**Loan Agreement: Letters of Credit Clauses**

* Resource type: Standard Clauses
* Status: Maintained
* Jurisdiction: USA

These Standard Clauses are typical provisions setting out the terms of a letter of credit facility made available to the borrower under a revolving credit loan. These Standard Clauses govern the process for requesting letters of credit and specify the borrower's obligations to reimburse the letter of credit issuing bank for amounts drawn under the letters of credit.  They also set out the obligations of the revolving lenders to participate in outstanding letter of credit obligations if not reimbursed by the borrower. Also included are provisions requiring the borrower to post cash collateral to secure letter of credit obligations under certain circumstances, and provisions regarding letter of credit fees. These Standard Clauses have integrated notes with important explanations and drafting and negotiating tips.

*Practical Law Finance*

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**Letters of Credit**

[***Letters of credit (www.practicallaw.com/3-382-3574)***](http://us.practicallaw.com/3-382-3574) are irrevocable undertakings for the payment of money that are generally issued by banks (referred to as the [***issuing bank (www.practicallaw.com/4-382-3564)***](http://us.practicallaw.com/4-382-3564) or issuer). Letters of credit function like cash [***guarantees (www.practicallaw.com/8-382-3519)***](http://us.practicallaw.com/8-382-3519) of specified obligations and are provided for the benefit of the addressee of the letter of credit (the beneficiary) at the request of the bank's customer. Letters of credit can be issued on a one-time basis or under a letter of credit facility, which is usually a sub-facility of a larger [***revolving credit loan (www.practicallaw.com/9-382-3774)***](http://us.practicallaw.com/9-382-3774).

For more information about letters of credit, see [*Practice Note, Letters of Credit in Financing Transactions: Overview (www.practicallaw.com/1-505-9216)*](http://us.practicallaw.com/1-505-9216).

[Top](http://us.practicallaw.com/0-523-5140#top)

**Assumptions Used in these Standard Clauses**

The following assumptions are reflected in these Standard Clauses (which should be revised, as necessary, to fit the facts of your deal):

* This is a domestic loan transaction with a US borrower.
* The loan is [***syndicated (www.practicallaw.com/4-382-3861)***](http://us.practicallaw.com/4-382-3861) and the [***administrative agent (www.practicallaw.com/1-382-3216)***](http://us.practicallaw.com/1-382-3216) acts for all the lenders.
* The borrower is solvent and not financially distressed.
* The loan agreement into which these Standard Clauses are to be included is governed by New York law.
* All letters of credit issued under the facility are standby, not commercial, letters of credit.

[Top](http://us.practicallaw.com/0-523-5140#top)

**Bracketed Items**

Complete all square bracketed items (in all capitalized letters) with the facts of your deal. All square bracketed items (in all lower case letters) are optional language to be selected or deleted depending on the specifics of your transaction.

[Top](http://us.practicallaw.com/0-523-5140#top)

**Defined Terms**

The following capitalized terms are used in these Standard Clauses but are not defined. You should ensure that they conform to the defined terms used in your loan agreement (if applicable to your deal):

Administrative Agent; Administrative Agent's Office; Agreement (meaning the loan agreement); Applicable Margin; Assignment and Assumption; Base Rate Loan; Borrower; Borrowing Notice; Business Day; Closing Date; Debtor Relief Law; Default; Default Rate; Defaulting Lender; Dollars; Eurodollar Rate Loan; Event of Default; Federal Funds Effective Rate; Governmental Authority; Lender; Lien; Loan Document; Maturity Date; Obligations; Outstanding Amount; Person; Related Party; Required Lenders; Requirement of Law; Responsible Officer; Revolving Credit Borrowing; Revolving Credit Facility; Revolving Lender; Subsidiary; Swing Line Lender; and Swing Line Loan.

For standard definitions, see [*Standard Clauses, Loan Agreement: Standard Definitions (www.practicallaw.com/4-383-8339)*](http://us.practicallaw.com/4-383-8339).

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**ARTICLE I**

**DEFINITIONS**

**"Applicable Percentage"**means, as to any Revolving Lender at any time, the percentage of the aggregate Revolving Credit Commitments of all Revolving Lenders represented by that Revolving Lender's Revolving Credit Commitment at such time; *provided*, that if the Revolving Credit Commitments have terminated, the Applicable Percentages shall be calculated using the Revolving Credit Commitments most recently in effect after giving effect to any assignments.

[**"Automatic Extension L/C"**has the meaning set forth in Section [2.02(c)] hereof.]

**"Cash Collateralize"**means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuer or the Revolving Lenders, as collateral for L/C Obligations or obligations of the Revolving Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if the Administrative Agent and the L/C Issuer shall agree in their sole but reasonable discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the L/C Issuer. "Cash Collateral" shall have a meaning correlative to the foregoing, and shall include the proceeds of such cash collateral and other credit support.

**"Fee Payment Date"**means the [last] Business Day of each [March, June, September and December].

[Hide Note: Fee Payment Date](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22null)Note: Fee Payment Date

**1. Fee Payment Date**

**Fee Payment Date**

Recurring fees under letter of credit facilities are typically payable quarterly. Often there are other ongoing fees payable under the same loan agreement that are unrelated to letters of credit, such as [***commitment fees (www.practicallaw.com/6-382-3351)***](http://us.practicallaw.com/6-382-3351) for a revolving credit facility. In many loan agreements, recurring fees of all types are payable on the same dates. The above definition must be modified if there is any variation in the timing of fee payments in your deal and letter of credit fees are payable at different times than other fees.

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**"Fronting Exposure"**means, at any time there is a Defaulting Lender that is a Revolving Lender [(a) with respect to the L/C Issuer], such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations at such time, other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof[, and (b) with respect to the Swing Line Lender, such Defaulting Lender's Applicable Percentage of Swing Line Loans at such time, other than Swing Line Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Lenders in accordance with the terms hereof].

[Hide Note: Fronting Exposure](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22null)Note: Fronting Exposure

**1. Fronting Exposure**

**Fronting Exposure**

As soon as a letter of credit is issued and given to the beneficiary, the issuing bank is liable to honor all drawings properly presented by the beneficiary. The issuing bank is entitled to be reimbursed by the borrower and the revolving lenders for all amounts drawn by the beneficiary. However, until the issuing bank actually receives payment from the borrower or the revolving lenders (or [***cash collateral (www.practicallaw.com/7-382-9828)***](http://us.practicallaw.com/7-382-9828) or other acceptable assurances that it will be reimbursed), it is out of pocket for any payments it makes to the beneficiary. To ensure that the letter of credit issuer is fully reimbursed by the revolving lenders, the loan agreement allocates the letter of credit issuer's fronting exposure for all drawn and undrawn stated amounts under letters of credit among the revolving lenders, ratably in proportion with their respective shares of the revolving commitments. If a lender in the syndicate becomes a defaulting lender, however, the defaulting lender's share of any letter of credit reimbursement obligations must either be:

* Allocated to the other revolving lenders.
* Covered by cash collateral posted by the borrower.

If the letter of credit issuer is not satisfied that a defaulting lender's share of letter of credit reimbursement obligations is adequately covered, the letter of credit issuer is under no obligation to issue additional letters of credit or to extend existing ones.

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**"Honor Date"**has the meaning set forth in Section [2.03(a)] hereof.

**"ISP"**means, with respect to any Letter of Credit, the "International Standby Practices ISP98" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

**"L/C Advance"**means, with respect to each Revolving Lender, such Revolving Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

**"L/C Borrowing"**means an extension of credit arising from a drawing under a Letter of Credit that has not been reimbursed on the date when made or refinanced by a Revolving Credit Loan.

**"L/C Credit Extension"**means, with respect to any Letter of Credit, the issuance thereof, increase in the amount thereof, or extension of the expiration date thereof.

**"L/C Issuer"**means [NAME OF ISSUING BANK] in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

**"L/C Issuing Documents"**means, with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any of its Subsidiaries) or in favor of the L/C Issuer and relating to any such Letter of Credit.

**"L/C Obligations"**means, on any date of determination, the aggregate amount of the undrawn stated amount of all outstanding Letters of Credit, plus the amount drawn under Letters of Credit for which the L/C Issuer and the Revolving Lenders, or any one or more of them, have not received payment or reimbursement (in the form of a conversion of such liability to Revolving Credit Loans, or otherwise) as required pursuant to Section [2.03] hereof.

**"Letter of Credit"**means any standby letter of credit issued hereunder that provides for the payment of cash upon the honoring of a presentation thereunder.

**"Letter of Credit Application"**means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

**"Letter of Credit Expiration Date"**means the day that is [five] Business Days prior to the Maturity Date then in effect for the Revolving Credit Facility.

[Hide Note: Letter of Credit Expiration Date](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22null)Note: Letter of Credit Expiration Date

**1. Letter of Credit Expiration Date**

**Letter of Credit Expiration Date**

Letter of credit facilities are typically sub-facilities of revolving credit facilities. Most letter of credit facilities expire a few days (commonly five business days) before the end of the revolving credit facility. This means that any final drawings under outstanding letters of credit are processed by the issuing bank ahead of the termination of the revolving credit facility. When the revolving credit facility subsequently terminates, all the borrower's payment obligations under that facility become due, including all letter of credit obligations.

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**"Letter of Credit Fee"**has the meaning set forth in Section [2.09(a)] hereof.

**"Letter of Credit Sublimit"**means an amount equal to $[AMOUNT]. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

**"Minimum Cash Collateral Amount"**means, at any time (a) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure when there is a Defaulting Lender, an amount equal to [105]% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section [2.07(a)(i), (a)(ii) or (a)(iii)], an amount equal to [105]% of the Outstanding Amount of all L/C Obligations, and (c) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their sole but reasonable discretion.

[Hide Note: Minimum Cash Collateral Amount](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22null)Note: Minimum Cash Collateral Amount

**1. Minimum Cash Collateral Amount**

**Minimum Cash Collateral Amount**

Loan agreements commonly require the borrower to provide cash collateral to the issuing bank to cover letter of credit reimbursement obligations in certain circumstances (see [*Drafting Note, Cash Collateral*](http://us.practicallaw.com/0-523-5140#a687303)). The amount that must be provided for any letter of credit typically exceeds the maximum amount (also called the face amount) that can be drawn under that letter of credit by a small margin, typically between 2% and 5%. This additional amount ensures that fees and other charges of the issuing bank are also covered by the cash collateral posted by the borrower.

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[**"Non-Extension Notice Date"**has the meaning set forth in Section [2.02(c)] hereof.]

**"Required Revolving Lenders"**means, at any time, Revolving Lenders with Total Revolving Credit Exposures equalling more than [50]% of the Total Revolving Credit Exposures of all Revolving Lenders; *provided*, that the Total Revolving Credit Exposure of any Revolving Lender that is a Defaulting Lender shall be disregarded in determining Required Revolving Credit Lenders at any time; *provided further*, that the amount of any participation in any [Swing Line Loan and] Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to, and funded by, another Revolving Lender shall be deemed to be held by the Lender that is the [Swing Line Lender or] L/C Issuer[, as the case may be,] in making such determination.

**"Revolving Credit Commitments"**means, as to any Revolving Lender, the obligation of such Revolving Lender to make Revolving Credit Loans and participate in [Swingline Loans and] Letters of Credit in an aggregate principal amount not to exceed the amount set forth under the heading "Revolving Credit Commitment" opposite such Revolving Lender's name on Schedule [NUMBER] or in the Assignment and Assumption pursuant to which such Revolving Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof.

**"Revolving Credit Exposure"**means, as to any Revolving Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Revolving Credit Loans held by such Revolving Lender then outstanding[,/ and] (b) such Revolving Lender's Applicable Percentage of the L/C Obligations then outstanding [and (c) such Revolving Lender's Applicable Percentage of the aggregate principal amount of Swingline Loans then outstanding].

**"Revolving Credit Loans"**means any revolving credit loan made by a Revolving Lender under the Revolving Credit Facility.

**"Total Revolving Credit Exposure"**means, as to any Revolving Lender at any time, the unused Revolving Credit Commitments and Revolving Credit Exposure of such Revolving Lender at such time.

**"Unreimbursed Amount"**has the meaning set forth in Section [2.03(a)] hereof.

[Top](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22top%22%20%5Co%20%22Link%20to%20the%20top%20of%20the%20document)

**ARTICLE II**

**LETTERS OF CREDIT**

 **Section 2.01 Letter of Credit Commitment.**

(a) Subject to the terms and conditions set forth herein (i) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Lenders set forth in this Article II, (A) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Borrower [or any of its Subsidiaries], and to amend Letters of Credit previously issued by it, in accordance with Section 2.02, and (B) to honor drawings under the Letters of Credit; and (ii) the Revolving Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower [or any of its Subsidiaries] and any drawings thereunder; *provided*, that after giving effect to any L/C Credit Extension (x) the aggregate principal amount of all Revolving Credit Loans then outstanding shall not exceed the aggregate Revolving Credit Commitments, (y) the Revolving Credit Exposure of any Revolving Lender shall not exceed such Lender’s Revolving Credit Commitment, and (z) the aggregate outstanding amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(b) The L/C Issuer shall not issue any Letter of Credit if:

(i) [subject to Section 2.02(c), ]the expiry date of the requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Revolving Lenders have approved such expiry date; or

(ii) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Revolving Lenders have approved such expiry date.

(c) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Requirement of Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from the issuance of letters of credit generally or such Letter of Credit in particular, or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(ii) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer generally applicable to the issuance of letters of credit;

(iii) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is in an initial stated amount less than $[AMOUNT];

(iv) the Letter of Credit is to be denominated in a currency other than Dollars; or

(v) any Revolving Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements satisfactory to it (in its sole discretion) with the Borrower or such Revolving Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section [SECTION ON REALLOCATION OF DEFAULTING LENDER COMMITMENTS TO REDUCE FRONTING EXPOSURE]) with respect to the Defaulting Lender arising from such Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(d) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(e) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (i) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (ii) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(f) The L/C Issuer shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (i) provided to the Administrative Agent in Article [ARTICLE CONTAINING ADMINISTRATIVE AGENCY PROVISIONS] with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and L/C Issuing Documents pertaining to such Letters of Credit, as fully as if the term "Administrative Agent" as used in Article [ARTICLE CONTAINING ADMINISTRATIVE AGENCY PROVISIONS] included the L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to the L/C Issuer.

[Hide Note: Letter of Credit Commitment](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22null)Note: Letter of Credit Commitment

**2. Letter of Credit Commitment**

**Letter of Credit Commitment**

The letter of credit commitments are central to all letter of credit provisions. Many loan agreements adopt the approach used in these Standard Clauses where the first section of the letter of credit provisions contains:

* The commitments of the issuing bank and the revolving lenders concerning letters of credit.
* Threshold conditions regarding letters of credit that must be met before the borrower can obtain a letter of credit under the facility.

[Top](http://us.practicallaw.com/0-523-5140#top)

**Issuing Bank and Revolving Lender Commitments**

In syndicated deals, there are two separate commitments:

* The issuing bank's commitment to issue letters of credit at the borrower's request.
* The commitments of the revolving lenders in the syndicate to [***participate (www.practicallaw.com/3-382-3673)***](http://us.practicallaw.com/3-382-3673) in all letters of credit that are issued.

The revolving lenders are only required to fund their participations if the borrower fails to reimburse the issuing bank. If this happens, however, each revolving lender's obligation to fund its participation is absolute and unconditional (see [*Drafting Note, Lenders' Obligations Unconditional*](http://us.practicallaw.com/0-523-5140#a110512)).

[Top](http://us.practicallaw.com/0-523-5140#top)

**Conditions Concerning Letters of Credit**

[*Section 2.01*](http://us.practicallaw.com/0-523-5140#a276936) in these Standard Clauses sets out certain threshold conditions that must be satisfied for the borrower to obtain a letter of credit. The conditions set out in [*Section 2.01(a)*](http://us.practicallaw.com/0-523-5140#a543969) and [*Section 2.01(b)*](http://us.practicallaw.com/0-523-5140#a742869) ensure that:

* The maximum amount of revolving loans and letters of credit is not greater than the aggregate revolving credit commitments.
* The amount of letters of credit does not exceed the applicable sublimit for the letter of credit facility.
* Unless the lender's approval is given, no letter of credit is issued (or extended):
	+ with a maturity date that exceeds one year; or
	+ for the remainder of the term of the letter of credit facility.

The satisfaction of the conditions contained in [*Section 2.01(c)*](http://us.practicallaw.com/0-523-5140#a159442) is determined by the letter of credit issuer, based on its policies or opinion. The borrower's inability to satisfy these conditions means that the letter of credit issuer is not under an obligation to issue the requested letter of credit. However, it can still choose to do so even if one or more of these conditions are not met.

[*Section 2.01(f)*](http://us.practicallaw.com/0-523-5140#a73991) appears in the letter of credit commitment section, but addresses the separate topic of limitations on the letter of credit issuer's responsibilities. It provides that the benefits and immunities enjoyed by the letter of credit issuer include those that apply to the administrative agent in the exercise of its role. While the issuing bank would be unwilling to undertake the role without these limitations, this is not a controversial issue in practice.

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 **Section 2.02 Issuance and Amendment of Letters of Credit[; Automatic Extension L/Cs].**

(a) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, completed to the satisfaction of the L/C Issuer and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than [TIME] [a.m./p.m.] at least [two] Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (ii) the amount thereof; (iii) the expiry date thereof; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by such beneficiary in case of any drawing thereunder; (vi) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (vii) the purpose and nature of the requested Letter of Credit; and (viii) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may require. Additionally, the Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any L/C Issuing Documents, as the L/C Issuer or the Administrative Agent may request.

[Hide Note: Applications to Issue or Extend Letters of Credit](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22null)Note: Applications to Issue or Extend Letters of Credit

**2.2 Applications to Issue or Extend Letters of Credit**

**Applications to Issue or Extend Letters of Credit**

The borrower requests the issuance of a letter of credit by completing the issuing bank's standard form of application. Usually, however, the issuing bank uses the same application form for:

* One-time issuances of letters of credit to its customers.
* Letters of credit issued under a loan agreement.

Applications for letters of credit therefore typically contain many of the terms included in these Standard Clauses, such as the borrower's obligation to reimburse the issuing bank for drawings made by the beneficiary. The applicable terms are typically printed on the reverse of the application form.

To avoid conflicts between the terms printed on an application form and the letter of credit provisions of a governing loan agreement, the loan agreement commonly includes a provision stating that the terms set out in the application are replaced by the terms of the loan agreement (see [*Drafting Note, Conflicts and Inconsistencies with L/C Issuing Documents*](http://us.practicallaw.com/0-523-5140#a623215)). This means that when letters of credit are issued under a loan agreement, the sole function of the letter of credit application form is to provide the issuing bank with the factual details that it needs to prepare the letter of credit (such as the amount and duration of the letter of credit and the name of the beneficiary). The required details are typically also spelled out in the loan agreement section that deals with applications for letters of credit, even though they duplicate the information required by the application form.

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(b) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving Lender, the Administrative Agent or the Borrower, at least [one] Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Section [SECTION ON CONDITIONS PRECEDENT TO EACH EXTENSION OF CREDIT] shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower [(or the applicable Subsidiary)] or enter into the applicable amendment, as the case may be, in each case in such form as may be approved from time to time by the L/C Issuer and in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Lender's Applicable Percentage times the amount of such Letter of Credit.

(c) [If the Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an **"Automatic Extension L/C"**); *provided*, that any such Automatic Extension L/C must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the **"Non-Extension Notice Date"**) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Automatic Extension L/C has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; *provided, however*, that the L/C Issuer shall not permit any such extension if (i) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of Sections 2.01(b) or 2.01(c), or otherwise), or (ii) it has received notice (which may be by telephone or in writing) on or before the day that is [five] Business Days before the Non-Extension Notice Date (A) from the Administrative Agent that the Required Revolving Lenders have elected not to permit such extension or (B) from the Administrative Agent, any Revolving Lender or the Borrower that one or more of the applicable conditions specified in Section [SECTION ON CONDITIONS PRECEDENT TO EACH EXTENSION OF CREDIT] is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.]

[Hide Note: Evergreen Letters of Credit](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22null)Note: Evergreen Letters of Credit

**2.2 Evergreen Letters of Credit**

**Evergreen Letters of Credit**

Most standby letters of credit are issued with terms of one year. However, if the borrower needs to provide a beneficiary with a letter of credit with a longer duration, the issuing bank may issue a so-called evergreen letter of credit. The duration of an evergreen letter of credit extends automatically:

* At the end of its initial one-year term by one more year.
* At the end of any extended term by one more year.

In [*Section 2.02(c)*](http://us.practicallaw.com/0-523-5140#a373068) of these Standard Clauses, as in most loan agreements that provide for automatically extending letters of credit, the borrower does not need to request an extension each time. Once the issuing bank has agreed to the initial issuance of an evergreen letter of credit, the extension occurs automatically unless the issuer notifies the borrower that it will not extend the letter of credit.

The issuing bank has an opportunity each year not to extend a letter of credit that would otherwise extend automatically. Usually the issuing bank must give the borrower 30 days' notice of its decision not to extend. The length of the required notice period is recorded in the evergreen letter of credit itself, rather than in the loan agreement. Different evergreen letters of credit can therefore specify different non-extension notice periods, giving the borrower greater flexibility.

While the term "evergreen letter of credit" is widely understood by bankers and finance practitioners, do not use this term in a loan agreement when drafting letter of credit provisions, but instead refer to "automatic extension letters of credit." The extension of the term of an evergreen letter of credit is effected by an automatic amendment to the letter of credit. Under ISP98 Rule 2.06(a), automatic amendments to standby letters of credit are effective without further notification and without needing the beneficiary's consent, if the amendment is expressly stated in the letter of credit as being "automatic."

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(d) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to the beneficiary thereof, the L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

 **Section 2.03 Drawings and Reimbursements; Funding of Participations.**

(a) Upon the presentment of any notice of drawing under any Letter of Credit by the beneficiary thereof which the L/C Issuer determines to be in compliance with the conditions for payment thereunder, the L/C Issuer shall notify the Borrower and the Administrative Agent of the intended date of honor of such drawing. Not later than [TIME] [a.m./p.m.] on the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an **"Honor Date"**), the Borrower shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such payment. If the Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Lender of the Honor Date, the amount of the unreimbursed drawing (the **"Unreimbursed Amount"**), and the amount of such Revolving Lender's Applicable Percentage thereof. In such event, the Borrower shall be deemed to have requested a Base Rate Loan under the Revolving Credit Commitments to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section [SECTION ON PROCEDURES FOR REVOLVING CREDIT BORROWING] for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Credit Commitments and the conditions set forth in Section [SECTION ON CONDITIONS PRECEDENT TO EACH EXTENSION OF CREDIT] (other than the delivery of a Borrowing Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(a) may be given by telephone if immediately confirmed in writing; *provided*, that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(b) Each Revolving Lender shall, upon any notice pursuant to Section 2.03(a), make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer at the Administrative Agent's Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than [TIME] [a.m./p.m.] on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer.

[Hide Note: Drawings and Reimbursements](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22null)Note: Drawings and Reimbursements

**2.3 Drawings and Reimbursements**

**Drawings and Reimbursements**

Letter of credit provisions must address:

* The requirements that must be satisfied before the issuing bank is obligated to honor a drawing request.
* The consequences for the borrower and the syndicate banks of the issuing bank honoring a drawing request.

[Top](http://us.practicallaw.com/0-523-5140#top)

**Complying with Letter of Credit Drawing Conditions**

When a beneficiary makes a drawing under a letter of credit it must provide the issuing bank with all supporting documents for the drawing required by the letter of credit.

Typically the drawing conditions for letters of credit:

* Are determined solely by the applicant and the beneficiary.
* In the case of standby letters of credit, only require the beneficiary to submit a sight draft to the issuing bank.
* In the case of commercial letters of credit, can involve extensive documentation depending on the terms of the underlying transaction (which is usually a sale in international trade).
* Do not require the issuing bank to determine whether requirements of the underlying contract have been performed.

Under Section 5-108(a) of the [***Uniform Commercial Code (www.practicallaw.com/1-382-3891)***](http://us.practicallaw.com/1-382-3891) (UCC), the issuing bank must honor a drawing request that appears on its face to comply strictly with the drawing conditions of the letter of credit. The issuing bank must examine the sight draft (and any other documents required for drawings) within a reasonable period of time. Under both the UCC and ISP98 (see [*Drafting Note, ISP98 Rules*](http://us.practicallaw.com/0-523-5140#a836842)), up to seven business days is reasonable ([*UCC § 5-108(b)*](http://us.practicallaw.com/westlaw?url=http%3A%2F%2Fwww.westlaw.com%2FFind%2Fdefault.wl%3Frs%3Dtran3.0%26vr%3D2.0%26FindType%3DL%26DB%3D1002112%26DocName%3DULUCCS5-108%26&feedbackPlcRef=0-523-5140) and *ISP 590, Rule 5.01.a.i)*). If the issuing bank fails to examine the drawing documents within a reasonable time, it is deemed to have accepted them and is bound to make the payment to the beneficiary.

[Top](http://us.practicallaw.com/0-523-5140#top)

**Reimbursement Obligation**

Loan agreements universally require the borrower to reimburse the issuing bank whenever a drawing is made, usually on the same day. As soon as the beneficiary submits its notice of drawing to the issuing bank, the issuing bank notifies the borrower and the administrative agent of its intention to honor the request, so the borrower receives advance notice of its reimbursement obligation. The interval between the beneficiary submitting its drawing request and the issuing bank honoring the request is set out in the letter of credit. The duration of this period depends on the circumstances of the underlying transaction, but a few days is common.

If the borrower fails to reimburse the issuing bank for a drawing:

* In many loan agreements, as in these Standard Clauses, the unreimbursed amount automatically converts into a revolving loan.
* The revolving lenders must pay their proportionate share of the revolving loan to the administrative agent, which then remits the funds to the issuing bank.

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(c) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section [SECTION ON CONDITIONS PRECEDENT TO EACH EXTENSION OF CREDIT] cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(b) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Revolving Lender in satisfaction of its participation obligation under this Article II.

[Hide Note: L/C Borrowings and L/C Advances](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22null)Note: L/C Borrowings and L/C Advances

**2.3 L/C Borrowings and L/C Advances**

**L/C Borrowings and L/C Advances**

An L/C borrowing is an extension of credit by the issuing bank to the borrower that occurs when:

* The beneficiary makes a drawing under its letter of credit.
* The borrower fails to reimburse the issuing bank on the day it funds the drawing.
* The borrower cannot meet the conditions to lending that would enable it to reimburse the issuing bank with the proceeds of a new borrowing under the revolver.

L/C borrowings are not treated like ordinary borrowings under the loan agreement. Because the borrower cannot obtain a new loan and obtain or extend new letters of credit at the time the L/C borrowing is made, the L/C borrowing:

* Is payable at the demand of the issuing bank.
* Bears interest at the post-default rate.

When the issuing bank pays the beneficiary as part of an L/C borrowing, the revolving lenders must fund their respective portions of the L/C borrowing so that the issuing bank is fully reimbursed for the amount of the payment. The funds advanced by each revolving bank are deemed to be that revolving lender's payment for its participation obligation in the L/C borrowing, referred to in these Standard Clauses as that lender's L/C Advance.

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(d) Until each Revolving Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03 to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Revolving Lender's Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(e) Each Revolving Lender's obligation to make Revolving Credit Loans to the Borrower or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated in this Section 2.03, shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right which such Revolving Lender may have against the L/C Issuer, the Borrower or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default; or (iii) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however*, that each Revolving Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03 is subject to the conditions set forth in Section [SECTION ON CONDITIONS PRECEDENT TO EACH EXTENSION OF CREDIT] (other than delivery by the Borrower of a Borrowing Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

[Hide Note: Lenders' Obligations Unconditional](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22null)Note: Lenders' Obligations Unconditional

**2.3 Lenders' Obligations Unconditional**

**Lenders' Obligations Unconditional**

Loan agreements unconditionally require the revolving lenders to make payments to reimburse the issuing bank for drawings under letters of credit. This reflects the independence principle that characterizes the issuing bank's obligation to make payments to the beneficiary under the letter of credit. The issuing bank must honor all properly submitted drawing requests independently of the performance by the parties of the underlying transaction. The issuing bank is not, therefore, concerned with the performance of the contract or other arrangement between the borrower and the beneficiary that the letter of credit supports. All the issuing bank must do is examine the documents that are required to be presented by the letter of credit to make a valid drawing and to ensure that they comply on their face with the drawing conditions.

If the borrower can meet the [***conditions precedent (www.practicallaw.com/7-382-3355)***](http://us.practicallaw.com/7-382-3355) to lending, the revolving lenders' payments to the issuing bank constitute a loan under the revolving facility. If the borrower cannot meet the lending conditions, the revolving lenders' payments to the issuing bank are deemed to fund the revolving lenders' purchases of participations in a demand loan made by the issuing bank to the borrower in the amount of the letter of credit drawing (an L/C advance).

The inability of any revolving lender to raise defenses against its obligation to reimburse the issuing bank does not mean that the lender has no redress. However, a revolving lender must raise any issue that could otherwise have been used as a defense to its payment obligation separately.

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(f) If any Revolving Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.03 by the time specified in Section 2.03(b), the L/C Issuer shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Effective Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Revolving Lender pays such amount (with required interest and fees), the amount so paid shall constitute such Revolving Lender's Revolving Credit Loan included in the relevant Base Rate Loan or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(f) shall be conclusive absent manifest error.

 **Section 2.04 Repayment of Participations.**

(a) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Lender such Revolving Lender's L/C Advance in respect of such payment in accordance with Section 2.03, if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Revolving Lender its Applicable Percentage thereof in the same funds as those received by the Administrative Agent.

(b) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(a) is required to be returned under any of the circumstances described in Section [SECTION ON PAYMENTS SET ASIDE], each Revolving Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Revolving Lender, at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Revolving Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

 **Section 2.05 Obligations Absolute.**

(a) The obligation of the Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or any Subsidiary.

[Hide Note: Borrower's Obligations Absolute](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22null)Note: Borrower's Obligations Absolute

**2.5 Borrower's Obligations Absolute**

**Borrower's Obligations Absolute**

Letter of credit provisions invariably provide that the borrower's obligation to reimburse the issuing bank is absolute and unconditional. As with the obligations of the revolving lenders to backstop the borrower's reimbursement obligation (see [*Drafting Note, Lenders' Obligations Unconditional*](http://us.practicallaw.com/0-523-5140#a110512)), this reflects the independence principle that requires the issuing bank to honor all properly submitted drawing requests without concerning itself with the parties' performance of the underlying transaction.

This provision means that the borrower cannot use any claim it may have against any other party as a defense to its obligation to reimburse the issuing bank. The borrower must pursue any of these claims independently.

In [*Section 2.05(a)(iv)*](http://us.practicallaw.com/0-523-5140#a824746), the borrower's waiver extends to the presentation of drawing documents that **do not** strictly comply with the terms of a letter of credit. Most letters of credit require the beneficiary to submit drawing documents that comply strictly with the letter of credit before it is entitled to be paid. However, this provision is commonly included in letter of credit provisions because the issuing bank does not want to become embroiled in a dispute with the borrower or the syndicate banks about the propriety of the drawing documents that the beneficiary submitted to the issuing bank.

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(b) The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of non-compliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given.

 **Section 2.06 Role of L/C Issuer.**   Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Lenders or the Required Revolving Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or L/C Issuing Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude the Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.05(a); *provided, however*, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrower to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the L/C Issuer’s willful misconduct or gross negligence or the L/C Issuer’s willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

 **Section 2.07 Cash Collateral.**

(a) If (i) the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing; (ii) as of the Letter of Credit Expiration Date, any L/C Obligation remains outstanding for any reason; (iii) the Borrower shall be required to provide cash collateral pursuant to Section [SECTION ON REMEDIES]; or (iv) there shall exist a Defaulting Lender, the Borrower shall immediately (in the case of clause (iii) above) or within [one] Business Day (in all other cases) after a demand by the Administrative Agent [or the L/C Issuer], provide cash collateral to the Administrative Agent in an amount not less than the Minimum Cash Collateral Amount (determined, in the case of clause (iv) above, after giving effect to Section [SECTION ON REALLOCATION OF DEFAULTING LENDER COMMITMENTS TO REDUCE FRONTING EXPOSURE] and any cash collateral provided by the Defaulting Lender).

(b) If at any time the Administrative Agent determines that any funds held as cash collateral are subject to any right or claim of any Person other than the Administrative Agent, the L/C Issuer or a Revolving Lender, the Borrower shall, immediately after a demand by the Administrative Agent [or the L/C Issuer], pay to the Administrative Agent, as additional cash collateral, an amount equal to the excess of (i) the Minimum Cash Collateral Amount over (ii) the total amount of funds, if any, then held as cash collateral that the Administrative Agent determines to be free and clear of any such right or claim.

(c) If at any time the Administrative Agent determines that the total amount of funds held as cash collateral is less than the Minimum Cash Collateral Amount, the Borrower shall, immediately after a demand by the Administrative Agent [or the L/C Issuer], pay to the Administrative Agent, as additional cash collateral, an amount sufficient to eliminate such deficiency.

(d) The Borrower and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grant to the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Revolving Lenders, and agree to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein and in all proceeds of the foregoing, all as security for the obligations to which such cash collateral may be applied pursuant to Section 2.07(e). All cash collateral shall be maintained in blocked, non-interest bearing deposit accounts at [ADMINISTRATIVE AGENT]. The Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of cash collateral.

(e) Notwithstanding anything to the contrary contained in this Agreement, cash collateral provided under this Section 2.07 or Sections [SECTION ON DEFAULTING LENDERS] or [SECTION ON REMEDIES] in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to cash collateral provided by a Revolving Lender that is a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the cash collateral was so provided, prior to any other application of such funds as may otherwise be provided for herein.

(f) Funds held as cash collateral (or any appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Revolving Lender); or (ii) the determination by the Administrative Agent [and the L/C Issuer] that there exists excess cash collateral; *provided, however*, that [(x)] any such release shall be without prejudice to, and any disbursement or other transfer of cash collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions of the Loan Documents[, and (y) the Person providing cash collateral and the L/C Issuer may agree that cash collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations].

[Hide Note: Cash Collateral](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22null)Note: Cash Collateral

**2. Cash Collateral**

**Cash Collateral**

Many loan agreements require the borrower to provide cash collateral to secure its obligation to reimburse the issuing bank for drawings under letters of credit. The borrower is usually only required to post cash collateral, however, when a specified event occurs, such as:

* An [***event of default (www.practicallaw.com/2-382-3447)***](http://us.practicallaw.com/2-382-3447).
* The acceleration of the borrower's repayment obligations under the loan agreement.
* The borrower's inability to meet the conditions for a reimbursement obligation to be satisfied with a deemed borrowing under the revolver.
* Letter of credit obligations remaining outstanding after the termination date of the letter of credit facility.
* A revolving lender in the syndicate becoming a defaulting lender.

Many loan agreements contain additional provisions, similar to those set out in [*Section 2.07*](http://us.practicallaw.com/0-523-5140#a872926), that can either require a return of cash collateral to the borrower, or require the borrower to post additional cash collateral, depending on changes in the circumstances.

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 **Section 2.08 Applicability of ISP; Limitation of Liability.**   Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrower [or any Subsidiary] for, and the L/C Issuer's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the L/C Issuer under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including any Requirement of Law of a jurisdiction where the L/C Issuer or the beneficiary is located, or the practice stated in the ISP, whether or not any Letter of Credit chooses such law or practice.

[Hide Note: ISP98 Rules](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22null)Note: ISP98 Rules

**2. ISP98 Rules**

**ISP98 Rules**

Article 5 of the UCC is generally the governing law for letters of credit issued by banks in the US. However, the issuing bank can also choose a set of customary industry rules to fill in any gaps left by the applicable statutory law. Industry rules typically address procedural and interpretive matters that are not specifically covered in the loan agreement or the letter of credit. The significance of industry rules is lessened when letters of credit are issued under a loan agreement, because the loan agreement and the letter of credit together typically address all aspects about drawings, amendments, expiration and renewal of letters of credit.

The International Chamber of Commerce publishes the two most common sets of industry rules for letters of credit:

* Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (2007 Revision) (UCP 600).
* International Standby Practices, International Chamber of Commerce Publication No. 590 (1998) (ISP98).

ISP98 became effective on January 1, 1999 and was designed specifically for standby letters of credit. It contains more detail than UCP 600 about the drawing process under letters of credit, as well as amendments and transfers. While an issuing bank can specify that UCP 600 applies to standby letters of credit, ISP98 is used by most issuing banks for standby letters of credit and most use UCP 600 for commercial letters of credit.

For more information, see [*Practice Note, Letters of Credit in Financing Transactions: Governing Laws and Interpretive Rules (www.practicallaw.com/1-505-9216)*](http://us.practicallaw.com/1-505-9216#a632666).

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 **Section 2.09 Letter of Credit Fees.**

(a) The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender, in accordance with its Applicable Percentage, a Letter of Credit fee (the **"Letter of Credit Fee"**) for each Letter of Credit equal to the Applicable Margin [for Eurodollar Rate Loans] times the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be deemed to be the stated amount of such Letter of Credit; *provided*, that, with respect to any Letter of Credit that, by its terms or the terms of any related L/C Issuing Document, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum state amount is then in effect. Letter of Credit Fees shall be (i) computed on a quarterly basis in arrears and (ii) due and payable on each Fee Payment Date, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Margin during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Margin separately for each period during such quarter that such Applicable Margin was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required [Revolving] Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(b) The Borrower shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at the rate [of [PERCENTAGE]% per annum/per annum specified in the Fee Letter], computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on each Fee Payment Date, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in the manner described in Section 2.09(a). In addition, the Borrower shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are non-refundable.

[Hide Note: Letter of Credit Fees](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22null)Note: Letter of Credit Fees

**2. Letter of Credit Fees**

**Letter of Credit Fees**

Letter of credit facilities require the borrower to pay an annual commitment fee to the issuing bank for issuing letters of credit. The fee is usually a negotiated percentage of the amounts available to be drawn under the letters of credit. Fee provisions are often included in the loan agreement, but may appear in a separate fee letter if the issuing bank and the administrative agent do not wish to disclose details of the fees to the syndicate members.

In some transactions, usually where the issuing bank undertakes to issue letters of credit with small face amounts, there may be a minimum fee amount for each letter of credit regardless of its face amount. If this is a feature of your transaction, include the following text after the words "per annum" in the first bracketed text in the third line of [*Section 2.10*](http://us.practicallaw.com/0-523-5140#a795664):

"but in no event less than $[AMOUNT] per annum for each Letter of Credit"

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 **Section 2.10 Conflicts and Inconsistencies With L/C Issuing Documents.**   In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any L/C Issuing Document, the terms and conditions of this Agreement shall control, and in the event that any L/C Issuing Document contains provisions that impose obligations on the Borrower or grant rights to the L/C Issuer beyond those imposed or granted under this Agreement, such provisions shall be of no force or effect and shall not be binding on the Borrower.

[Hide Note: Conflicts and Inconsistencies with L/C Issuing Documents](http://us.practicallaw.com/0-523-5140%22%20%5Cl%20%22null)Note: Conflicts and Inconsistencies with L/C Issuing Documents

**2. Conflicts and Inconsistencies with L/C Issuing Documents**

**Conflicts and Inconsistencies with L/C Issuing Documents**

Because standard forms of application for letters of credit often contain many of the terms that are included in the letter of credit provisions in a loan agreement (see [*Applications to Issue or Extend Letters of Credit*](http://us.practicallaw.com/0-523-5140#a566080)), many loan agreements include a provision such as [*Section 2.10*](http://us.practicallaw.com/0-523-5140#a795664) of these Standard Clauses. This provides that the terms set out in the application are replaced by the provisions of the loan agreement.

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 **Section 2.11 Letters of Credit Issued for Subsidiaries.**   Notwithstanding that one or more Letters of Credit issued or outstanding hereunder are in support of any obligations of, or are for the account of, any of the Borrower's Subsidiaries, the Borrower shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letters of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of its Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of its Subsidiaries.