment to the Maximum Amount), Lender shall be obligated to pay Ex-Im Bank a late fee in an amount equal to Fifty Dollars (\$50.00) for each calendar day the Facility Fee remains unpaid after the tenth (10<sup>th</sup>) Business Day following the Effective Date (or, if applicable, each Loan Facility Anniversary Date or the effective date of each Extension or amendment to a Loan Authorization Agreement increasing the Maximum Amount) up to the sixtieth (60<sup>th</sup>) calendar day following the Effective Date (or, if applicable, each Loan Facility Anniversary Date or the effective date of each Extension or amendment to a Loan Authorization Agreement increasing the Maximum Amount). If the Facility Fee and any applicable late fees are not credited to Ex-Im Bank's account on or before the sixtieth (60<sup>th</sup>) calendar day after the Effective Date (or, if applicable, each Loan Facility Anniversary Date or the effective date of each Extension or amendment to the Maximum Amount), the Guarantee shall be null and void with respect to Credit Accommodations made after the Effective Date (or the relevant Loan Facility Anniversary Date or the effective date of the relevant Extension or amendment to the Maximum Amount). Lender has the sole obligation to pay the Facility Fee and any applicable late fees, and to maintain a verifiable record of such payment. Ex-Im Bank has no obligation to send Lender a bill for the Facility Fee or any late fees in connection with a Loan Facility.

3.02 Method of Payment of Facility Fee. Payment of the Facility Fee and any applicable late fees shall be made in Dollars either (i) by wire transfer of immediately available funds to the Federal Reserve Bank of New York in New York City for credit to Ex-Im Bank's account at the U.S. Treasury Department as identified below:

U.S. Treasury Department  
021030004  
TREAS NYC/CTR/  
BNF=/AC-4984 OBI=  
EXPORT-IMPORT BANK  
REFERENCE: [Lender Name] [Borrower Name]  
ON EIB GUAR. NO. \_\_\_\_\_  
FROM \_\_\_\_\_ ,

which shall be deemed paid as of the date of receipt of such funds in such account or (ii) by cashier's check sent via U.S. certified mail, return receipt requested, payable to the order of the Export-Import Bank of the United States, which shall be deemed paid as of the date of receipt of such check by Ex-Im Bank's Office of the Treasurer Controller at 811 Vermont Avenue, N.W., Washington, D.C. 20571, U.S.A.

#### **ARTICLE IV OBLIGATIONS OF LENDER**

So long as this Agreement is in effect and Ex-Im Bank remains liable under the Guarantee, Lender agrees as follows:

4.01 Loan Documents.

(a) For each Loan Facility: (i) Lender and Ex-Im Bank shall enter into a Loan Authorization Agreement; (ii) Lender shall have each Borrower execute a Borrower Agreement; (iii) Lender shall have each Guarantor execute a Guaranty Agreement and (iv) Lender shall enter into a Loan Agreement with Borrower.

(b) Each Loan Document shall be consistent with the standard of care stated in Section 4.04(a) herein. The Loan Agreement shall be consistent with the Borrower Agreement.

(c) Each of the Loan Documents: (i) shall be assignable to Ex-Im Bank; (ii) shall be governed by the laws of a state, territory or commonwealth within the United States and; (iii) shall not contain any form of alternative dispute resolution provision other than alternative dispute resolution electable at the sole option of the Lender or its assignees; in no event shall the Lender exercise any option to proceed with alternative dispute resolution with regard to the Loan Facility or the Collateral without the express written consent of Ex-Im Bank.

(d) Lender shall include a provision in the applicable Loan Documents requiring that each Borrower and each Guarantor deliver the financial statements described in Section 11 of the applicable Loan Authorization Agreement.

(e) Lender shall provide Borrower with a copy of the applicable Loan Authorization Agreement.

(f) Without Ex-Im Bank's prior written consent, the Effective Date for any Loan Facility shall not be later than sixty (60) days after the date which Ex-Im Bank executed the Loan Authorization Agreement (except in the case of the Loan Authorization Notice, when the Effective Date is determined by Lender in accordance with Section (3) of the Delegated Authority Letter Agreement).

#### 4.02 Security Interests.

(a) As of the applicable Effective Date, Lender shall (i) obtain from the applicable Borrower a valid and enforceable agreement pursuant to which such Borrower grants to Lender a valid and enforceable first priority Lien in the Collateral, subject to the provisos below and (ii) take such actions as are required to perfect Lender's Liens in the Collateral under the laws of the United States (as well as under the laws of any applicable foreign jurisdiction in the case of Export-Related Overseas Accounts Receivable, and patents registered in a foreign jurisdiction in the circumstances described below), including the filing in the appropriate jurisdictions of UCC financing statements identifying the applicable Borrower, Guarantor or third party and describing the Collateral and the filing of any documents required to protect the Liens granted to Lender in Collateral that cannot be fully perfected by a filing under the UCC (e.g., the filing of patent and trademark security agreements in the United States Patent and Trademark Office and the filing of mortgages, deeds of trusts, fixture filings or other indenture documents in local recording offices) provided that filings with the United States Patent and Trademark Office (or under the laws of any foreign jurisdiction in which a patent might be registered) are only required when Lender would make such filing for similar loan facilities (including domestic facilities) on its own account and risk. Lender shall take such steps as are

necessary to maintain throughout the Loan Facility Term a valid, enforceable and perfected first priority Lien in the Collateral subject only to Permitted Liens, including the timely filing of continuation statements with respect to such UCC financing statements and the filing of additional UCC financing statements if Lender has actual knowledge that a Borrower, a Guarantor or a third party has moved the Collateral or its jurisdiction of organization or otherwise has taken any action that would require Lender to take additional action to maintain its perfected first priority Lien in the Collateral subject only to Permitted Liens. If, in connection with any loan or other credit accommodation to be provided by Lender to a Borrower, Lender receives a Lien on any assets (other than Primary Collateral) to secure such loans and other credit accommodations, the Lien on such assets shall also secure the Loan Facility Obligations. Notwithstanding the foregoing, if any Lien on any Secondary Collateral or any Guarantor Collateral is not intended to be a first priority Lien, all references herein to a first priority Lien with respect to such Secondary Collateral or Guarantor Collateral shall be to a Lien in the priority set forth in Sections 6.E. and F. respectively, of the applicable Loan Authorization Agreement.

(b) Primary Collateral shall mean the Collateral described in Section 6.A. of the Loan Authorization Agreement which shall include at a minimum the following: (A) all Export-Related Accounts Receivable, (B) (only applicable if such Accounts Receivable will enter into the Export-Related Borrowing Base) all Export-Related Overseas Accounts Receivable, (C) all Export-Related General Intangibles, (D) Other Assets, if any, and (D) Other Collateral, if any;

(c) For each Loan Facility, Secondary Collateral shall mean the Collateral described in Section 6.B. of the Loan Authorization Agreement which shall include at a minimum all assets of a Borrower, other than the Primary Collateral, in which Lender is granted a Lien to secure any financial accommodation (other than the Loan Facility Obligations) provided by Lender to Borrower.

(d) Lender shall not obtain from any Borrower, any Guarantor or any other Person, a Lien on any asset not included in the Collateral which would separately secure the portion of the Loan Facility not guaranteed by Ex-Im Bank.

(e) Promptly after the Effective Date, Lender shall confirm by a UCC search of the appropriate jurisdictions that Lender has obtained a perfected first priority Lien in the Collateral subject only to Permitted Liens, provided that, such UCC search is not required when the Loan Facility is a Renewal; notwithstanding this proviso, Lender in all cases continues throughout the Loan Facility to have the Lender Obligations to obtain and maintain its perfected security interest in the Collateral.

4.03 Guarantors. Each Person that owns or controls twenty percent (20%) or more of the ownership interests of Borrower, or otherwise has the power to control the affairs of Borrower, shall guarantee repayment of the Loan Facility Obligations pursuant to a Guarantee Agreement.

4.04 Management of Loan Facility, Allocation of Proceeds.

(a) Lender shall originate and manage each Loan Facility, manage, perform and enforce the terms of the Loan Documents and exercise and enforce all privileges and rights exercisable or enforceable by Lender thereunder, for the joint benefit of Lender and Ex-Im Bank. Lender shall in all respects relating to a Loan Facility and the corresponding Loan Documents, act on behalf of Ex-Im Bank with the standard of care that Lender would exercise on its own behalf for similar loans and obligations made and/or held by Lender for its own account and risk, but in all events with at least the standard of care of a reasonable lender, except to the extent (if any) that such actions are inconsistent with the requirements of this Agreement, the Loan Authorization Agreements governing specific Loan Facilities, and any applicable Delegated Authority Letter Agreement and/or Fast Track Lender Agreement.

(b) Subject to the terms of Article V and Section 4.14 herein, upon the occurrence of a default by Borrower under the Loan Documents, Lender may take any action it is entitled to take under the Loan Documents or by law for the protection or realization of the Collateral or for the repayment of the Loan Facility Obligations or the enforcement of the Loan Documents or of any Guarantee Agreements.

(c) All proceeds attributable to the Loan Facility shall be allocated as follows:

(i) Prior to Claim Payment, Lender shall apply the proceeds of the Primary Collateral and any other payment made on the Loan Facility to reduce the Loan Facility Obligations in the following order of priority: (A) interest due on the Loan Facility at the Guaranteed Interest Rate, then (B) principal due on the Loan Facility and then (C) all other Loan Facility Obligations related to such Loan Facility.

(ii) Prior to Claim Payment, unless proceeds from Primary Collateral or any other payment made by Borrower or another source towards the reduction of Loan Facility Obligations can be clearly attributed to the Loan Facility Obligations, the amount of such proceeds so attributed shall be the Pro Rata Guarantee Percentage or Pro Rata Percentage, as applicable, in the latter case such percentage determined based on the earlier of (A) the date such proceeds are received and (B) the date Borrower fails to pay when due any outstanding amount of principal or accrued interest payable under the Loan Documents that becomes the basis for a Payment Default on which a Claim is filed.

(iii) All proceeds attributable to the Loan Facility made after Claim Payment shall be allocated between Lender and Ex-Im Bank in accordance with Section 5.06 herein.

4.05 Country Limitation Schedule. Lender shall send a copy of each updated Country Limitation Schedule to each Borrower within ten (10) Business Days after receiving such updated Country Limitation Schedule from Ex-Im Bank. Until an updated Country Limitation Schedule is received by Lender, Lender shall be entitled to rely on the Country Limitation Schedule previously delivered to Lender.

4.06 Credit Accommodations, Borrowing Base Certificates.

(a) Lender may make Credit Accommodations to a Borrower only if it has received (i) an Export-Related Borrowing Base Certificate from such Borrower as frequently as Lender customarily requires such certificates from similar borrowers on its own account and risk, but at least within the prior month, (ii) copies of Invoices (and accompanying Bills of Lading) or, if permitted by Lender, a written summary of the Invoices and corresponding Bills of Lading supporting the Export-Related Borrowing Base, (iii) Borrower's Certificates corresponding to all such Invoices, and (iv) an Accounts Receivable Aging Report for the preceding month. In addition, so long as there are any Credit Accommodations outstanding under the Loan Facility, Borrower shall deliver to Lender items (i) – (iv) above at least once each month. Daily electronic reporting reconciled monthly may substitute for monthly Export-Related Borrowing Base Certificates.

(b) Without limiting Lender's Obligations hereunder, including its obligation to perform field examinations, Lender may rely upon the Export-Related Borrowing Base Certificates in determining credit availability under the Export-Related Borrowing Base unless it has actual knowledge that the Export-Related Borrowing Base Certificate is incorrect or contains a fraudulent representation.

(c) Lender shall not at any time provide a Credit Accommodation to a Borrower:

- (i) after the applicable Final Disbursement Date;
- (ii) following the occurrence of an Event of Default with respect to the applicable Loan Facility unless with Ex-Im Bank written approval;
- (iii) if Lender has actual knowledge that the Credit Accommodation has been or will be used in a manner prohibited by the applicable Borrower Agreement;
- (iv) if Lender has actual knowledge that no Eligible Export-Related Accounts Receivable exist with respect to such Borrower;
- (v) if Lender has not obtained an Export-Related Borrowing Base Certificate within the timeframe specified in the first sentence of subclause (a) above that substantiates credit availability prior to issuance of such Credit Accommodation; or
- (vi) if Lender has actual knowledge that any applicable Special Conditions or modifications and waivers of Lender Obligations were not satisfied on or prior to the Effective Date and such subsequent date that a Credit Accommodation is requested.

In the event that Lender makes Credit Accommodations available to a Borrower following the occurrence of any event in this subsection (c), the Guarantee set forth in this Agreement shall be null and void with respect to such Credit Accommodations.

(d) Except for Permitted Overadvances, if Lender has actual knowledge that the applicable Export-Related Borrowing Base is at any time less than the aggregate outstanding amount of Credit Accommodations, Lender shall promptly make demand on the applicable Borrower to either (i) furnish additional Collateral to Lender as security for the Loan Facility

Obligations, in form and amount satisfactory to Lender and Ex-Im Bank, or (ii) pay to Lender an amount equal to the difference between the aggregate outstanding amount of Credit Accommodations and the Export-Related Borrowing Base with respect to such Borrower. If the initial demand is not made in writing and compliance is not met within a reasonable period of time, Lender shall follow up with a written demand.

(e) If Lender has actual knowledge that the conditions of Section 4.11(g) are at any time not being met, Lender shall promptly make demand on Borrower to either (i) furnish additional Collateral to Lender that is not Eligible Export-Related Overseas Accounts Receivable, in form and amount satisfactory to Lender and Ex-Im Bank, or (ii) remove from the Export-Related Borrowing Base the portion of Eligible Export-Related Overseas Accounts Receivable that supports greater than fifty percent (50%) of the Export-Related Borrowing Base. If the initial demand is not made in writing and compliance is not met within a reasonable period of time, Lender shall follow up with a written demand. If Borrower has not complied with (i) or (ii) above within thirty (30) days following Lender's initial demand, Lender shall remove from the Export-Related Borrowing Base the portion of Eligible Export-Related Overseas Accounts Receivable that supports greater than fifty percent (50%) of the Export-Related Borrowing Base even if such action immediately requires Lender to make demand on Borrower in accordance with 4.06(d).

4.07 Loan Records. Lender shall maintain accurate records of (a) each Credit Accommodation, (b) each payment of principal and interest made by each Borrower for credit to such Borrower's Loan Facility, and (c) all accrued interest with respect to the Loan Facility. Upon Ex-Im Bank's prior notice to Lender, Lender shall permit the representatives of Ex-Im Bank during normal business hours to inspect its records with respect to matters relating to the Loan Facility, this Agreement or other loans or financial accommodations provided by Lender to a Borrower, and shall direct its officers and employees to give their full cooperation and assistance in connection therewith. Lender shall, from time to time, at the request of Ex-Im Bank, furnish to Ex-Im Bank such information as Lender may have or be able to obtain with respect to the Loan Documents and/or the financial condition of a Borrower.

4.08 Inspections and Reviews. Lender shall perform all of the following inspections and reviews, as applicable:

(a) If (i) the Maximum Amount of a Loan Facility is \$1,000,000 or greater or (ii) the Maximum Amount is less than \$1,000,000 but Lender has other loans and financial accommodations to such Borrower for which it performs (or contracts to perform) field examinations, Lender shall conduct field examinations (performed by Lender, an independent certified public accountant or another appropriate entity acceptable to Lender) of such Borrower as often as Lender customarily conducts such examinations on similar loan facilities, but not less than once every six (6) months until any applicable Final Disbursement Date, on the schedule Lender agrees to in Section 5.C of the Loan Authorization Agreement. Lender may substitute audited financial statements for one of the semi-annual field examinations each year, provided that the field examination date Lender selects (in Section 5.C of the Loan Authorization Agreement) for such substitute audited financial statements is the date of the Borrower's fiscal year end, and the applicable audited financial statements are completed no later than 120 days following such field examination date, and provided further that Ex-Im Bank reserves the right

on a case by case exceptional basis to require that Lender perform two full field examinations for any Loan Facility with a Maximum Amount over \$1,000,000.

(b) The content of the field examinations shall be in accordance with Lender's customary practices except that such examinations shall address: (x) the value of the Collateral against which Credit Accommodations may be provided, (y) the amount, if any, that the aggregate outstanding amount of Credit Accommodations exceeds the Export-Related Borrowing Base and (z) whether such Borrower is in material compliance with the terms of each Loan Document to which it is a party. Such field examinations shall include an inspection of Borrower's physical facilities, a book audit of any Export-Related Accounts Receivable and Export-Related Overseas Accounts Receivable, a review of the Accounts Receivable Aging Reports, Invoices and accompanying Bills of Lading, Borrowers' Certificates, and a review of Borrower's compliance with any Special Conditions.

(c) If, in isolated instances, Lender is unable to complete a field examination (including the field exam report) or audited financial statements substitution under the above schedule, Lender may request from Ex-Im Bank an extension. If Lender submits a written request for an extension prior to the applicable scheduled field exam date, Ex-Im Bank shall automatically grant such extension for 30 (thirty) days unless Ex-Im Bank previously otherwise notified Lender. The automatic thirty (30) day extension does not apply when audited financial statements are substituted. Ex-Im Bank is under no obligation to grant requested extensions beyond the automatic thirty (30) day extension. Lender shall complete all field examinations (including the field exam report) or audited financial statement substitution on the schedule provided above or have obtained an extension from Ex-Im Bank, which extension must be in writing except for the automatic 30 day extension, and then complete the field examination or audited financial statements by the date authorized in such extension.

(d) If under the terms of Section 4.06(a), Lender permits Borrower to submit summaries of Invoices and corresponding Bills of Lading together with Export-Related Borrowing Base Certificates, then at least once each quarter, Lender shall review a sampling selected by Lender of those Invoices and corresponding Bills of Lading representing at least ten percent (10%) of the aggregate Dollar volume of Export-Related Accounts Receivable and ten percent (10%) of the number of Invoices and corresponding Bills of Lading supporting the credit available on the Export-Related Borrowing Base. Lender is not required to conduct this sampling for any quarter in which Lender maintains copies of all Invoices and corresponding Bills of Lading that generate the Accounts Receivable in the Export-Related Borrowing Base.

#### 4.09 Events of Default

(a) The occurrence of any of the following events with respect to a Borrower or a Guarantor shall constitute an "Event of Default" with respect to the applicable Loan Facility:

(i) such Borrower fails to pay within thirty (30) calendar days of the date when due, at stated maturity or otherwise, any amount payable under the Loan Documents;

(ii) such Borrower or such Guarantor fails to pay within thirty (30) calendar days of the date when due, at stated maturity or otherwise, any amount payable to

Lender under any loan(s) or other financial accommodations not guaranteed by Ex-Im Bank that have been extended by Lender to such Borrower or such Guarantor;

(iii) except for Permitted Overadvances, the aggregate outstanding amount of Credit Accommodations exceeds the Export-Related Borrowing Base and such Borrower fails within thirty (30) calendar days after being informed thereof by Lender (in writing or otherwise) either to (A) furnish additional Collateral to Lender as security for the Loan Facility, in form and amount satisfactory to Lender and Ex-Im Bank, or (B) pay to Lender an amount equal to the difference between the aggregate outstanding amount of Credit Accommodations and the Export-Related Borrowing Base;

(iv) such Borrower or such Guarantor (A) applies for, consents to or suffers the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or similar fiduciary of itself or of all or a substantial part of its property or calls a meeting of its creditors, (B) admits in writing its inability, or is generally unable, to pay its debts as they become due or ceases operations of its present business, (C) makes a general assignment for the benefit of creditors, (D) commences a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), (E) is adjudicated as bankrupt or insolvent, (F) files a petition seeking to take advantage of any other law providing for the relief of debtors, (G) acquiesces to, or fails to have dismissed within thirty (30) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (H) takes any action for the purpose of effecting any of the foregoing;

(v) any Lien in any of the Collateral, granted or intended by the Loan Documents to be granted to Lender, ceases to be a valid, enforceable, perfected, first priority Lien (or a lesser priority if expressly permitted pursuant to Section 6 of the Loan Authorization Agreement) subject only to Permitted Liens;

(vi) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms;

(vii) the issuance of any levy, assessment, attachment, seizure or Lien, other than a Permitted Lien, against any of the Collateral which is not stayed or lifted within thirty (30) calendar days, unless sufficient cash reserves are established;

(viii) any proceeding is commenced by or against such Borrower or such Guarantor for the liquidation of its assets or dissolution;

(ix) such Borrower fails to comply with any provision of the applicable Borrower Agreement or Loan Authorization Agreement and such failure is not cured within thirty (30) calendar days after the occurrence of such failure;

(x) any litigation is filed against such Borrower or any Guarantor which has had or could reasonably be expected to have a Material Adverse Effect and such litigation is not withdrawn or dismissed within thirty (30) calendar days of the filing thereof;



(xi) any breach or default occurs under any Guaranty Agreement, or any Guaranty Agreement is terminated, or any obligation to perform thereunder is terminated, or any Guarantor attempts to revoke any Guaranty Agreement; or

(xii) any default or event of default other than those described above occurs under any of the Loan Documents which causes the obligations thereunder or a portion thereof to become due prior to its stated maturity or prior to the regularly scheduled dates of payment.

(b) If directed to do so by Ex-Im Bank in writing following the occurrence of an Event of Default, Lender shall accelerate the maturity of the Loan Facility Obligations against the applicable Borrower and any Guarantors, and the Loan Documents shall provide for such acceleration, provided that Ex-Im Bank shall not be entitled to direct acceleration with respect to a Loan Facility if at the time of such request the ratio of (i) the outstanding principal balance of the loans and other financial accommodations provided to such Borrower by Lender (other than real estate loans) secured by the Collateral other than the Loan Facility Obligations to (ii) the outstanding principal balance of the Loan Facility Obligations is equal to or greater than 1.0.

#### 4.10 Notice of Events.

(a) Lender shall notify Ex-Im Bank in writing within ten (10) Business Days if it has knowledge of any Event of Default or the occurrence of any of the following events with respect to a Borrower or Guarantor:

(i) any default or event of default under the applicable Loan Documents;

(ii) any default or event of default under any loan(s), financial accommodations or credit facilities not guaranteed by Ex-Im Bank that have been extended or established by Lender in favor of such Borrower or such Guarantor;

(iii) any restructuring, arising from material adverse developments in Borrower's or Guarantor's financial condition or prospects, of any loan(s), financial accommodations or credit facilities not guaranteed by Ex-Im Bank that have been extended or established by Lender in favor of such Borrower or such Guarantor;

(iv) any event which has had or could reasonably be expected to have a Material Adverse Effect;

(v) such Borrower has included in the applicable Export-Related Borrowing Base, or Accounts Receivable which are not Eligible Export-Related Accounts Receivable or Eligible Export-Related Overseas Accounts Receivable;

(vi) Lender downgrades the internal credit rating provided to such Loan Facility, such Borrower, or such Guarantor by Lender;

(vii) Lender receives a notice from such Borrower that it has not complied with any of the terms of the Borrower Agreement or Lender otherwise has actual knowledge that such Borrower has not complied with any of the terms of the Borrower Agreement; or

(viii) any event described in Section 4.06(c) of this Agreement.

(b) Any notice Lender sends pursuant to (a) above shall be clearly identified as such. In the event that Lender is required to send to Ex-Im Bank a notice required by (a) above, Lender shall also send to Ex-Im Bank not less than once every thirty (30) calendar days thereafter a written report on the status of the event(s) covered by such notice. Lender shall continue to provide Ex-Im Bank with such periodic status reports until Lender files a Claim pursuant to this Agreement, the applicable event(s) have been cured to the satisfaction of Ex-Im Bank or the applicable event(s) have been waived by Lender with the consent of Ex-Im Bank; provided that, with respect to any default occurring under the Loan Documents (other than an Event of Default or a default which with the passage of time or the giving of notice would become an Event of Default), Lender may waive such default without Ex-Im Bank's consent provided that Lender sends written notice of such waiver within five (5) Business Days to Ex-Im Bank.

4.11 Export-Related Overseas Accounts Receivable. Subject to the terms and conditions of this Agreement, Lender may only include Export-Related Overseas Accounts Receivable of a Borrower or of an Affiliated Foreign Person (as defined below) in the Export-Related Borrowing Base with the prior written consent of Ex-Im Bank and provided that the following conditions and any other conditions requested by Ex-Im Bank are met to Ex-Im Bank's satisfaction:

- (a) the Affiliated Foreign Person, if any, has been approved by Ex-Im Bank;
- (b) the Affiliated Foreign Person, if any, is a Borrower under the relevant Loan Facility;
- (c) notwithstanding the Maximum Amount of the Loan Facility, all payments due and payable on such Export-Related Overseas Accounts Receivable are collected through a cash collateral account under Lender's control and subject to any other conditions required by Ex-Im Bank;
- (d) as of the Effective Date, or such later date when the Export-Related Overseas Accounts Receivable are added to the Loan Facility, Lender has obtained a valid and enforceable first priority Lien in the Export-Related Overseas Accounts Receivable as applicable and agrees to maintain such Lien through the term of the Loan Facility, in accordance with Section 4.02;
- (e) as of the Effective Date, or such later date when the Export-Related Overseas Accounts Receivable are added to the Loan Facility, Lender has obtained a legal opinion stating (i) the steps that were taken to obtain a first priority Lien for Lender in the Export-Related Overseas Accounts Receivable (ii) that such first priority Lien is valid and enforceable in the country where such accounts receivable are located, (iii) that such Lien is

assignable to Ex-Im Bank and (iv) the procedures that Ex-Im Bank (as assignee) would have to take to foreclose upon such Lien and liquidate such accounts receivable;

(f) the Export-Related Overseas Accounts Receivable are due and payable in United States Dollars or other currency acceptable to Ex-Im Bank; and

(g) at no time may the portion of the Export-Related Borrowing Base derived from Eligible Export-Related Overseas Accounts Receivable exceed fifty percent (50%) of the Export-Related Borrowing Base.

For purposes hereof, an “Affiliated Foreign Person” shall mean a subsidiary or affiliate of a Borrower on the same Loan Facility, which has duly executed as a Borrower all of the applicable Loan Documents and any other documents required by Ex-Im Bank, meets all of the requirements of the definition of Eligible Person other than subclause (a) thereof and is in good standing in the country of its formation or otherwise authorized to conduct business in such country.

4.12 Assignability; No Third Party Beneficiaries. Lender may assign, transfer, negotiate, sell or participate all or part of its interests, obligations or rights in a Loan Facility and the applicable Loan Documents to an affiliate or subsidiary of Lender or to any other financial institution provided that Lender continues to act as the administrative and collateral agent for such Loan Facility and Lender retains all obligations with respect to Ex-Im Bank under the Guarantee, this Agreement, the Loan Authorization Agreement and, to the extent applicable, the Delegated Authority Letter Agreement or Fast Track Lender Agreement. Except as set forth in the preceding sentence, Lender shall not assign, transfer, negotiate, sell or participate any of its interests, obligations or rights in any Loan Facility, the applicable Loan Documents or this Agreement without prior written consent of Ex-Im Bank. No assignment, transfer, negotiation, sale or participation of Lender’s interests, obligations or rights in any Loan Facility, the applicable Loan Documents, this Agreement or other loan or financial accommodation shall be incorporated into Loan Documents or bestow on any such assignees, transferees, buyers or participants any rights as Lender or otherwise under the terms of this Agreement, or create any obligations by Ex-Im Bank to any such assignee, transferee, buyer or participant either before or after Claim Payment except with Ex-Im Bank’s prior written consent. Only Ex-Im Bank and Lender have rights and obligations under this Agreement; no third party shall have any rights hereunder as a third party beneficiary or otherwise.

4.13 Renewals. The Ex-Im Bank Guarantee shall continue in full force and effect for a Revolving Loan Facility renewed in accordance with the terms of this Section 4.13. The Lender shall, at least sixty (60) days prior to the expiration of the Loan Facility Term or as soon thereafter as a determination is made, notify Ex-Im Bank if such Lender does not intend to renew a Revolving Loan Facility. Any Lender not operating under a Delegated Authority Lender Agreement shall not enter into a Renewal unless and until Ex-Im Bank has authorized such Renewal in writing. In connection with any Renewal, Lender is required to re-submit all documentation as if the Loan Facility were an initial application, including the following: a completed SBA/Ex-Im Bank Joint Application, the applicable application fee, the Facility Fee calculated based on an initial Loan Facility in accordance with Article III of this Agreement, a new duly executed Loan Authorization Agreement and a new duly executed Borrower

Agreement. The same procedures regarding approvals are applicable for Renewals as if this were a new application. To be effective as a Renewal, the Effective Date of such Renewal must be the date immediately following the last day of the original Loan Facility Term or any Extensions. Lender's failure to complete or comply with any of the terms and conditions set forth in this Section 4.13 shall render any Guarantee null and void with respect to any Credit Accommodation made after the Final Disbursement Date of the original Loan Facility Term.

#### 4.14 Legal Actions, Amendments.

(a) Lender shall not, without the prior written consent of Ex-Im Bank or as may be permitted in a Delegated Authority Letter Agreement, amend any Loan Document in a manner inconsistent with Lender Obligations, including the standard of care stated in Section 4.04(a). Further, Lender shall not, without the prior written consent of Ex-Im Bank, release any Collateral applicable to a Loan Facility, release any Guarantor from its obligations, reschedule or restructure the applicable Loan Facility, or undertake any legal action with respect to any of the Loan Documents, including accelerating the applicable Loan Facility (except for the automatic acceleration of the Loan Facility arising as a matter of law from the filing of a proceeding in bankruptcy by or against the applicable Borrower) or exercising any of its remedies under the Loan Documents or applicable law; provided, however in situations following an Event of Default when Lender determines, in good faith, that time is of the essence and it is not practical to obtain Ex-Im Bank's prior written consent, Lender may take such actions required in its reasonable judgment to protect the physical security or market value of the Collateral and any materials or records relating thereto or to preserve the collection prospects of the Loan Facility or Collateral, provided, that, Lender notifies Ex-Im Bank when feasible, prior to taking such action, or as soon as practicable thereafter, but in no event later than five (5) Business Days after taking such action.

(b) Notwithstanding anything to the contrary in this Agreement, Lender may make Permitted Overadvances, and any such Permitted Overadvance (including interest accrued thereon) shall be covered by the Guarantee.

(c) Lender shall take such measures as are reasonably requested by Ex-Im Bank to cooperate with Ex-Im Bank in recovery efforts against each applicable Borrower, any Guarantors and the applicable Collateral.

## ARTICLE V

### CLAIMS PROCEDURES

#### 5.01 Conditions Precedent to Payment.

(a) As conditions precedent to Ex-Im Bank's obligation to make a payment to Lender under the Guarantee with respect to a particular Loan Facility, Lender shall submit a written demand ("Claim") to Ex-Im Bank for payment under the Guarantee, together with the Claim Documents, on a Business Day not sooner than thirty (30) calendar days nor later than one hundred and twenty (120) calendar days following Borrower's failure to pay when due any outstanding amount of principal or accrued interest payable on the Loan Facility (which is ninety

(90) calendar days following a Payment Default). The Payment Default must be continuing through the Claim Date.

(b) The Claim shall only be deemed complete upon receipt by Ex-Im Bank of all of the documents enumerated in this subsection (b) (the "Claim Documents"):

(i) a written statement setting forth (A) the total principal balance of the Credit Accommodations outstanding, (B) the current Guaranteed Interest Rate, (C) the amount of past due interest on the Loan Facility, (D) the date through which interest has been paid with respect to the Loan Facility, (E) the first date interest was due and not paid with respect to the Loan Facility, (F) the amount and calculation of the Collateral Protection Costs and the Enforcement Costs of Lender as of the Claim Date, and (G) the circumstances that gave rise to Borrower's failure to make such payment including without limitation any Events of Default that have occurred and the dates of any such Events of Default;

(ii) a copy of the written demand made by Lender on the applicable Borrower and any Guarantors for payment of all amounts due and payable with respect to such Loan Facility or a copy of the bankruptcy notice or court order in the event that the making of such demand would be prohibited by (A) a court order or (B) an automatic stay imposed pursuant to 11 U.S.C. § 362(a) or a similar provision of a foreign bankruptcy law (Lender shall have no obligation to apply for relief from such stay);

(iii) duplicate originals or photocopies of fully duly executed copies of the Loan Authorization Agreement, Borrower Agreement, Loan Agreement and any other Loan Documents with respect to such Loan Facility;

(iv) copies of all UCC financing statements and other documents covering the Collateral for such Loan Facility filed by or on behalf of Lender and evidence that Lender has conducted or obtained, no earlier than 60 days prior to the Claim Date, lien searches of the appropriate agencies, registries, offices and jurisdictions which indicates that Lender has a perfected first priority Lien in the applicable Collateral subject only to Permitted Liens and any other exceptions from the order of priority as set forth in Section 6.E. and F. of the applicable Loan Authorization Agreement; and (applicable only if Export-Related Overseas Accounts Receivable is included in the Export-Related Borrowing Base), copies of any filings and searches which evidence that Lender has, as of the date no older than 60 days prior to the Claim filing date, a perfected first priority Lien in such Export-Related Overseas Accounts Receivable, an opinion of Lender's counsel in accordance with Section 4.11(e); Lender shall include a certification stating the expiration date of any security filings (both domestic and foreign) scheduled to expire within twelve (12) months following the Claim Date;

(v) evidence that Lender paid the applicable Facility Fee to Ex-Im Bank and any accrued late fees within the time period set forth in Section 3.01 of this Agreement;

(vi) copies of all field examination reports conducted (or written extensions obtained) over the twelve (12) month period preceding the Claim Date in accordance with the requirements in Section 4.08 of this Agreement;

(vii) copies of all applicable Export-Related Borrowing Base Certificates and Borrower's Certificates prepared in accordance with Section 4.06(a) together with supporting Accounts Receivable Aging Reports and evidence of the sample of Invoices and corresponding Bills of Lading conducted in accordance with Section 4.08(d) (or alternatively, copies of all Invoices with corresponding Bills of Lading) for the shorter of (i) the Loan Facility Term and (ii) the six month period preceding the date of the Payment Default, plus all sets received subsequent to the Payment Default and the set immediately prior to the last Credit Accommodation (if not included in the above);

(viii) a certification or other evidence that Lender has complied with the terms of Section 4.06(c) regarding prohibited Credit Accommodations;

(ix) a certification from Lender stating the applicable Guarantee Percentage(s) for the Claim amount with reference to the relevant supporting Invoices and corresponding Bills of Lading or sampling documents and Borrower's Certificates submitted with subpart (vii) above as well such documents covering the time period prior to that required in subpart (vii), if necessary, to substantiate Invoices eligible for coverage at the 95% Guarantee Percentage;

(x) copies of Lender's material records regarding Credit Accommodations and loan transaction history, including application of payments to the Loan Facility throughout the Loan Facility Term;

(xi) copies of any material communications to, and from, Ex-Im Bank regarding Events of Default;

(xii) any material records regarding satisfaction of the Special Conditions, if any, and, modifications and waivers of Lender Obligations, if any.

(c) Notwithstanding Section 6.02, unless instructed otherwise in writing by Ex-Im Bank, Lender shall submit all Claims and Claim Documents to the Ex-Im Bank Asset Management Division, 811 Vermont Avenue, Washington DC 20571, Attention: Claims. Lender shall submit the Claim Documents together with the Claim unless Lender submits the Claim electronically through the Ex-Im Bank website, in which case Lender shall on the same day as the Claim is submitted electronically submit the Claim Documents to the address specified above.

(d) Upon written request from Lender received by Ex-Im Bank prior to the Claim filing deadline, Ex-Im Bank may in its discretion grant a written extension of the 90-day period for Claim submission. Ex-Im Bank shall notify Lender in writing if the Claim Documents submitted with the Claim are incomplete. Lender shall submit the requested missing Claim Documents to the address specified in subsection (c) above or such other address as Ex-Im Bank indicates to Lender in writing, within the timetable specified in writing by Ex-Im Bank, which time period shall not be less than ten (10) Business Days. If Lender does not submit all requested missing Claim Documents within the requested timetable, Ex-Im Bank reserves the right to return as incomplete the submitted Claim and Claim Documents. Such action shall not reset the timetable for Claim submission.

5.02 Disposition of Claims. Ex-Im Bank reserves the right to deny a Claim or any portion thereof if Ex-Im Bank determines that Lender has not (a) filed the Claim and all Claim Documents within the time periods set forth in Section 5.01; (b) complied with Sections 3.01, 4.01(a) and (c), 4.02(a), 4.06(c), (d) and (e), and 4.08(c); or (c) materially complied with all other Lender Obligations.

5.03 Payment of Claims.

(a) Within thirty (30) calendar days of receipt by Ex-Im Bank of a complete Claim, Ex-Im Bank shall either notify Lender in writing (i) of Ex-Im Bank's decision regarding the Claim (the "Claim Disposition Notice") or (ii) that Lender needs to provide additional documents, records, correspondence or items in Lender's possession related to the Loan Facility, the Loan Documents, or the obligations of Lender under this Agreement ("Additional Claim Documentation") not included with the Claim. Lender shall provide such Additional Claim Documentation that Ex-Im Bank reasonably requests in order to process the Claim or proceed with recovery efforts against any Borrower, Guarantor or Collateral in the relevant Loan Facility. In the event Lender fails to provide the Additional Claim Documentation to the address specified in Section 5.01(c) or such other address as Ex-Im Bank indicates to Lender in writing, within a reasonable time frame set by Ex-Im Bank, the Guaranteed Amount shall only include interest on unpaid Credit Accommodations through the date specified in writing by Ex-Im Bank. In the event Ex-Im Bank denies the payment of a Claim or a portion thereof, Ex-Im Bank shall state the reasons for such denial in the Claim Disposition Notice.

(b) If the Claim Disposition Notice states that Ex-Im Bank will not pay a Claim or any portion thereof because Lender has failed to obtain a perfected Lien in any portion of the Collateral in the priority set forth in this Agreement and the applicable Loan Authorization Agreement, then Ex-Im Bank may still make a Claim Payment to Lender after the completion of all recovery efforts against the Collateral. Upon completion of such recovery efforts, Ex-Im Bank may pay any unpaid portion of the Claim to Lender, deducting therefrom an amount equal to the non-recoverable value, as determined by Ex-Im Bank in its sole discretion exercised in good faith, attributable to the portion of the Collateral in which Lender failed to obtain the required perfected Lien. Such determination shall, without limitation, take into account the relative priority Lender and Ex-Im Bank were to have in the proceeds of the Collateral in which Lender did not have the required perfected Lien and the relative ultimate net loss suffered by each.

(c) If the Claim Disposition Notice states that Ex-Im Bank will not pay a Claim or a portion thereof pursuant to Section 5.02 in any respect, then Ex-Im Bank may still make a Claim Payment to Lender after the completion of all recovery efforts against the applicable Borrower, any Guarantor and the Collateral. Upon completion of such recovery efforts or earlier if deemed appropriate by Ex-Im Bank in its sole discretion, Ex-Im Bank may pay any unpaid portion of the Claim to Lender, deducting therefrom an amount equal to the non-recoverable value, as determined by Ex-Im Bank in its sole discretion exercised in good faith, attributable to such exception(s) or non compliance. Lender shall promptly respond to any request from Ex-Im Bank for documentation or otherwise regarding the determination of the non-recoverable value attributable to Lender's exception(s) or non compliance.

(d) In connection with any of the events described in Sections 5.03(b) and (c), Ex-Im Bank shall have no obligation to commence or conduct any recovery efforts against any Borrower, any Guarantor or any Collateral.

#### 5.04 Assignment.

(a) Except for the circumstances stated in subsection (b) below, prior to any Claim Payment, Lender shall, if requested by Ex-Im Bank, duly execute and deliver to Ex-Im Bank an Assignment Agreement pursuant to which Lender assigns all of its right, title and interest in and to: (i) the Loan Documents relating to the Loan Facility Obligations; (ii) the Primary Collateral; and (iii) all other instruments, documents, items and property related to the applicable Loan Facility Obligations. If the Loan Documents cannot be completely separated from a set of credit and security documents governing both the Loan Facility and other loans and financial accommodations, Lender shall assign to Ex-Im Bank its right, title and interest to the full set of credit and security documents. Lender shall deliver to Ex-Im Bank together with such Assignment Agreement, such other instruments and documents (including originals when applicable) as Ex-Im Bank shall reasonably request together with appropriate endorsements thereto. In the event Lender fails to deliver an Assignment Agreement and related documents that effectuate the assignment within the time frame set by Ex-Im Bank, the Guaranteed Amount shall only include interest on unpaid Credit Accommodations through the date specified in writing by Ex-Im Bank.

(b) Ex-Im Bank shall not be entitled to request an Assignment Agreement with respect to a Loan Facility if at the time of such request the ratio of (i) the outstanding principal balance of the loans and other financial accommodations provided to such Borrower by Lender secured by the Collateral other than the Loan Facility Obligations to (ii) the outstanding principal balance of the Loan Facility Obligations is equal or greater than 1.0 to 1.0. Notwithstanding the ratio set forth in this Section 5.04(b), after such Lender has liquidated the Collateral, Ex-Im Bank shall be entitled to request an Assignment Agreement covering any still applicable documents specified in Section 5.04(a) above.

5.05 Liquidation by Lender. At all times prior to a Claim Payment and at all times thereafter until an Assignment Agreement, if any, is delivered, Lender shall enforce the Loan Documents and liquidate the Collateral for the joint benefit of Lender and Ex-Im Bank, subject to the priorities and the standard of care contemplated by this Agreement, any Loan Authorization Agreement, and any and all other agreements pertaining hereto or thereto. Any action Lender takes regarding Collateral shall be in accordance with Section 4.14 of this Agreement.

#### 5.06 Application of Recovery Proceeds. After Claim Payment:

(a) One hundred percent (100%) of the proceeds from the Primary Collateral received by either Ex-Im Bank or Lender shall, respectively, be held by or turned over to Ex-Im Bank which shall calculate Recovery Proceeds and apply such Recovery Proceeds as follows:



(i) the Guaranteed Percentage to Ex-Im Bank up to an amount equal to the amount of the Claim Payment plus interest accrued to date on such Claim Payment since the Claim Payment Date (such sums together, the "Actualized Claim Payment"); and

(ii) the Non-Guaranteed Percentage to Lender until the earlier of (A) Ex-Im Bank's receipt of the full amount of the Actualized Claim Payment and (B) the unpaid balance of the Loan Facility Obligations is reduced to zero.

(b) One hundred percent (100%) of the proceeds from the Secondary Collateral remaining after payment in full of all of Borrower's obligations to Lender secured by the Collateral other than the Loan Facility Obligations (along with an accounting of how the Lender applied such proceeds towards loans other than the Loan Facility Obligations, such accounting to be due even if no proceeds remain, if requested by Ex-Im Bank) shall, respectively, be held by or turned over to Ex-Im Bank which shall calculate Recovery Proceeds and apply such Recovery Proceeds as follows:

(i) the Guaranteed Percentage to Ex-Im Bank up to an amount equal to the Actualized Claim Payment; and

(ii) the Non-Guaranteed Percentage to Lender until the earlier of (A) Ex-Im Bank's receipt of the full amount of the Actualized Claim Payment and (B) the unpaid balance of the Loan Facility Obligations is reduced to zero.

(c) The amount of proceeds deemed to be Guarantor Collateral shall be the Pro Rata Guaranty Percentage. One hundred percent (100%) of the proceeds so determined of Guarantor Collateral shall, respectively, be held by or turned over to Ex-Im Bank which shall calculate Recovery Proceeds and apply such Recovery Proceeds as follows:

(i) the Guaranteed Percentage to Ex-Im Bank up to an amount equal to the Actualized Claim Payment; and

(ii) the Non-Guaranteed Percentage to Lender until the earlier of (A) Ex-Im Bank's receipt of the full amount of the Actualized Claim Payment and (B) the unpaid balance of the Loan Facility Obligations is reduced to zero.

(d) One hundred percent (100%) of the proceeds from any payment by Borrower or any other source attributed to the Loan Facility shall, as applicable, be held by or turned over to Ex-Im Bank which shall calculate Recovery Proceeds and apply such Recovery Proceeds as follows:

(i) the Guaranteed Percentage to Ex-Im Bank up to an amount equal to the Actualized Claim Payment; and

(ii) the Non-Guaranteed Percentage to Lender until the earlier of (A) Ex-Im Bank's receipt of the full amount of the Actualized Claim Payment and (B) the unpaid balance of the Loan Facility Obligations is reduced to zero.

(e) One hundred percent (100%) of any amounts received with respect to other obligations due Lender from Borrower or Guarantor after payment in full of all of Borrower's obligations to Lender (other than the Loan Facility Obligations) shall, as applicable, be held by or turned over to Ex-Im Bank which shall calculate Recovery Proceeds and apply such Recovery Proceeds as follows:

(i) the Guaranteed Percentage to Ex-Im Bank up to an amount equal to the Actualized Claim Payment; and

(ii) the Non-Guaranteed Percentage to Lender until the earlier of (A) Ex-Im Bank's receipt of the full amount of the Actualized Claim Payment and (B) the unpaid balance of the Loan Facility Obligations is reduced to zero.

(f) Any Recovery Proceeds received by Ex-Im Bank in excess of the amount of the Claim Payment shall, subject to applicable law, be remitted to Lender for application to any other obligations of such Borrower or Guarantor to Lender that are secured by the Collateral or for application towards the unpaid balance of still outstanding Loan Facility Obligations.

(g) Unless the Other Collateral, if any, of a Borrower can be effectively segregated from collateral securing the Lender on another loan facility of Borrower, for purposes of calculating Recovery Proceeds in connection with claim recoveries under this Agreement, the amount of proceeds attributable to Other Collateral shall be the Pro Rata Percentage determined as of the date Borrower fails to pay when due any outstanding amount of principal or accrued interest payable under the Loan Documents that becomes the basis for a Payment Default on which a Claim is filed.

(h) Unless any other payment made by Borrower or another source towards the reduction of Loan Facility Obligations can be effectively segregated from payments made to Lender on another loan facility of Borrower, for purposes of calculating Recovery Proceeds in connection with claim recoveries under this Agreement, the proceeds attributable to such payments shall be the Pro Rata Percentage determined as of the date Borrower fails to pay when due any outstanding amount of principal or accrued interest payable under the Loan Documents that becomes the basis for a Payment Default on which a Claim is filed.

5.07 Payments. If either Ex-Im Bank or Lender (each a "Benefited Party") shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of banker's lien, set-off or counterclaim) on account of the Loan Facility Obligations in excess of the amounts it would be entitled to receive hereunder, such Benefited Party shall provide the other party with such amounts so as to share the excess payment in the manner set forth in this Agreement; provided, however, if such excess payment is thereafter recovered from such Benefited Party such excess amounts shall be returned to the Benefited Party by the other party.

#### 5.08 Responsibilities of Lender During a Workout/Restructuring and thereafter.

(a) Lender shall conduct any Workout/Restructuring negotiations in accordance with the standard of care set forth in Section 4.04(a) and subject to Section 4.14 of

this Agreement. Notwithstanding such negotiations and any consultation between Lender and Ex-Im Bank regarding such negotiations, Lender shall continue to be bound by, and comply with, the Claim filing deadline in Section 5.01 of this Agreement and all other Lender Obligations unless otherwise agreed to in writing by Ex-Im Bank.

(b) If Ex-Im Bank agrees in writing to a Workout/Restructuring prior to a Claim Payment and delivery of an Assignment Agreement (if any), the existing Loan Documents and corresponding Lender Obligations shall be amended to adhere to the agreed upon Workout/Restructuring.

(c) Notwithstanding any agreed upon Workout/Restructuring and compliance by the Borrower therewith, Lender shall not make any further Credit Accommodations to a Borrower subject to such Workout/Restructuring under any Loan Facility without Ex-Im Bank's prior written consent.

5.09 Indemnity. Lender shall indemnify Ex-Im Bank for any damages sustained by Ex-Im Bank caused by Lender's fraud, intentional misconduct or gross negligence up to the amount of any Claim Payment plus legal and collection expenses. This provision shall survive the term of this Agreement and any Claim Payment.

## ARTICLE VI

### MISCELLANEOUS

6.01 Governing Law. This Agreement and the Loan Authorization Agreement and the obligations arising under this Agreement and the Loan Authorization Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, United States of America, applicable to contracts made and performed in such State, without regard to the principles thereof regarding conflicts of laws (other than Section 5-1401 and Section 5-1402 of the New York General Obligations Laws).

6.02 Notices. Any notice or request hereunder shall be in writing and shall be addressed, when to the Lender, to the physical address, facsimile number or e-mail address set forth under the Lender's name on the signature page hereof and when to Ex-Im Bank, to the Director, Business Credit Division, 811 Vermont Avenue, NW, Washington, DC 20571, facsimile number (202) 565-3793 or for either Lender or Ex-Im Bank, to such other physical address, facsimile number or e-mail address as may hereafter be specified in a notice with such purpose. Any notice or request hereunder which relates exclusively to a specific Loan Facility shall include the Ex-Im Bank Guarantee Loan Number. It is Lender's responsibility to insure that the physical address, facsimile number and e-mail address information provided to Ex-Im Bank continues up-to-date. Any notice or request hereunder shall be deemed validly given or delivered (a) when hand delivered to an officer of the party to whom it was addressed, (b) upon the earlier of actual receipt thereof or three (3) days after deposit in the United States Mail, certified or registered mail, return receipt requested, with proper postage prepaid, (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid, (d) upon transmission when sent by telecopier or other facsimile transmission with such telecopy or

facsimile promptly confirmed or (e) upon transmission by e-mail without return notice of nondelivery to the transmitting party.

6.03 Termination. This Agreement shall continue in full force and effect until terminated by the actual receipt by Lender from Ex-Im Bank of written notice of termination. Such termination shall be applicable only to transactions having their inception after such termination and rights and obligations arising out of transactions having their inception prior to such termination shall not be affected.

6.04 Modification of Agreement. This Agreement, the Loan Authorization Agreement, the Loan Documents and, to the extent applicable, the Delegated Authority Letter Agreement or Fast Track Lender Agreement constitute the complete agreement between the parties with respect to the subject matter hereof and thereof, supersede all prior agreements, commitments, understandings or inducements (oral or written, expressed or implied). This Agreement may not be modified, altered or amended except by a written agreement signed by Ex-Im Bank and Lender.

6.05 No Partnership or Joint Venture Established. No term or provision contained in the Agreement, and no other agreement between the parties hereto, is intended to be, or shall be construed to be, the formation of a partnership or joint venture between Ex-Im Bank and Lender.

6.06 No Waiver. Neither Ex-Im Bank's failure, at any time or times, to require strict performance by Lender of any provision of this Agreement, nor Ex-Im Bank's failure to exercise, nor any delay in exercising any right, power or privilege hereunder, (a) shall waive, affect or diminish any right of Ex-Im Bank thereafter to demand strict compliance and performance therewith, or (b) shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or future exercise thereof or the exercise of any other right, power or privilege. Any suspension or waiver of a provision under this Agreement or any Loan Documents shall not suspend, waive or affect any other provision under this Agreement or any Loan Document, whether the same is prior or subsequent thereto and whether of the same or of a different type, and shall not be construed as a bar to any right or remedy which Lender would otherwise have had on any future occasion. None of the undertakings, indemnities, agreements, warranties, covenants and representations of Lender to Ex-Im Bank in this Agreement or any Loan Document shall be deemed to have been suspended or waived by Lender, unless such waiver or suspension is by an instrument in writing signed by an officer or other authorized employee of Ex-Im Bank and directed to specifying such suspension or waiver (and then such suspension or waiver shall be effective only to the extent therein expressly set forth). Ex-Im Bank shall not, by any act (other than execution of a formal written waiver), delay, omission or otherwise, be deemed to have waived any of its rights or remedies hereunder.

6.07 Partial Invalidity. If at any time any of the provisions of this Agreement becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, none of the legality, validity or enforceability of the remaining provisions hereof shall in any way be affected or impaired.

6.08 Waiver of Jury Trial. EACH OF LENDER AND EX-IM BANK HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OR OMISSIONS OF LENDER, EX-IM BANK OR ANY OTHER PERSON RELATING TO THIS AGREEMENT, THE LOAN AGREEMENT OR ANY OTHER LOAN DOCUMENT, PROCEEDING OR OTHER LITIGATION BROUGHT TO RESOLVE ANY DISPUTE ARISING UNDER, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, ANY LOAN AUTHORIZATION AGREEMENT OR ANY OTHER AGREEMENT, DOCUMENT OR INSTRUMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THEREWITH.

6.09 Section Titles. The Section titles contained in this Agreement shall be without substantive meaning or content of any kind whatsoever and are not part of the agreement between the parties hereto.

6.10 Counterparts. This Agreement, the Loan Authorization Agreement, the Loan Documents and to the extent applicable the Delegated Authority Letter Agreement or Fast Track Lender Agreement may be duly executed in any number of separate counterparts by any one or more of the parties thereto, and all of said counterparts taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, in duplicate, as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Name of Lender)

EXPORT-IMPORT BANK OF THE UNITED STATES

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Name: Pamela S. Bowers

Title : \_\_\_\_\_

Title: Vice President, Business Credit Division

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

811 Vermont Avenue, N.W.  
Washington, D.C. 20571

Telephone: \_\_\_\_\_

Telephone: (202) 565-3780

Telecopier: \_\_\_\_\_

Telecopier: (202) 565-3793

E-Mail: \_\_\_\_\_

ANNEXES:

- Annex A - Borrower Agreement
- Annex B - Fast Track Loan Authorization Agreement
- Annex C - Loan Authorization Agreement
- Annex D - Loan Authorization Notice
- Annex E - Form of Borrower's Certificate

EXHIBITS:

- Exhibit 1 - Criteria for Reduced Facility Fee