Model ISP98 Forms

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ISP98 Form 1
Model Standby Incorporating Annexed Form of Payment Demand with Statement*

[name and address of beneficiary] [date of issuance]

Issuance. At the request and for the account of [name and address of applicant] (“Applicant”), we [name and address of issuer at place of issuance] (“Issuer”) issue this irrevocable standby letter of credit number [reference number] (“Standby”) in favour of [name and address of beneficiary] (“Beneficiary”) in the maximum aggregate amount of [currency/amount].

Undertaking. Issuer undertake to Beneficiary to pay Beneficiary’s demand for payment in the currency and for an amount available under this Standby and in the form of the Annexed Payment Demand completed as indicated and presented to Issuer at the following place for presentation: [address of place for presentation], on or before the expiration date.

Expiration. The expiration date of this Standby is [date].

Payment. Payment against a complying presentation shall be made within 3 business days after presentation at the place for presentation or by wire transfer to a duly requested account of Beneficiary. An advice of such payment shall be sent to Beneficiary’s above-stated address.

Drawing. Partial and multiple drawings are permitted.

Reduction. Any payment made under this Standby shall reduce the amount available under it.

ISP98. This Standby is issued subject to the International Standby Practices 1998 (ISP98) (International Chamber of Commerce Publication No. 590).

Communications. Communications other than demands may be made to Issuer by telephone, telefax, or SWIFT message, to the following: [numbers/addresses]. Beneficiary requests for amendment of this Standby, including amendment to reflect a change in Beneficiary’s address, should be made to Applicant, who may then request Issuer to issue the desired amendment.

[Issuer’s name]

[signature] Authorized Signature

Annexed Payment Demand
[Insert date]21

[name and address of Issuer or other addressee at place of presentation as stated in standby]22

Re: Standby Letter of Credit No. [reference number], dated [date], issued by [Issuer’s name] ("Standby")23

The undersigned Beneficiary demands payment of [Insert currency/amount] under the Standby.24

Beneficiary states25 that Applicant26 is obligated27 to pay to Beneficiary the amount demanded[, which amount is due and unpaid28] under[ or in connection with] the agreement29 between Beneficiary and Applicant30 titled [agreement title] and dated [date].

[Beneficiary further states that the proceeds31 from this demand will be used to satisfy32 the above-identified obligations and that Beneficiary will account to Applicant33 for any proceeds that are not so used.]

Beneficiary requests that payment be made by wire transfer to an account of Beneficiary as follows: [Insert name, address, and routing number of Beneficiary’s bank, and name and number of Beneficiary’s account].34

[Beneficiary’s name and address]35

By its authorized officer:

[Insert original signature]36
[Insert typed/printed name and title]

[Before the standby is issued, all text in [bold] should be completed, and optional text in [italics] should be included or deleted (or redrafted). Text in the annexed demand form preceded by “INSERT” (or other All Capitals guidance) and in [All Capitals Underlined] is to be completed as indicated when the beneficiary prepares and presents a demand.]

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This ISP98 Form 1 model standby includes terms that ISP98 indicates should be included in a standby. It includes terms that restate other ISP98 rules for the avoidance of doubt, e.g., that the
standby is irrevocable and permits partial demands. It uses words, phrases, and spellings that are used in ISP98. It also includes optional terms that are specific about when and how payment will be made.

This ISP98 Form 1 incorporates an annexed model form of payment demand that includes terms that ISP98 indicates should be included when making a presentation. This demand form also includes beneficiary statements of a type the applicant or beneficiary may desire in order to identify the underlying obligation(s) to be supported by the standby (and to be satisfied upon honour of the standby).

The annexed demand form may also be used as a precedent by a beneficiary preparing a demand to be presented under an ISP98 standby that does not specify the entire form of demand to be presented. See ISP98 Form 5 (Simplified Demand Only Standby).

This ISP98 Form 1 is intended to be self-contained and, absent special circumstances, useable without extended reference to the text of ISP98.

The endnotes to this form include alternative and other optional terms, as well as references to relevant ISP98 rules. Other ISP98 model standby forms vary this form, e.g., by adding text and annexes (with relevant endnotes) that focus on expiration, reduction, transfer, confirmation, and counter standby support.

This form is published for educational purposes and not as legal or professional advice. Potential users should consult with their own advisers in the drafting or use of a standby letter of credit. ISP98 and letter of credit educational and training materials, including The Official Commentary on the International Standby Practices containing official interpretations of ISP98, are available from IIBLP at www.iiblp.org.

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1 **Applicant.** As noted in ISP98 Rule 1.09(a) (Definitions), the “applicant” is the person who applies for issuance or for whose account the standby is issued. Typically, the applicant stated in the standby is the person whose underlying obligation is supported by the standby. The standby’s terms should be appropriate to support those underlying obligations, and the underlying documentation should appropriately provide for the standby and for the use of funds paid under the standby.

Where a standby is issued on the application of a correspondent bank from whom the issuer expects reimbursement, consideration should be given to an alternative clause: “At the request and for the account of [name of correspondent bank], (“Applicant”) acting at the request and for the account of its customer, [XYZ]...”. Similarly, where a standby is issued on the application of a parent company, consideration should be given to an alternative clause: “At the request and for the account of [Parent] (“Applicant”) acting at the request and for the account of its subsidiary [name]...”.

This standby form adds “(“Applicant”)” after the name of the applicant, and that defined term is used in the annexed model demand form. If this parenthetical definition (or the parenthetical definition for the issuer or the beneficiary) is not wanted, appropriate adjustments should be made in the standby, including in any statement required to be included with any beneficiary demand. If an adjustment is made because the applicant is not also the underlying obligor (or the beneficiary is not also the underlying obligee), then the adjustments should be made in the standby and also in the documentation underlying the standby. See endnote 30.

Except for endnotes 1 and 30, these endnotes do not address issues that may arise where the applicant is not the underlying obligor or where there are multiple applicants.

2 Issuance. The name of the issuer and the place(s) of issuance and presentation should be indicated in the standby. The indicated place of issuance is significant in determining what law governs the issuer’s obligations. Absent an indication of the place of issuance in the standby, it may prove difficult to determine a single place of issuance, even with full knowledge of the process resulting in sending the standby to the beneficiary. This form, including endnotes, does not address the possibility, briefly addressed in ISP98 Rule 10 (Syndication/Participation), of multiple issuers or of participating interests in a single issuer’s standby facility.

Rule 2.03 (Conditions to Issuance) provides generally that a standby is issued when it leaves the issuer's control, and Rule 3.05 (When Timely Presentation Made) allows presentation any time after issuance (and before expiry). It is customary for a standby to recite the issuance date either at the top of the undertaking or in the first paragraph of the text (or both).

3 Irrevocability. It is unnecessary to state that an ISP98 standby is irrevocable. See ISP98 Rule 1.06(a) and (b) (Nature of Standbys). However, because of the contrary rule in UCP82 (1933) until UCP500 (1993), some letter of credit users expect or require inclusion of the word “irrevocable”.

4 Name of undertaking. While this form of undertaking is named a “standby letter of credit”, the name is not determinative of its character as an undertaking within the scope of ISP98 or as an independent undertaking under applicable law. As provided in ISP98 Rule 1.01(b) (Scope and Application), it could be called an independent guarantee, bank guarantee, bond, or any other name.

5 Beneficiary. The beneficiary named in a standby is the person to whom the issuer’s obligation is owed. Typically, there is one named beneficiary of the issuer’s undertaking, who is also the obligee of the applicant’s obligation that is supported by the standby. This standby form, including endnotes, does not address issues that may arise where the named beneficiary is not the underlying obligee or where there are multiple beneficiaries.

6 Amount available. A standby should expressly state the amount available under the standby. Standbys commonly add that the stated amount of a standby is the “maximum” (or “full” or “not
to exceed”) “aggregate” amount. These are unnecessary additions because ISP98 Rule 3.08 (Partial Drawings & Multiple Presentations; Amount of Drawings) permits presentations for less, but not more, than the amount available under a standby.

Under ISP98 Rule 3.08(e) (Partial Drawings & Multiple Presentations; Amount of Drawings), a drawing that exceeds the amount available under the standby is discrepant. To override that rule and require the issuer to pay the full amount available under the standby against a presentation that would comply but for the “credit overdrawn” discrepancy, the following clause may be added: “If a demand exceeds the amount available, but the presentation otherwise complies, Issuer undertakes to pay the amount available.”

7 Undertaking to the beneficiary only. It is unnecessary to state that an issuer’s payment obligation is made “to Beneficiary”. Except as otherwise stated in the standby or mandated by applicable law, a standby that names a beneficiary and does not identify any other person as having rights under the standby obligates the issuer solely to the named beneficiary. ISP98 Rule 2.04 (Nomination) provides for the possibility that a standby nominates another person to confirm the issuer’s undertaking or otherwise to give value against the named beneficiary’s complying demand. ISP98 Rule 6 (Transfer, Assignment, and Transfer by Operation of Law) provides for the possibility that an issuer is requested to acknowledge a person claiming to be a transferee beneficiary or an assignee of standby proceeds or a successor beneficiary. ISP98 Form 4 (Model Standby Providing for Transfer and Incorporating Annexed Form of Transfer Demand) focuses on transfer of drawing rights by beneficiary demand and other standby terms affecting a claimed transferee beneficiary, assignee of standby proceeds, or successor beneficiary.

8 Honour by payment. An issuer may undertake to honour a letter of credit other than by sight payment. Under ISP98 Rule 2.01 (Undertaking to Honour by Issuer and Any Confirmer to Beneficiary) an issuer may undertake to honour by non-recourse negotiation (purchase) of the documents presented or by acceptance of a time draft or incurrence of a deferred payment undertaking, followed by payment at maturity. Also, an issuer may undertake to honour by the delivery of an item of value, such as gold, in which case the issuer must be able to deliver the specified item. These other forms of honour are not covered in this form because they are much less common for standbys than honour by sight payment.

9 Presentation of standby. An issuer’s obligation is not dependant on the beneficiary’s holding or presenting the standby, unless the standby so provides. See ISP98 Rule 2.03 (Conditions to Issuance). This form, like most standbys, does not require presentation of the standby with a payment demand. Any such requirement exposes the beneficiary to the risk that a demand may be rightfully refused if the standby is lost or otherwise cannot be timely presented. It also exposes the issuer to disputes over the issuer's receipt, handling, or return of the standby. There are other ways to avoid payment against a forged demand, e.g., by providing in the standby that payment must be made to a specified beneficiary account.
Under ISP98 Rule 3.12 (Original Standby Lost, Stolen, Mutilated, or Destroyed), an issuer is entitled to enforce a requirement that the standby be presented with a demand. However, the rule also gives an issuer considerable discretion to excuse or remedy a beneficiary’s failure to present the standby. If greater certainty is desired, then the standby could add the following or a variation: "Issuer undertakes to exercise its discretion under ISP98 Rule 3.12 to waive the requirement to present this Standby (or to replace it) against Beneficiary's representations and indemnities (including third party indemnities deemed appropriate by Issuer) in favor of Issuer and Applicant that are reasonably satisfactory to Issuer." The representations and indemnities should run to the applicant as well as the issuer. Although the issuer would determine what is reasonable at the time of taking any representations or indemnities, the applicant would bear the ultimate risk of payment against a forged demand.

The term "this Standby" in this ISP98 Form 1, like the term "original standby" in ISP98 Rule 3.12 (and Rule 6.03 (Conditions to Transfer)), refers to the originally signed/authenticated undertaking that evidences the issuer's obligation. Unless the issuer sends a signed/authenticated undertaking directly to the beneficiary, it may be desirable to clarify in the standby what must or may be presented as, or in lieu of, the issuer's undertaking in the form it left the issuer's control. If the standby was sent by an authenticated SWIFT message from an issuing bank to an advisor, the document to be presented would be the advisor's signed/authenticated message to the beneficiary annexing, or reproducing the text of, the SWIFT message sent by the issuer. There may be no unique undertaking for the beneficiary to present. If, for example, a standby was sent to a beneficiary in an electronic medium, its presentation to the issuer in an electronic medium or as a paper printout would serve merely to identify the standby to be transferred.

The terms "this standby" and "original standby" do not necessarily refer also to amendments. Some standbys state that all amendments must also be presented, and some also require a statement from the beneficiary as to whether it has consented (or not) to each amendment issued by the issuer. Neither should be necessary. An issuer should be able to determine from its own records whether amendments are binding on the issuer and the beneficiary, but it may nonetheless be desirable to address the status of amendments in any standby term requiring presentation of the standby.

10 Form of payment demand. This ISP98 Form 1 standby incorporates an annexed model form of payment demand to be completed and presented by the beneficiary. Annexing the desired form of payment demand (with any desired beneficiary statement) to a standby is unnecessary but promotes the efficient use of standbys. Requiring a "draft" (or bill of exchange) drawn at sight by the beneficiary on the issuer is neither necessary nor efficient under a standby that undertakes to pay at sight.

A standby that specifies wording in an annexed form of demand is subject to ISP98 Rule 4.09(b) (Identical Wording and Quotation Marks). That subsection requires or permits the beneficiary to complete blank lines or spaces and to correct apparent typographical errors and the like. It is intended to cover practically all circumstances in which a form of beneficiary demand and
statement is annexed to the standby.

If more flexibility is desired, Rule 4.09(a) should be consulted, but flexibility is better introduced by adding alternative wording to the annexed form of demand or otherwise indicating in the annexed form of demand how blank spaces may be completed. If no flexibility whatsoever is desired (e.g., because the demand or statement must be delivered to a third person in a precisely specified form), then Rule 4.09(c) should be consulted, with the understanding that it should be invoked rarely, that it requires use of the word "exact" or "identical" in the standby, and that its use may lead to unintended consequences for the issuer, applicant, or beneficiary.

The phrase “completed as indicated” assumes that the annexed form of demand adequately indicates how it is to be completed (e.g., by the inclusion of instructions and blank lines) and that it is to be dated and signed by the beneficiary. It does not add that the demand be “apparently” signed by the beneficiary or the beneficiary’s “purported” representative, because such additions are more likely to confuse than clarify the allocation of risks under ISP98 and applicable law of payment or non-payment of a forged demand.

ISP98 Rule 4.08 (Demand Document Implied) requires presentation of a documentary demand for payment. ISP98 itself does not require the named beneficiary to present any beneficiary statement.

Some standbys state that they are available by “one or more demands” or by “demand(s)”, rather than by “demand” in the singular. This is unnecessary for the reasons indicated in endnote 17.

11 **Manner of presentation.** This standby form is based on the usual practice of sending original documents, sometimes including the original standby, in a package by courier to the issuer’s indicated place of presentation. Presentations by telefax and the like are prohibited unless expressly permitted in the standby or unless the beneficiary is a SWIFT participant or bank sending a demand using SWIFT or other similar authenticated means. See ISP98 Rule 3.06 (Complying Medium of Presentation). ISP98 Rule 1.09(c) (Electronic Presentations) includes defined terms that may be used in a standby that permits electronic presentation.

12 **Place of Presentation.** ISP98 Rule 3.01 (Complying Presentation under a Standby) provides that a standby should indicate the place, the location within that place, and the person to whom presentation should be made. ISP98 Rule 3.04 (Where and to Whom Complying Presentation Made) provides default rules. The indicated place of presentation is significant in determining whether a complying demand is timely presented.

Standbys frequently include a requirement that the presentation be addressed to the attention of the Standby Letter of Credit Department or the like, which may prove critical on a last minute presentation. Some standbys also include in the address for presentation a specific floor or office, which, if it is not accessible to the beneficiary, may prove contentious in the case of a last
minute presentation. Beneficiaries and issuers both should avoid testing the limits of such requirements.

A standby may require presentation to the issuer to be made at a place that is not the place of issuance, e.g., to and at the address of a processing agent for the issuer (which could be an affiliate or another bank). A standby may also nominate another branch or bank to receive a presentation and act on that nomination. This standby form does not include any nomination or address issues which arise from a nomination. See ISP98 Rule 2.04 (Nomination).

13 **Time of presentation.** ISP98 Rule 3.05 (When Timely Presentation Made) provides that presentation must be made before expiry on the expiration date and that a presentation after business hours is treated as made the next business day. Rule 9.04 (Time of Day of Expiration) provides that expiry occurs at the close of business at the place of presentation.

14 **Expiration.** Standbys must contain an expiration date under ISP98 Rule 9.01 (Duration of Standby) and likely also under applicable commercial law and banking regulations. This standby form is based on the common practice of stating a specific calendar date. The stated date should be set sufficiently after the underlying obligation becomes due to allow for drawing after refusal of an initial drawing. If payment of the underlying obligation may be made outside of the standby, the stated date should be set to allow also for drawing after any possible rescission of an outside payment made by an insolvent payor.

Many issuers are subject to laws, regulations, or internal policies that limit their incurrence of obligations that are indefinite or long term. A common response is to set a one year expiration date and allow for automatic annual extensions unless the issuer sends or the beneficiary receives advance notice of non-extension. ISP98 Rule 2.06(a) (When an Amendment is Authorized and Binding) makes “automatic amendments”, including extensions of the expiration date, effective without further notification or consent, if the automatic amendment is expressly stated in a standby. ISP98 Form 2 (Model Standby Providing for Extension) focuses on annual automatic extension and other alternatives to a single fixed expiration date.

The expiration date stated in a standby is not necessarily the last day on which a complying presentation may be made under the standby. ISP98 Rules 3.13 (Expiration Date on a Non-Business Day) and 3.14 (Closure on a Business Day and Authorization of Another Reasonable Place for Presentation) extend the expiration date where it falls on a non-business day or on a day the bank is closed for any other reason.

15 **Three days to examine and pay a presentation.** ISP98 Rules 2.01(c) (Undertaking to Honour by Issuer and Any Confirmer to Beneficiary) and 5.01 (Timely Notice of Dishonour) provide for the time an issuer has to honour or dishonour and include a safe-harbor of three business days after presentation. The three day period begins on the business day following the business day of presentation. This optional standby text converts that 3-day safe harbor period in ISP98 into a timing requirement for payment of a complying presentation.
Many so-called financial standbys state a shorter period within which a complying presentation must be paid, and some also state that the shortened period also applies to the time allowed for the issuer to avoid preclusion by giving a notice of dishonour. For example, a standby payable against a simple demand to be presented by a bank beneficiary might state: “Payment of a complying presentation shall be made[, or in the case of a non-complying presentation a notice of dishonour shall be given,] on the first banking day following the banking day on which Issuer receives a presentation from Beneficiary[, if received before noon,][by SWIFT/telefax message at Issuer’s following SWIFT address/telefax number]…”

Some standbys permit a longer period for payment, e.g., 30 days after presentation or 10 days after a presentation is determined to comply. Lengthening the time for honour would not, without more, lengthen the timing requirements of ISP98 Rule 5.01 (Timely Notice of Dishonour) for giving a notice of dishonour or for precluding defenses under ISP98 Rule 5.03 (Failure to Give Timely Notice of Dishonour).

16 **Place and method of payment.** If a standby, including an annexed form of demand, does not state the method of payment, then an issuer may voluntarily follow the presenter’s request. ISP98 Rule 5.08 (Cover Instructions/Transmittal Letter) permits an issuer to deal with the presenter and to follow instructions accompanying a presentation. Similarly, ISP98 Rule 6.10 (Reimbursement for Payment Based on an Assignment) protects an issuer’s reimbursement rights in cases of payment to an acknowledged assignee of standby proceeds. ISP98 Rule 2.01(e) (Undertaking to Honour by Issuer and Any Confirmer to Beneficiary) provides that honour by payment is to be made in immediately available funds. This optional standby text facilitates payment by wire transfer in response to a request duly made by the beneficiary.

Unless the standby otherwise states, an issuer is not required to pay anyone other than a beneficiary, a nominated person, or an acknowledged assignee of standby proceeds and is not required to pay anywhere other than at the place of presentation. See ISP98 Rule 6 (Transfer, Assignment, and Transfer by Operation of Law). Payment may be made at the place of presentation by sending a bank check to the order of the beneficiary or by initiating a wire transfer.

If payment by check is the sole desired method of honour, the following may be substituted: “Payment shall be made by Issuer’s check payable to Beneficiary sent to Beneficiary’s above-stated address by registered mail or [inter]nationally recognized courier or other means of receipted delivery to Beneficiary.”

If payment by wire transfer is the sole desired method of honour, the following standby text may be substituted: “Payment shall be made by wire transfer to an account of Beneficiary as follows: [name, address, and routing number of Beneficiary’s bank, and name and number of Beneficiary’s account] or to such other bank account of Beneficiary as Beneficiary may duly request of Issuer”. An issuer’s response to a beneficiary request may be affected by regulatory
requirements limiting payment to a permissible account at a permissible financial institution located in a permissible country. The annexed form of demand and statement incorporated into this ISP98 Form 1 standby contains model wording for a beneficiary’s request for payment by wire transfer. Including a detailed method of payment in a standby may deter forged beneficiary demands, as well as avoid delays resulting from the issuer’s receipt of an inadequate request as to the method of payment.

No matter what a standby, demand form, or separate request for routing payment may state, applicable law, e.g., a court or government agency order, may block payment. Applicable law may also allocate the risks of loss in case of payment to the wrong person.

17 More than one drawing. It is unnecessary to state that a beneficiary may make multiple drawings or drawings for less than the full amount available. A standby that undertakes to honour “a demand” (in the singular) does not affect the beneficiary’s right to present more than one demand under standard practice applicable to standby (and commercial) letters of credit. ISP98 Rule 3.08 (Partial Drawings & Multiple Presentations; Amount of Drawings) permits both partial and multiple drawings unless prohibited in the standby. If a standby is to be honoured once only, then the standby should state that affirmatively or, as indicated in ISP98 Rule 3.08(d), state “multiple drawings prohibited”.

18 Reduction by honour. It is unnecessary to state that the amount available under a standby is reduced by the amount of any drawing that is honoured. This is because honour discharges (rather than amends or cancels) the issuer’s obligations and because ISP98 Rule 1.10(c)(ii) (Redundant or Otherwise Undesirable Terms) presumes that reinstatement is not intended. ISP98 Form 3 (Model Standby Providing for Reduction and Incorporating Annexed Form of Reduction Demand) focuses on reduction, including reduction to zero, by beneficiary demand and by other optional terms permitting or requiring reductions in the amount available under a standby.

19 Incorporation of ISP98; law, court, arbitration, and sanctions. Incorporation of ISP98 into an undertaking that is payable against the presentation of documents should qualify the undertaking as independent under applicable law. ISP98 invokes letter of credit law by emphasizing the letter of credit aspects of a standby and its independence in ISP98 Rules 1.06(c) (Nature of Standbys) and 1.07 (Independence of the Issuer-Beneficiary Relationship). See Team Telecom Int’l v. Hutchison 3G UK Ltd, 2003 EWHC 762 (Q.B. Div’l Ct.) [England], abstracted at 2004 Annual Survey of Letter of Credit Law & Practice 335 (bond subject to ISP98 is an independent undertaking).

It is unnecessary for a standby to recite that it is independent or that it is enforceable without regard to the validity of any claim of performance or non-performance in the underlying transaction. It is unnecessary for a standby to add a recital (including an “integration” or “merger” clause) that would deny or limit the effect of any document or other matter mentioned
in the standby or of any negotiations leading up to or following standby issuance. Such clauses and recitals risk limiting the various ISP98 rules that provide for the standby’s independence.

Where a choice-of-law clause is included in a standby, most courts will give effect to it. Otherwise, a court will likely apply its own conflict-of-laws’ rules. Conflict-of-laws’ rules affect the legal standards for compliance of any presentation, for the scope of any fraud/abuse exception, for the availability of any excuse based on government sanctions, etc. Under many legal systems, the conflict-of-laws’ rules provide that the law at the place of issuance of the standby (or confirmation) should govern the issuer’s (or confirmer’s) obligations. See, e.g., the UN Convention on Independent Guarantees and Standby Letters of Credit, Articles 21 (Choice of applicable law) and 22 (Determination of applicable law). However, courts may hear a wrongful dishonour claim filed other than where the issuer (or confirmer) is located, may apply different conflict-of-laws’ rules, and may determine, e.g., that the law of the place where the beneficiary is located should govern.

As indicated, most courts will respect a choice-of-law clause and a choice-of-exclusive-forum clause in a standby (or confirmation of a standby). Including a choice of law clause or an exclusive forum clause or both fosters certainty. E.g.: “Issuer’s obligations under this Standby are governed by the laws of [State]. The courts located in [State] shall have exclusive jurisdiction over any action to enforce Issuer’s obligations under this Standby.”

The Preface to ISP98 includes a suggested arbitration clause: “This Standby [undertaking] is issued subject to ISP98, and all disputes arising out of it or related to it are subject to arbitration under ICLOCA Rules (1996).” (The ICLOCA Rules, which are based on the UNCITRAL Rules of Arbitration, are available at www.icloca.org. The International Center for Letter of Credit Arbitration is located in metropolitan Washington, D.C., at 20405 Ryecroft Court, Montgomery Village, MD 20886 USA.)

Particularly if the standby does not choose applicable law, the issuer may wish to consider including a “sanctions” clause covering sovereign compulsion excusing the issuer, e.g.: “Issuer disclaims liability for delay, non-return of documents, non-payment, or other action or inaction compelled by a judicial order or government regulation applicable to Issuer.”

A standby consists of obligations of the issuer limited by its terms and conditions. Accordingly, a choice of law or forum or both in a standby applies to those issuer obligations and not to the obligations of any confirmer or other person. There is no problem under a straight standby that states that “this standby is governed” by the chosen law or that any litigation under it is limited to the chosen court, but this same wording might prove confusing when included in a standby that nominates another person to advise, confirm, or otherwise act on the standby.

Communications. This optional clause or a variation of it is particularly apt for a standby that is long term or that provides for communications from or to the beneficiary (apart from payment demands). If a beneficiary requires greater certainty that its request to amend its address will be
given effect, then the standby should expressly provide for automatic amendment against presentation of a complying beneficiary demand for an address change. Standby language with a demand form for this purpose may be adapted from ISP98 Forms 3 and 4 providing for reduction and transfer on demand by the beneficiary.

21 **Demand Date.** ISP98 Rule 4.16(b)(ii) (Demand for Payment) provides that a demand must contain an issuance date, and ISP98 Rule 4.06 (Date of Documents) provides that its issuance date may not be later than the date of its presentation. To override that rule, e.g., to permit post-dated documents, the following clause may be added to the Standby text: “The issuance date or any other date on any document, including the required demand, may be a date on, before, or after the date the document is presented under this Standby.”

22 **Addressee.** The information in the text of the standby indicating where, how, and to whom a presentation is to be made under the standby should be repeated in the demand form. See ISP98 Rules 3.01 (Complying Presentation under a Standby), 3.04 (Where and to Whom Complying Presentation Made), and 3.06 (Complying Medium of Presentation). Particular attention should be given to the possibility that a standby may require presentation at an address that differs from the issuer’s letterhead address.

23 **Standby identification.** A demand form should identify the standby by including the information in the standby text that identifies it, particularly the issuer’s reference number. See ISP98 Rules 3.01 (Complying Presentation under a Standby) and 3.03 (Identification of Standby).

24 **Demand.** This model form of annexed demand should satisfy the requirements of ISP98 Rules 4.16 (Demand for Payment) and 4.17 (Statement of Default or other Drawing Event), so that, when the beneficiary completes it as indicated, it will include a demand for payment of a stated amount, be dated and signed, and contain any required beneficiary statements.

25 **Beneficiary statements.** Standbys commonly require presentation of beneficiary statements and commonly combine them with the required form of demand for payment. Words other than “states”, such as “certifies”, “represents”, “warrants”, “promises”, or a combination of those words, are also used and may be preferable in the context of the underlying transaction. Any such word of assurance, when required to be included in a document presented under a standby, may give rise to a claim against the beneficiary who obtains payment under the standby. The nature and sufficiency of such claim may depend on the precise wording included in the demand, the identity of the claimant, and the status of any related claims based on the obligations intended to be supported by the standby.

The applicant or issuer or both may prefer a combination of specific representations and undertakings from the beneficiary. The beneficiary may prefer no such wording or only conclusory wording qualified by the beneficiary’s reference to “good faith” belief or the like. The applicant or issuer or both may prefer that the beneficiary make its statements expressly to
the applicant or issuer or both.

ISP98 Rule 4.12 (Formality of Statements in Documents) provides guidance on standby requirements for statements that are to be “sworn to”, “witnessed”, “legalized”, or the like.

It should be unnecessary to include in a demand form that the amount demanded is available under the standby, because that amount should be determinable without dependence on any such statement.

26 “Applicant” as underlying obligor. This demand form uses “Applicant”, which is a defined term in the text of the standby, and assumes that the applicant and beneficiary are parties to an underlying agreement that establishes the obligations to be supported by the standby. See endnotes 1 and 30.

27 Obligated/in default. This statement indicates that the applicant is “obligated to pay” the amount demanded, not that there is a “default”. A default statement is inapt where the amount demanded is payable on the date demanded without regard to the occurrence or continuance of a default or where “default” is not adequately defined in the documentation for the underlying obligations or where “default” may require that an action be taken that may be prohibited under laws triggered by the insolvency of the applicant or other party.

28 Unpaid. The term “unpaid” in the optional “due and unpaid” recital may raise a question where the applicant has made a direct payment to the beneficiary but the funds paid are subject to recapture by an insolvency representative of the applicant. It should be possible for a beneficiary in that context to state, without running afoul of a fraud or abuse exception under applicable letter of credit law, that the underlying obligation remains unpaid where a direct payment has been received subject to a credible claim that the direct payment is voidable and must be returned.

29 Underlying obligation. Although some standbys are payable on simple demand, the applicant, beneficiary, or issuer may insist that a demand under a standby identify the underlying obligation, obligor, and obligee, particularly where there may be no single underlying agreement between the applicant and beneficiary that establishes the underlying obligations and provides that those obligations be supported by a standby.

30 Applicant-beneficiary relationship. This model form of annexed demand assumes that the standby supports one or more obligations of the applicant to the beneficiary. Under commercial and regulatory laws, the issuer, any nominated bank, the applicant and beneficiary, and, where different, the underlying obligor and obligee may need to identify the underlying obligations intended to be supported by the standby and to be satisfied or secured by the proceeds of a drawing under the standby. Accordingly, this form of demand should be redrafted if, e.g., the applicant is a surety for the underlying obligor or the beneficiary is a creditor of the underlying obligee. Additionally, the underlying documentation should be drafted to provide for the pre-
and post-honour obligations of the applicant and beneficiary (and, where different, of the underlying obligor and obligee) to each other, particularly if the named applicant has or intends to claim the rights of an ordinary guarantor or surety. In this regard, it may be desirable for the beneficiary’s statement to refer expressly to the underlying obligations, as they may be amended by the obligor and obligee, without (or with) the further consent of the applicant.

31 **Use of proceeds.** This optional beneficiary statement is unnecessary if the underlying agreement adequately provides for the use of all proceeds from a drawing under the standby and if the applicant reimburses the issuer. Otherwise, some mention in the form of demand of the relationship of any standby proceeds to the underlying obligation is helpful in answering post-honour questions about the disposition of any excess standby proceeds. Absent such a provision, the “independence” of the standby obligation may hinder appropriate post-honour accounting for the use of funds received under a standby.

32 **Proceeds as cash collateral.** Where the proceeds cannot or might not be used to “satisfy” the applicant’s obligations, the demand form should indicate that the proceeds will be used to “secure” them. This consideration is important under standbys that are intended to be used, at least in some circumstances, to fund the applicant’s underlying obligation to provide cash collateral. The most common circumstance involves standbys that may expire before the underlying obligations become fully due and payable.

33 **Accounting to issuer for unused proceeds.** The issuer may want to take a security interest in the applicant’s rights to unused proceeds and/or require the beneficiary to state, e.g.,: “…and that Beneficiary will account to Issuer or Applicant, as their interests may appear, for any proceeds that are not so used.”

34 **Request for wire transfer to beneficiary’s account.** This term in the demand form is unnecessary if the text of the standby includes satisfactory wire transfer information for payment to the beneficiary. See endnote 16.

Issuers are not required to pay wherever, however, or whomever the beneficiary requests, unless the standby so states. Under ISP98 Rule 5.08 (Cover Instructions/Transmittal Letter), issuers are permitted to follow a request to pay by wire transfer to the beneficiary’s account, subject to timely receipt of customary account information and deduction of customary wire transfer charges and due consideration of any regulations or bank policies affecting wire transfer of funds to the requested country, bank, and account.

A request to pay to another’s account is a request for acknowledgement of an assignment of proceeds, which is subject to the special rules in ISP98 Rules 6.06-6.10 (Acknowledgement of Assignment of Proceeds), as well as laws protecting issuers and applicants and other laws regulating money laundering, etc.

To deter forged demands, and to address anti-money-laundering concerns, this model form of
request for payment by wire transfer states that payment is to be made to the named beneficiary at a specified beneficiary account at a specified bank location.

35 **Signer authentication.** This demand form requires the signer to indicate in the signature line that the demand and statement are made by the named beneficiary located at the address stated in the standby. Accordingly, the beneficiary's name and address should be stated in this demand form when the standby incorporating it is issued.

36 **Original signature.** What is an original signature depends on the mode of communication. See ISP98 Rules 1.09(a) (Defined Terms) (“Signature”) and 3.06(d) (Complying Medium of Presentation).
ISP98 Form 2

Model Standby Providing for Extension and Incorporating Annexed Form of Payment Demand with Alternative Non-Extension Statement*

[name and address of beneficiary]                      [date of issuance]

Issuance. At the request and for the account of [name and address of applicant] (“Applicant”), we [name and address of issuer at place of issuance] (“Issuer”) issue this irrevocable standby letter of credit number [reference number] (“Standby”) in favour of [name and address of beneficiary] (“Beneficiary”) in the maximum aggregate amount of [currency/amount].

Undertaking. Issuer undertakes to Beneficiary to pay Beneficiary’s demand for payment in the currency and for an amount available under this Standby and in the form of the Annexed Payment Demand completed as indicated and presented to Issuer at the following place for presentation: [address of place for presentation], on or before the expiration date.

Expiration. The expiration date of this Standby is [date].1

Extension. The expiration date of this Standby shall be automatically2 extended3 for successive one year periods, unless Issuer notifies Beneficiary by registered mail or other receipted means of delivery sent4 to Beneficiary’s above-stated address [30]5 or more days before the then current expiration date that Issuer elects not to extend the expiration date.6 The expiration date is not subject to automatic extension beyond [date], and any pending automatic one-year extension shall be ineffective beyond that date.7 [The expiration date may also be extended in accordance with the terms of an amendment issued by Issuer to which Beneficiary consents and in accordance with ISP98 rules on closure of the place for presentation on the expiration date.]8

[Payment. Payment against a complying presentation shall be made within 3 business days after presentation at the place for presentation or by wire transfer to a duly requested account of Beneficiary. An advice of such payment shall be sent to Beneficiary’s above-stated address.]

[Drawing. Partial and multiple drawings are permitted.]

[Reduction. Any payment made under this Standby shall reduce the amount available under it.]

ISP98. This Standby is issued subject to the International Standby Practices 1998 (ISP98) (International Chamber of Commerce Publication No. 590).
Communications. Communications other than demands may be made to Issuer by telephone, telefax, or SWIFT message, to the following: [numbers/addresses]. Beneficiary requests for amendment of this Standby, including amendment to reflect a change in Beneficiary’s address, should be made to Applicant, who may then request Issuer to issue the desired amendment.]

[Issuer’s name]

__________________
Authorized Signature

Annexed Payment Demand

[INSERT DATE]

[name and address of Issuer or other addressee at place of presentation as stated in standby]

Re: Standby Letter of Credit No. [reference number], dated [date], issued by [Issuer’s name] ("Standby")

The undersigned Beneficiary demands payment of [INSERT CURRENCY/AMOUNT] under the Standby.

Beneficiary states that

[INSERT ONE OF THE FOLLOWING ALTERNATIVE STATEMENTS]:

Applicant is obligated to pay to Beneficiary the amount demanded, which amount is due and unpaid] under[ or in connection with] the agreement between Beneficiary and Applicant titled [agreement title] and dated [date]. [Beneficiary further states that the proceeds from this demand will be used to satisfy the above-identified obligations and that Beneficiary will account to Applicant for any proceeds that are not so used.]

or

the Standby is set to expire fewer than [30] days from the date hereof, because Issuer has given a notice of non-extension of the Standby, and the amount demanded is required as cash collateral to secure the unmatured or contingent obligations of Applicant under[ or in connection with] the agreement between Beneficiary and Applicant titled [agreement title] and dated [date]. Beneficiary further states that the proceeds from this demand will be used to secure the above-identified obligations and then to satisfy them as they become absolute and due and that Beneficiary will account to Applicant for any proceeds that are not so used.]
Beneficiary requests that payment be made by wire transfer to an account of Beneficiary as follows: [INSERT NAME, ADDRESS, AND ROUTING NUMBER OF BENEFICIARY’S BANK, AND NAME AND NUMBER OF BENEFICIARY’S ACCOUNT].

[Beneficiary’s name and address]

By its authorized officer:

[INSERT ORIGINAL SIGNATURE]
[INSERT TYPED/PRINTED NAME AND TITLE]

[Before the standby is issued, all text in [bold] should be completed, and optional text in [italics] should be included or deleted (or redrafted). Text in the annexed demand form preceded by “INSERT” (or other ALL CAPITALS guidance) and in [ALL CAPITALS UNDERLINED] is to be completed as indicated when the beneficiary prepares and presents a demand.]

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This ISP98 Form 2 model standby repeats the text of ISP98 Form 1. It adds a provision for automatic extension and incorporates a model form of payment demand that adds an alternative beneficiary statement demanding payment because of the issuer’s action resulting in non-extension of the expiration date of the standby. Like ISP98 Form 1, this Form 2 is intended to be self-contained and, absent special circumstances, useable without extended reference to the text of ISP98.

The endnotes to this standby include alternative and other optional terms of particular relevance to standbys providing for automatic amendment of an expiration date, as well as references to relevant ISP98 rules. See the ISP98 Form 1 endnotes for explanation of wording that is common to ISP98 Forms 1 and 2 and for alternative and optional wording for general terms common to both forms. (There are more than 30 endnotes to Form 1 that are not repeated in this Form 2.)

This form is published for educational purposes and not as legal or professional advice. Potential users should consult with their own advisers in the drafting or use of a standby letter of credit. ISP98 and letter of credit educational and training materials, including The Official Commentary on the International Standby Practices containing official interpretations of ISP98, are available from IIBLP at www.iiblp.org.

1 Expiration. ISP98 Rule 9.01 (Duration of Standby) provides that “A standbys must: (a) contain an expiration date or (b) permit the issuer to terminate the standby upon reasonable prior notice
or payment”. Commercial law and banking regulations are likely to impose similar requirements. As reflected in ISP98 Form 1, a standby may set an expiration date and leave the possibility of shortening or extending that date to future amendment(s) issued by the issuer to which the beneficiary consents, as provided in ISP98 Rule 2.06(b)-(d) (When an Amendment is Authorised and Binding). Also, a beneficiary may seek the issuer’s consent to an amendment of the expiration date by requesting the amendment or by making an extend or pay demand.

2 Automatic amendment. Many issuers are subject to laws, regulations, or internal policies that limit their incurrence of obligations that are indefinite or long term. A common response to an applicant’s request for a medium or long term standby is to set a one year expiration date and then state in the standby that it automatically extends for successive one-year periods unless the issuer sends, or the beneficiary receives, advance notice of non-extension, as provided in ISP98 Rule 2.06(a) (When an Amendment is Authorised and Binding). This ISP98 Form 2 reflects that common response.

Alternative responses include the following model clause for automatic early termination of the standby based on the issuer’s giving advance notice to the beneficiary, e.g.: “The expiration date of this Standby is [date]. The expiration date shall be automatically amended to an earlier date if Issuer notifies Beneficiary of the proposed earlier expiration date by registered mail or other receipted means of delivery sent to Beneficiary's above-stated address [30] or more days before the proposed earlier expiration date stated in the notice.”

Another alternative is based on early payment, e.g., “The expiration date of this Standby is [date]. The expiration date shall be automatically amended to an earlier date if Issuer notifies Beneficiary by registered mail or other receipted means of delivery sent to Beneficiary's above-stated address that Issuer elects to terminate this Standby with Issuer’s payment to Beneficiary of the full amount available under this Standby and payment is made to Beneficiary, whereupon this Standby shall expire.” See ISP98 Rule 9.01(b) (Duration of Standby).

ISP98 Rule 2.06(a) (When an Amendment is Authorized and Binding) makes “automatic amendments” effective without further notification or consent if the automatic amendment is expressly stated in a standby. Accordingly, it is desirable to include the word “automatic” in any standby clause intended to make an amendment effective based on the terms of the standby and not by obtaining the beneficiary’s consent. It is unnecessary to recite that an automatic extension is “without amendment” or that an automatic extension clause is a “condition”.

3 Automatic extension. The words “extend” and “non-extension” are used, rather than “renew” and “non-renewal”, to avoid any doubt that the intent is to amend, rather than replace, the standby.

It is not desirable to include the word “evergreen” in an automatic extension clause. The word “evergreen” is popularly used to refer to automatic extension clauses, such as the one included in this ISP98 Form 2. However, this word cannot substitute for, or usefully supplement, an automatic extension clause. See ISP98 Rule 1.10(c)(ii) (Redundant or Otherwise Undesirable Terms).
Send/receive. Automatic extension clauses vary in the extent to which they spell out where and how a notice of non-extension must or may be sent to, or be received by, the beneficiary in order to establish an expiration date that is not subject to further automatic extension. For alternative wording, consider: “...is sent to Beneficiary’s above-stated address by registered mail or by [inter]nationally recognized courier or is received by Beneficiary at Beneficiary’s above-stated or current address....” Under ISP98 Rule 4.11(c)(ii) (Non-Documentary Terms or Conditions), standby requirements based on when, where, and how issuer notices are sent or received by the issuer or beneficiary are effective. However, there may be practical difficulties in proving when an issuer’s non-extension notice was sent to or received by the beneficiary. Strict compliance concepts applicable to beneficiary presentations under a standby are sometimes applied to issuer notices to a beneficiary. Some standbys address these concerns by providing alternative beneficiary addresses or by providing that timely actual receipt of notice by the beneficiary is sufficient.

If notice by e-mail, telefax, or the like is also to be permitted, then the automatic extension clause should state the alternative, e.g. “Such notice may also be given by [e-mail] [telefax] [authenticated SWIFT message] sent to the following Beneficiary [address] [number]...”

30 days/one year. A 30-day period for giving or receiving a notice of non-extension is common, but shorter (e.g., 15 days) and longer (e.g., 60 days) periods are also common. The length of that period is affected by the length of time expected for (i) the issuer to re-approve the applicant’s credit, (ii) the beneficiary to draw as permitted by the standby and the underlying transaction, and (iii) the applicant to replace the standby.

A one-year period for setting the initial expiration date and for the duration of automatic extension periods is very common. It is based on the common practice of bank issuers that annually re-evaluate applicant credit-worthiness.

Retraction of non-extension notice. Standby operations personnel may not receive credit approval for extension before the date required to initiate sending a timely non-extension notice and, as a result, may issue a notice of non-extension and later receive credit approval for extension. The following optional model clause would permit a full right of retraction: “At any time before the next expiration date Issuer may retract its notice of non-extension and thereby automatically extend the expiration date as if its notice of non-extension had not been sent or received and may treat any pending (unhonoured) demand for payment based on non-extension as automatically retracted by Beneficiary.”

Final expiration date. An end date for automatic extensions, even if it is set many years out, is desirable for record keeping purposes, particularly to avoid having to retain indefinitely proof that a standby was terminated by expiration following an effective notification of non-extension (or was honoured or otherwise reduced to zero).

Extension under ISP98 Rules 3.13 (Expiration Date on a Non-Business Day) and 3.14 (Closure on Expiry Date). The initial or automatically extended expiration date stated in a standby may
not be the last day on which a presentation may be made. ISP98 provides for extensions for a presentation that is received during a weekend or holiday or that is attempted during a business day at a place of presentation that is closed for any reason. Separately, ISP98 Rule 9.03(b) (Calculation of Time) provides that an extension period starts on the calendar day following a stated expiration date that falls on a day when the issuer is closed. (This rule is intended to keep the same calendar date as the expiration date under an annually extended standby.)

9 Communications. See ISP98 Form 1 endnote 20. This optional clause is particularly apt for a standby that is long term or otherwise more complex than most standbys, such that communication from or to the beneficiary (apart from payment demands) may be expected. An issuer may wish to expand this clause or the clause on giving notice of non-extension to the beneficiary, to assure that effect will be given to a notice duly sent but not (provably) received by the beneficiary, “A notice shown to have been delivered to the Beneficiary’s above address by mail or courier certificate, invoice, or the like shall be deemed received by Beneficiary and effective not later than 5 Business Days after the date of delivery shown thereon.”

10 Alternative Statements. Depending on the terms of the underlying obligation, an issuer’s non-extension notice may entitle the beneficiary to a payment either that satisfies the underlying obligation or serves as cash collateral for an underlying obligation or that is not yet due. ISP98 Form 2 contemplates that the beneficiary will present separate demands and statements if the beneficiary is entitled to make partial demands of both types.

11 First alternative statement (drawing to satisfy underlying obligation). The first alternative beneficiary statement is substantially the same as the beneficiary statement in ISP98 Form 1. This first alternative statement might be apt for a drawing made after sending/receipt of a non-extension notice, particularly if the underlying agreement entitled the beneficiary to accelerate an underlying debt obligation upon the imminent expiration of standby support. Any such underlying agreement could limit the beneficiary’s right to accelerate to situations in which there was no retraction of the non-extension notice sent/received and no substitute standby was issued.

12 Second alternative statement (drawing to cash collateralize underlying obligation). The second alternative statement would be apt for a drawing made after sending/receipt of a non-extension notice, particularly if the first alternative statement requires a statement that the amount demanded is due and if the underlying agreement does not treat imminent expiration of the standby as accelerating the underlying payment obligations.

13 Extend or pay demands. ISP98 Rule 3.09 (Extend or Pay) provides that an “extend or pay” demand must be examined for compliance with the standby’s terms and conditions for honouring payment demands. Imminent expiration would not excuse compliance with a requirement that a payment demand state that the underlying obligation is in default or the like. It would not excuse compliance with a requirement that a payment demand state that the issuer has sent a notice of non-extension. Accordingly, if the standby is to facilitate extend or pay demands, the standby text and the required form of payment demand in this model ISP98 Form 2 should be re-worded.
14 **No retraction or standby substitution.** The required beneficiary statement might here add a statement that no retraction of the non-extension notice has been timely sent/received and that no permitted substitute standby (or other equivalent security) has been timely sent/received. In such case, the 30 day period stated in the automatic extension clause in this ISP98 Form 2 should be reduced, e.g., to 15 days, to allow time for retraction or permitted standby substitution. It is possible to include all of the features of a permitted standby substitution (or for the tender of permitted equivalent security), but ordinarily what is permissible should be spelled out in the underlying agreement and cross referenced in the beneficiary’s statement.

15 **Proceeds as cash collateral.** Where the proceeds cannot or might not be used to “satisfy” the Applicant’s obligations, it may be appropriate to state that the proceeds are being used to “secure” them. The terms permitting a drawing and then holding of cash collateral should be stated in an underlying agreement between the applicant and beneficiary, particularly if the cash collateral is to be held in an interest bearing or other special account. Such terms may be stated also in the required form of beneficiary statement regarding the basis for the drawing and subsequent use of standby proceeds as security.

16 **Accounting for proceeds.** As noted in ISP98 Form 1, the issuer may wish that the demand form state that the beneficiary must account to the issuer for any unused proceeds resulting from a drawing based on the issuer’s advance notice of non-extension and to take further steps to protect its interest in such unused proceeds.

CHIDMS1/3001838.1 as of 10 May 2012
ISP98 Form 3
Model Standby Providing for Reduction and Incorporating Annexed Form of Reduction Demand*

[name and address of beneficiary] [date of issuance]

Issuance. At the request and for the account of [name and address of applicant] (“Applicant”), we [name and address of issuer at place of issuance] (“Issuer”) issue this irrevocable standby letter of credit number [reference number] (“Standby”) in favour of [name and address of beneficiary] (“Beneficiary”) in the maximum aggregate amount of [currency/amount].

Undertaking. Issuer undertakes to Beneficiary to pay Beneficiary’s demand for payment in the currency and for an amount available under this Standby and in the form of the Annexed Payment Demand completed as indicated and presented to Issuer at the following place for presentation: [address of place for presentation], on or before the expiration date.

Expiration. The expiration date of this Standby is [date].

[Payment. Payment against a complying presentation shall be made within 3 business days after presentation at the place for presentation or by wire transfer to a duly requested account of Beneficiary. An advice of such payment shall be sent to Beneficiary’s above-stated address.]

Reduction. Any payment made under this Standby shall reduce the amount available under it. Also, the amount available under this Standby shall be automatically reduced in accordance with the terms of Beneficiary’s reduction demand(s) in the form of the Annexed Reduction Demand completed as indicated and presented to Issuer at the above-stated place for presentation.3

[Partial and multiple drawings are permitted.]

ISP98. This Standby is issued subject to the International Standby Practices 1998 (ISP98) (International Chamber of Commerce Publication No. 590).

[Communications. Communications other than demands may be made to Issuer by telephone, telefax, or SWIFT message, to the following: [numbers/addresses]. Beneficiary requests for amendment of this Standby, including amendment to reflect a change in Beneficiary’s address, should be made to Applicant, who may then request Issuer to issue the desired amendment.]

[Issuer’s name]

__________________  
Authorized Signature
Annexed Payment Demand

[INSERT DATE]

[name and address of Issuer or other addressee at place of presentation as stated in standby]

Re: Standby Letter of Credit No. [reference number], dated [date], issued by [Issuer’s name] (“Standby”)

The undersigned Beneficiary demands payment of [INSERT CURRENCY/AMOUNT] under the Standby.

Beneficiary states that Applicant is obligated to pay to Beneficiary the amount demanded[, which amount is due and unpaid] under[ or in connection with] the agreement between Beneficiary and Applicant titled [agreement title] and dated [date].

[Beneficiary further states that the proceeds from this demand will be used to satisfy the above-identified obligations and that Beneficiary will account to Applicant for any proceeds that are not so used.]

Beneficiary requests that payment be made by wire transfer to an account of Beneficiary as follows: [INSERT NAME, ADDRESS, AND ROUTING NUMBER OF BENEFICIARY’S BANK, AND NAME AND NUMBER OF BENEFICIARY’S ACCOUNT].

[Beneficiary’s name and address]

By its authorized officer:

[INSERT ORIGINAL SIGNATURE]

[INSERT TYPED/PRINTED NAME AND TITLE]

Annexed Reduction Demand

[INSERT DATE]

[name and address of Issuer or other addressee at place of presentation as stated in standby]

Re: Standby Letter of Credit No. [reference number], dated [date], issued by [Issuer’s name] (“Standby”)
The undersigned Beneficiary demands reduction of the amount available under the Standby to the maximum aggregate of [INSERT CURRENCY/AMOUNT]).

Beneficiary states that this Demand for Reduction is based on Beneficiary’s determination regarding the maximum amount of standby support required to be provided to Beneficiary by Applicant under[ or in connection with] the agreement between Beneficiary and Applicant titled [agreement title] and dated [date].

Beneficiary’s demand and statements are made as of the date hereof.

[Beneficiary’s name and address]

By its authorized officer:

[INSERT ORIGINAL SIGNATURE]
[INSERT TYPED/PRINTED NAME AND TITLE]

[Before the standby is issued, all text in [bold] should be completed, and optional text in [italics] should be included or deleted (or redrafted). Text in the annexed demand forms preceded by “INSERT” (or other ALL CAPITALS guidance) and in [ALL CAPITALS UNDERLINED] is to be completed as indicated when the beneficiary prepares and presents a demand.]

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This ISP98 Form 3 model standby repeats the text of ISP98 Form 1. It adds standby text and incorporates a model reduction demand form that obligates the issuer to reduce the amount available under the standby upon receipt of a reduction demand completed and presented by the beneficiary. Like ISP98 Form 1, this Form 3 is intended to be self-contained and, absent special circumstances, useable without extended reference to the text of ISP98.

The endnotes to this standby include alternative and other optional terms of particular relevance to standbys providing for on demand or automatic reduction (including reduction to zero), as well as references to relevant ISP98 rules. See the ISP98 Form 1 endnotes for explanation of wording that is common to ISP98 Forms 1 and 3 and for alternative and optional wording for general terms common to both forms. (There are more than 30 endnotes to Form 1 that are not repeated in this Form 3.)

This form is published for educational purposes and not as legal or professional advice. Potential users should consult with their own advisers in the drafting or use of a standby letter of credit. ISP98 and letter of credit educational and training materials, including The Official Commentary...

1 Reduction by beneficiary demand. If it is expected that the amount available may be reduced (including a possible reduction to zero) before expiry, other than by honour of payment demands, then it may be desirable to simplify the process of reducing the standby by adding a term permitting the beneficiary to demand reduction(s) by presentation of a specified document. Otherwise, a request for reduction (including a reduction to zero) must be processed as an amendment (or cancellation) requiring the consent of the issuer as well as the beneficiary and, as a practical matter, the applicant, resulting in the application of ISP98 Rule 2 (Obligations) and Rule 7 (Cancellation). Reduction by beneficiary demand is “automatic” in that the standby obligates the issuer to give immediate effect to the beneficiary’s presentation of a complying demand for reduction. For an automatic cancellation clause, see ISP98 Form 7 (automatically cancelling standby if not timely confirmed).

2 Multiple demands for reduction. Because there is no ISP98 rule addressing multiple demands for reduction, their availability is affirmatively indicated by the addition of “(s)”.

3 Automatic reduction. If the timing and amount of any reductions are determinable at the time of standby issuance, then the standby may include an automatic reduction term, e.g.: “The amount available under this standby shall be reduced automatically to [currency/amount] on [date] at the close of business at the above-stated place of presentation. An amount that is available on the banking day on which a complying demand for payment is presented shall not be affected by any later automatic reduction” Such automatic reductions should be described as reductions to a new aggregate maximum amount available and not as reductions of a stated amount. Otherwise, additional wording might be required to indicate whether or not an automatic reduction is affected by any prior or pending demands for partial payment.

As indicated in ISP98 Form 1, endnote 17, it is unnecessary to state that the amount available under a standby is reduced by honour of a payment demand. However, if a standby includes a term that reinstates any honoured amount (e.g., after honour of a drawing to fund a periodic interest payment due on an underlying debt obligation) or a term that automatically reduces the amount available (e.g., with the passage of time) or permits a reduction (e.g., by presentation of a document evidencing a direct partial payment of an underlying debt obligation), then it may be desirable for the standby to state that honour reduces the amount available and to relate that statement to any other reduction event or reinstatement event to be included in the standby.

A statement in a standby that a payment made by an applicant to a beneficiary shall reduce the amount available under the standby may constitute a “non-documentary condition”. Under ISP98 Rule 4.11 (Non-Documentary Terms or Conditions), a non-documentary condition must be disregarded. Accordingly, an applicant-to-beneficiary payment will not reduce the amount available under a standby unless the standby provides for reduction based on the issuer’s own records of a payment made by or through the issuer (or the standby provides for reduction
against a presentation to the issuer of a document evidencing or reciting that the payment was made).

Standbys supporting the applicant’s accounting to the beneficiary for advance payments received frequently provide that the amount available under the standby must reduce pro rata as shipments are made or invoices are sent or paid. Such provisions are also subject to ISP98 Rule 4.11(Non-Documentary Terms or Conditions) and are best handled by identifying documents or banking activities to which the issuer has access, e.g., by relating pro rata reductions under an advance payment standby to the issuer’s negotiation or receipt of commercial documents as a nominated bank under a commercial letter of credit paying the purchase price less the pro-rata advance payment.

If payment under a standby may be made by the issuer at the request of the applicant or on the issuer’s own initiative, then the standby should affirmatively provide for such payment, preferably by specifying in the standby the beneficiary account to which such payment must be made with an undertaking to send an advice of payment to the beneficiary (and applicant). This kind of standby provision may be worded as a payment demand authorized by the beneficiary to be made in its name or may be worded as a beneficiary consent to automatic reduction against such payment, whether considered to have been under or outside the standby. See ISP98 Form 2, endnote 2, for a model standby term permitting the issuer to initiate early expiration by making full payment to the beneficiary.

Demand for reduction. This model form of reduction demand is called a “demand” for the sake of clarity. It is not a model form of full or partial cancellation to be used with a standby that is silent on the topic. It is to be used with a standby that obligates the issuer to give effect to a beneficiary demanded reduction. Otherwise, an issuer may exercise considerable discretion before giving effect to a request to reduce the amount available or to amend, cancel, or release obligations under a standby, as provided in ISP98 Rule 2.06 (When an Amendment is Authorized and Binding) and Rule 7 (Cancellation). Until the issuer recognizes a requested reduction, the applicant remains liable to pay fees and contingently liable to reimburse based on the maximum amount available under the standby. For the avoidance of doubt, the standby text uses the word “automatic” to clarify that no issuer (or applicant) consent is required, merely presentation of a complying reduction demand. See ISP98 Rule 2.06(a) (When an Amendment is Authorized and Binding).

Statement of continuing requirements for standby support. A standby that permits reduction by the presentation of a demand or other documents typically arises out of an underlying agreement that obligates the beneficiary to the applicant to initiate a reduction when a contractual milestone is met. In their negotiation of their underlying contractual obligations and the related standby terms, the contracting parties may require a more specific beneficiary statement regarding the basis for a demanded reduction.

Authentication. This annexed form of reduction demand requires the same level of authentication as the annexed form of payment demand. ISP98 Rule 7 (Cancellation) lists
additional conditions that the beneficiary, applicant, or issuer might wish to consider to deter unauthorized reduction demands.

CHIDMS1/3001852.1 as of 31 March 2012
ISP98 Form 4
Model Standby Providing for Transfer and Incorporating Annexed Form of Transfer Demand*

[name and address of beneficiary] [date of issuance]

Issuance. At the request and for the account of [name and address of applicant] (“Applicant”), we [name and address of issuer at place of issuance] (“Issuer”) issue this irrevocable standby letter of credit number [reference number] (“Standby”) in favour of [name and address of beneficiary] (“Beneficiary”) in the maximum aggregate amount of [currency/amount].

Undertaking. Issuer undertakes to Beneficiary to pay Beneficiary’s demand for payment in the currency and for an amount available under this Standby and in the form of the Annexed Payment Demand completed as indicated and presented to Issuer at the following place for presentation: [address of place for presentation], on or before the expiration date.

Expiration. The expiration date of this Standby is [date].

[Payment. Payment against a complying presentation shall be made within 3 business days after presentation at the place for presentation or by wire transfer to a duly requested account of Beneficiary. An advice of such payment shall be sent to Beneficiary’s above-stated address.]

[Reduction. Any payment made under this Standby shall reduce the amount available under it.]

[Partial and multiple drawings are permitted.]

Transfer.1 This Standby is transferable.2 Beneficiary’s drawing rights under this Standby shall be transferred in their entirety by presentation of a demand3 in the form of the Annexed Transfer Demand completed as indicated [together with this Standby]4 to Issuer at the above-stated place for presentation. Upon presentation5 of a complying demand for transfer, the person identified as the transferee shall become the Beneficiary, whose name and address [and duly provided bank account information for any requested payment by wire transfer of funds] shall be substituted for that of the transferor on any demands, requests, or consents then or thereafter required or permitted to be made by Beneficiary.6 Subject to compliance with applicable law7[ and receipt of its customary or agreed transfer fees8], Issuer must acknowledge and shall effect the demanded transfer9 and shall issue its advice of transfer to the [transferor and ]transferee.10

ISP98. This Standby is issued subject to the International Standby Practices 1998 (ISP98) (International Chamber of Commerce Publication No. 590).
Communications. Communications other than demands may be made to Issuer by telephone, telefax, or SWIFT message, to the following: [numbers/addresses]. Beneficiary requests for amendment of this Standby, including amendment to reflect a change in Beneficiary's address, should be made to Applicant, who may then request Issuer to issue the desired amendment.

[Issuer’s name]

__________________
Authorized Signature

Annexed Payment Demand

[INSERT DATE]

[name and address of Issuer or other addressee at place of presentation as stated in standby]

Re: Standby Letter of Credit No. [reference number], dated [date], issued by [Issuer’s name] (“Standby”)

The undersigned Beneficiary demands payment of [INSERT CURRENCY/AMOUNT] under the Standby.

Beneficiary states that Applicant is obligated to pay to Beneficiary the amount demanded[ which amount is due and unpaid] under[ or in connection with] the agreement between Beneficiary and Applicant titled [agreement title] and dated [date].

[Beneficiary further states that the proceeds from this demand will be used to satisfy the above-identified obligations and that Beneficiary will account to Applicant for any proceeds that are not so used.]

Beneficiary requests that payment be made by wire transfer to an account of Beneficiary as follows: [INSERT NAME, ADDRESS, AND ROUTING NUMBER OF BENEFICIARY’S BANK, AND NAME AND NUMBER OF BENEFICIARY’S ACCOUNT].

[Beneficiary’s name and address]

By its authorized officer:

__________________
[INSERT ORIGINAL SIGNATURE]
[INSERT TYPED/PRINTED NAME AND TITLE]
Annexed Transfer Demand

[INSERT DATE]

[name and address of Issuer or other addressee at place of presentation as stated in standby]

Re: Standby Letter of Credit No. [reference number], dated [date], issued by [Issuer’s name] (“Standby”)

The undersigned Beneficiary demands transfer of drawing rights in their entirety, including rights to demand further payment[, reduction, cancellation,] and transfer under the Standby and rights to give or withhold consent to any pending or future amendment or cancellation, to the following person at the following address: [INSERT NAME AND ADDRESS OF THAT PERSON

__________________________________________________________________________

__________________________________________________________________________]

[and with the following bank account for payment by wire transfer of funds to that person
[INSERT NAME, ADDRESS, AND ROUTING NUMBER OF THAT PERSON’S BANK AND NAME AND NUMBER OF THAT PERSON’S ACCOUNT]].

Beneficiary states that the above-identified person is the transferee, from and after the effective date stated below, of all of Beneficiary’s rights that are supported by the Standby [and Beneficiary’s related obligations ]under[ or in connection with] the agreement between Beneficiary and Applicant titled [agreement title] and dated [date].

Beneficiary further states that there are no outstanding demands by Beneficiary for any other transfer or for any payment[, or for any reduction or cancellation] under the Standby.

Beneficiary agrees to make no such demands or requests while this demand is outstanding.

[Accompanying this demand is the Standby.] Please effect the demanded transfer [as of the following effective date: [INSERT DATE]

__________________________________________________________________________]

Please do so ]by marking and delivering the Standby or by delivering a replacement to the above-identified person as the transferee beneficiary and then notify the undersigned thereof.

[Also accompanying this demand is Issuer’s transfer fee of an amount equal to [percentage amount]% of the amount of the standby to be transferred but not to exceed [currency/amount]].

[Beneficiary’s name and address]
By its authorized officer:

[INSERT ORIGINAL SIGNATURE]
[INSERT TYPED/PRINTED NAME AND TITLE]16

[Before the standby is issued, all text in [bold] should be completed, and optional text in [italics] should be included or deleted (or redrafted). Text in the annexed demand forms preceded by “INSERT” (or other ALL CAPITALS guidance) and in [ALL CAPITALS UNDERLINED] is to be completed as indicated when the beneficiary prepares and presents a demand.]

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This ISP98 Form 4 model standby repeats the text of ISP98 Form 1. It adds standby text and incorporates a model transfer demand form that obligates the issuer to acknowledge a transfer of drawing rights upon receipt of the transfer demand completed and presented by the beneficiary. Like ISP98 Form 1, this Form 4 is intended to be self-contained and, absent special circumstances, useable without extended reference to the text of ISP98.

The endnotes to this standby include alternative and other optional terms of particular relevance to standbys providing for transfer on demand or automatic reduction (including reduction to zero), as well as references to relevant ISP98 rules. See the ISP98 Form 1 endnotes for explanation of wording that is common to ISP98 Forms 1 and 3 and for alternative and optional wording for general terms common to both forms.

These endnotes do not include model wording for a form that an issuer might use when requested to give effect to a transfer that the issuer is not obligated to acknowledge.

This form is published for educational purposes and not as legal or professional advice. Potential users should consult with their own advisers in the drafting or use of a standby letter of credit. ISP98 and letter of credit educational and training materials, including The Official Commentary on the International Standby Practices containing official interpretations of ISP98, are available from IIBLP at www.iiblp.org.

1 Transfer; succession; and assignment of proceeds. ISP98 Rule 6 (Transfer, Assignment, & Transfer by Operation of Law) provides separate rules for contractual transfer of drawing rights, for transfer of drawing rights to a legal successor, and for assignment of the proceeds of a beneficiary’s drawing.

If a standby does not state that it is transferable, then under ISP98 Rule 6.02(a) (When Drawing
Rights are Transferable), a request for transfer of the beneficiary’s drawing rights, other than from a claimed legal successor, can be processed only as a request for amendment or for cancellation and new issuance.

Under ISP98 Rules 6.11-6.14 (Transfer by Operation of Law and/or applicable law, a legal successor may claim the rights of a transferee beneficiary under an otherwise non-transferable standby. Beneficiaries requiring additional certainty or clarity regarding the status of a legal successor to the beneficiary may wish to include in the standby, e.g., “Issuer undertakes to treat Beneficiary’s successor by operation of law as the authorised transferee of Beneficiary against presentation of the additional documents(s) from a public official referred to in ISP98 Rule 6.12, such as a document issued by [identification of public official] authorising or appointing the claimed successor as Beneficiary’s liquidator, rehabilitator, receiver, or conservator.” Separately from the terms of the standby and ISP98, a legal successor may be entitled by applicable law to sign demands and otherwise act as the named beneficiary. The ISP98 rules for legal successors address those successors that would sign as a named successor and not as the named beneficiary.

The word “assignable” does not mean “transferable” for purposes of ISP98. See ISP98 Rule 1.10(c)(ii) (Redundant or Otherwise Undesirable Terms) and ISP98 Rules 6.06-6.10 (Acknowledgement of Assignment of Proceeds). In general, ISP98 Rule 6 protects applicants as well as issuers against presentations made by a third party but protects only issuers against requests to pay to a third party part or all of the proceeds resulting from a complying presentation made by the beneficiary.

Ordinarily, requests for assignments of proceeds are made after standby issuance. Issuer acknowledgement of an assignment could be included in a standby, e.g.: “Payment against a complying presentation shall be made at the place for presentation or by wire transfer to a duly requested account of Beneficiary, except for the following amount: [currency/amount], which Beneficiary has irrevocably assigned to the following acknowledged assignee of standby proceeds with the following bank account [name and address of assignee; name, address, and routing number of assignee’s bank; and name and number of assignee’s account]. An advice of each such payment shall be sent to Beneficiary’s above-stated address.”

2 Permitted transfers. Under ISP98 Rules 6.02(b) (When Drawing Rights are Transferable), if a standby states that it is transferable, without more, then drawing rights under it may be transferred by the beneficiary in their entirety (not partially). Successive transfers of entire rights under a transferable standby are allowed in ISP98 Rule 6.02(b)(1) (When Drawing Rights are Transferable). All such transfers, however, require that the issuer agrees and effects the transfer requested by the beneficiary under the largely discretionary provisions of ISP98 Rules 6.01-6.05 (Transfer of Drawing Rights). Issuers regularly do so against the beneficiary’s payment of a fee and completion of the issuer’s own forms, which may differ significantly from the annexed model form of transfer demand in this ISP98 Form 4.

3 Transfer by beneficiary demand. If a beneficiary requires certainty that its request for transfer
will be effected, then the standby should state that the issuer must effect transfer against presentation of a specified document. ISP98 Form 4 so provides and incorporates an annexed model form of transfer demand that makes it unnecessary for the beneficiary to rely on transfer at the discretion of the issuer under ISP98 Rule 6.03 (Conditions to Transfer).

4 **Presentation of standby.** This form, like most standbys, does not require presentation of the standby with a payment demand. If, however, a standby requires presentation of the standby with any payment demand, then its presentation should be required with any transfer demand. Its presentation with any transfer demand should also be required if transfer is to be evidenced by the issuer’s marking the standby and delivering it to the transferee beneficiary. Its presentation might also be required to indicate that the transfer demand is authentic. See ISP98 Form 1, endnote 9 for an extended discussion of requirements for the presentation of the original standby.

5 **Effective date of transfer.** It is generally desirable to clarify and coordinate the effective date of a transfer of drawing rights in their entirety with the effective date of transfer of the underlying obligations supported by the standby. This coordination may be accomplished by changing the model standby text from “Upon presentation of a complying demand for transfer…” to “Upon presentation of, or any later effective transfer date stated in, a complying transfer demand….” The standby should not impose any non-documentary condition that would require the issuer to determine whether or when the underlying obligations were transferred.

6 **Transferee as substituted beneficiary.** A transfer of drawing rights in their entirety includes a beneficiary’s rights to demand any permitted further transfer or consent to any pending or future amendment or cancellation of the standby. Accordingly, any demand, statement, or other required document to be presented under a transferable standby must bear the name of the transferee rather than of the transferor. See ISP Rule 6.04 (Effect of Transfer on Required Documents). If a transfer of less than the entire rights of the beneficiary is contemplated or if rights exercised before transfer by the transferor are to be transferred, or if both the transferee and transferor intend to have veto rights over past or future amendments to the standby, then the transfer term and the annexed form of transfer demand in this ISP98 Form 4 should be revised to expressly re-allocate any beneficiary rights that are to be recognized by the issuer.

7 **Compliance with law.** Processing a transfer request or demand includes checking the transferee’s name and other information against applicable sanctions’ lists. See ISP98 Form 1, endnote 19, on sovereign compulsion and sanctions’ clauses.

8 **Issuer’s transfer fee.** Issuers expect to receive a fee for processing a transfer request or demand. This optional text in this ISP98 Form 4 addresses that expectation, and the annexed form of transfer demand includes optional text that more precisely states the amount of the transfer fee. They would be unnecessary if the issuer relied solely on the applicant to pay transfer fees.

9 **Mandatory transfer.** Because this standby form provides for transfer by demand, it includes an undertaking that the issuer “must” give effect to a complying demand for transfer. Because effecting transfer is mandatory, the issuer’s undertaking to effect a demanded transfer should
state any conditions other than presentation of a complying transfer demand. The issuer may prefer to include those conditions in the transfer term in the standby even if they are included in the text of the required transfer demand form.

10 Advice of transfer. Because this standby form provides for mandatory transfer, it includes an undertaking by the issuer to give effect to a complying transfer demand by issuing an advice of transfer that documents the transferee beneficiary’s rights under the standby.

11 Annexed transfer demand. The annexed model form of demand for transfer is called a “demand” for the sake of clarity. This ISP98 Form 4 standby obligates the issuer to effect transfer against receipt of a specified document. Accordingly, this is not a model form of transfer request to be used with a standby that is “transferable” but allows the issuer to exercise its discretion as to how and whether to recognize a requested transfer under ISP98 Rules 6-01-6.05 (Transfer of Drawing Rights) or under ISP98 Rules 6.11-6.14 (Transfer by Operation of Law).

12 Rights transferred. Under ISP98 Rule 6.02(b)(i) (When Drawing Rights are Transferable), it is unnecessary for a transferable standby to provide expressly for successive transfers or for transfer of any particular beneficiary rights, such as the right to demand reduction or to consent (or not) to a pending or future amendment.

13 Statement of underlying transfer of supported obligations. A standby that undertakes to effect transfer against the presentation of a demand or other documents is typically underpinned by an agreement that obligates the beneficiary to the applicant to demand a transfer of drawing rights only when the underlying contractual obligations are being rightfully and fully transferred. In their negotiation of their underlying contractual obligations and the related standby terms, the contracting parties may require a more specific beneficiary statement regarding the basis for a demanded transfer.

14 Standby enclosed. If the text of a standby requires presentation of the standby (or any beneficiary statement as to the existence and status of any amendments, demands, or other activity affecting the standby), then the annexed form of demand for transfer should address those requirements. See endnote 4 to this ISP98 Form 4 and endnote 9 to Form 1.

15 Postponed effective date. This optional wording addresses the possibility that the effective date of a transfer is to occur after presentation of the beneficiary’s demand for transfer.

16 Authentication. This model form of annexed transfer demand requires the same level of authentication as the model form of payment demand. ISP98 Rule 7 (Cancellation) lists additional conditions that the beneficiary, applicant, or issuer might wish to consider to deter unauthorized transfer demands.

CHIDMS1/3001853.1 as of 31 March 2012
ISP98 Form 5
Simplified Demand Only Standby*

On the application of [name and address of beneficiary], we, [name and address of issuer], issue in your favour this standby letter of credit No. [number] subject to the International Standby Practices 1998 (ISP98) (ICC Publication No. 590)\(^1\) in the amount of [currency/amount], payable\(^2\) against presentation of your demand\(^3\) to us at [address of place for presentation]\(^4\) on or before [date].\(^5\)

[issuer’s name]

________________________
Authorized Signature

[Before the standby is issued, all text in [bold] should be completed.]

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This is a form of simplified demand only standby. It relies on the incorporated ISP98 Rules to fill gaps, particularly as to the form of demand required to obtain honour. The endnotes to this form identify the gap-filling Rules.

This ISP98 Form 5 is intended to show that a simplified form of standby calling for a demand only is feasible. See ISP98 Form 1 (Model Standby Incorporating Annexed Form of Payment Demand (with Statement)) for a more self-contained model standby with more extensive endnotes.

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\(^1\) Incorporation of ISP98. ISP98 Rule 1.06 provides that an ISP98 standby is “an irrevocable, independent, documentary, and binding undertaking when issued and need not so state”. It is thus unnecessary for an ISP98 standby to recite that it is enforceable without regard to the validity of any claim of performance or non-performance in the underlying transaction. It is unnecessary to add a recital (including an "integration" or "merger" clause) that would deny or limit the effect of any document or other matter mentioned in the standby or of any negotiations leading up to or following standby
issuance. Such clauses and recitals risk limiting the various ISP98 rules that provide for the standby’s independence.

2 **Honour by payment.** ISP98 Rules 2.01 (Undertaking to Honour by Issuer and Any Confirmer to Beneficiary) and 5.01 (Timely Notice of Dishonour) provide that an issuer undertakes to honour a complying presentation and that an issuer has at least three, but not more than seven, business days after presentation either to pay or send a notice of dishonour.

3 **Presentation of demand.** This ISP98 Form 5 requires presentation of a demand but, unlike ISP98 Forms 1-4, this simplified standby does not describe or annex a required form of demand. ISP98 Rule 4.16 (Demand for Payment) requires that a demand for payment identify the standby as indicated in Rule 3.03 (Identification of Standby), state the amount demanded, be from the beneficiary and directed to the issuer, and be dated and signed as indicated in Rule 4.16 (Demand for Payment). ISP98 does not require that a demand be in the form of a “draft” or “bill of exchange” or include any other statement or be accompanied by any other document. ISP98 Rule 3.08 (Partial Drawing and Multiple Presentations; Amount of Drawings) provides that a beneficiary has the right to present partial and multiple demands. A beneficiary preparing a demand under this simplified form of standby could simplify the wording in the annexed demand form in ISP98 Form 1.

4 **Complying presentation.** To the extent that a standby that fails to state where, how, and to whom presentation must be made, ISP98 Rules 3.04 (Where and to Whom Complying Presentation Made) and 3.06 (Complying Medium of Presentation) apply. Those rules generally require physical presentation of a paper document to the issuer but allow a beneficiary that is a bank or SWIFT participant to present a demand using SWIFT or other similar authenticated means.

5 **Expiration.** Standbys must provide for their termination under ISP98 Rule 9.01 (Duration of Standby) and likely also under applicable commercial law and banking regulations. This form of standby is based on the common practice of stating a specific calendar date as the expiration date, i.e., the latest date for presentation. ISP98 Rules 3.13 (Expiration Date on a Non-Business Day) and 3.14 (Closure on a Business Day and Authorization of Another Reasonable Place for Presentation) provide for an extension if the place for presentation is closed on that date.

CHIDMS1/3001858.1 as of 31 March 2012
ISP98 Form 6
Model Counter Standby with Annexed Form of Local Bank Undertaking*

[<name and address of local bank beneficiary>] [<date of issuance>]

At the request and for the account of [<name and address of applicant>] (“Applicant”), we [<name and address of issuer at place of issuance>] (“Issuer”) issue this irrevocable standby letter of credit number [<reference number>] (“Counter Standby”) in favour of [<name and address of beneficiary>] (“Beneficiary”) in the maximum aggregate amount of [<currency/amount>].

This is a counter standby letter of credit supporting Beneficiary’s issuance of its separate [<local bank>] undertaking in the form of the Annexed Local Undertaking[<to be issued on or before date>].

Issuer undertakes to Beneficiary to pay Beneficiary’s demand that includes Beneficiary’s statement that Beneficiary issued its Local Undertaking as provided in the Counter Standby and has received [<and honoured>] a complying demand under its Local Undertaking in the amount hereby demanded from Issuer, if Beneficiary’s demand is presented to Issuer on or before the expiration date either as an originally signed paper document at Issuer’s above-stated address or as an authenticated SWIFT message sent to Issuer’s SWIFT address [SWIFT code] from Beneficiary’s SWIFT address [SWIFT code].

The expiration date of this Counter Standby is [<date>].

[Payment against a complying presentation shall be made within three business days after presentation at the place for presentation or by wire transfer to a duly requested account of Beneficiary.]

This Counter Standby is issued subject to the International Standby Practices 1998 (ISP98) (International Chamber of Commerce Publication No. 590).

[Issuer’s name]
[<signature>]
Authorized Signature

Annexed Local Undertaking
[INSERT DATE]

[<name and address of person indicated in counter standby as the intended local beneficiary of the local bank undertaking>]
On the application of [counter standby applicant’s name and address], [counter standby issuer’s name and address] has issued to us a standby letter of credit supporting our issuance of this undertaking to you.

We, [name and address of local bank], issue in your favour our [standby letter of credit] [guarantee] [undertaking] No. [INSERT REFERENCE NUMBER] in the amount of [currency/amount] payable against your demand for payment presented on or before [date] to us at [address of place for presentation], that identifies this undertaking, states the amount demanded, and includes your certificate that the amount demanded is due to you from [counter standby applicant’s name] under [numbered agreement sections or identified obligations to perform bid, bonding, delivery, warranty or other obligation or to account for advance payments received of] your agreement titled [agreement title] and dated [date].

Our undertaking is subject to the International Standby Practices 1998 (ISP98) (ICC Publication No. 590).

[local bank issuer’s name]
[INSERT ORIGINAL SIGNATURE]
Authorized Signature

[Before the counter standby with annexed form of local bank undertaking is issued, all text in [bold] should be completed, and optional text in [italics] should be included or deleted (or redrafted). All text preceded by “INSERT” (or other ALL CAPITALS guidance) and in [ALL CAPITALS UNDERLINED] is to be completed as indicated when the annexed local undertaking is prepared and issued.]

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This ISP98 Form 6 is a model form for a commonly used type of standby. As described in the Preface to ISP98, a “Counter Standby” supports the issuance of a separate standby or other undertaking by the beneficiary of the counter standby. The beneficiary of a counter-standby is typically another bank familiar with acting as a standby beneficiary and issuer and doing so by receiving and sending authenticated SWIFT messages as well as paper documents. Most counter standbys are issued as inter-bank authenticated SWIFT messages, and this ISP98 Form 6 could be adapted to a SWIFT message format.

The annexed form of local bank undertaking is also an ISP98 standby, but it could take many other forms. The local undertaking to be annexed to a counter standby should reflect the input of the local bank and local beneficiary, as well as the counter standby issuer and its applicant.
The endnotes to this ISP98 Form 6 refer to ISP98 rules of particular relevance to counter standbys. See the endnotes to ISP98 Form 1 for explanation of wording that is common to ISP98 Forms 6 and 1 and for alternative and optional wording.

A standby that provides for confirmation by another bank serves substantially the same purpose as a counter standby that supports another bank’s local undertaking. Either type of standby can be worded to reduce or expand the differences between the two under ISP98. See the ISP98 Form 7 Model Standby Providing for Confirmation for an alternative to this Form 6 Model Counter Standby with Annexed Form of Local Bank Undertaking.

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1 Applicant. The applicant for a counter standby typically has a “bid”, “performance”, “advance payment”, or other such obligation to a distant contracting party that must be supported by a local bank standby, guarantee, bond, or other undertaking. The applicant for the counter standby applies to its bank for issuance of a counter standby in order to meet the requirements of a local bank for an assured right of incoming payment in case the local bank must honour its local undertaking.

2 Beneficiary. The beneficiary named in a counter standby (like the issuer of the counter standby) is typically a bank that, on the basis of the counter standby, issues its own local bank standby, guarantee, bond, or other undertaking. The references in this model form and endnotes to “local bank” and “local bank undertaking” (and to “local undertaking” and “local beneficiary”) are for convenience in distinguishing the two different undertakings and the two different sets of issuers and beneficiaries involved in counter standby practice. The beneficiary of the counter standby need not be a bank. Its status as a non-bank might affect the nature of its local undertaking, but should not affect the independence of the counter standby under ISP98.

3 Counter standby name. While this model form is named a “counter standby”, the name is not determinative of its character as an undertaking within the scope of ISP98 or as an independent undertaking under applicable law. As noted in the ISP98 Preface, categorizing standbys based on the type of underlying transaction does not affect the application of the ISP98 Rules.

4 Request for local bank undertaking. This counter standby form assumes, but does not itself request, issuance by the beneficiary of a separate undertaking. ISP98 Rule 8.02 (Charges for Fees and Costs) obligates an issuer to pay the reasonable and customary fees and expenses of a beneficiary requested by the issuer to issue a separate undertaking, if otherwise unrecovered and unrecoverable. Accordingly, it may be desirable to clarify in the counter standby whether and to what extent the counter standby issuer must pay such
fees and expenses.

ISP98 Rule 4.21(a) (Request to Issue Separate Undertaking) provides that a beneficiary of a counter standby receives no rights “other than its rights to draw under the standby even if the issuer pays a fee to the beneficiary for issuing the separate undertaking.”

5 Form of local bank undertaking. The local bank undertaking may be a standby letter of credit, independent guarantee, dependent guaranty, bond, or contractual promise. This model form of counter standby specifies by annex the type and terms of the local bank undertaking.

6 Delivery of local undertaking. If the local bank undertaking is to be delivered to the applicant’s representative, then details for such delivery (and the effect of non-delivery or return of the local bank undertaking) should be added to the counter standby.

If it is desired that issuance of the counter standby be deferred until the local bank undertaking is issued, then ISP98 Rules 2.03 (Conditions to Issuance) and 4.11 (Non-Documentary Terms or Conditions) should be consulted. These same rules should be consulted if it is desired that issuance of the counter standby be deferred until an advance payment is actually made to the applicant for the counter standby.

7 Unstated requirements for demand. The word “includes” signals that there are unstated requirements for a complying demand, i.e., the demand must also include a date and identification of the counter standby. See ISP98 Form 1, endnote 10, and ISP98 Form 5, endnote 3.

8 Statements. Beneficiary statements included in a counter standby form of demand are sometimes limited to the beneficiary’s issuance of the requested local bank undertaking, receipt of a complying demand for payment thereunder, and incurrence of an absolute obligation to pay. Beneficiary statements under a counter standby sometimes also recite that payment has been made under the local bank undertaking (in which case the counter standby may provide for same day payment or payment with value from the date the beneficiary states that it funded its local undertaking).

If a counter standby requires presentation of (a copy of) the local bank undertaking issued or of the demand received under the local bank undertaking, then the standby text should state whether and how such documents are to be examined by the counter standby issuer. If a counter standby does not require their presentation but such documents are nonetheless presented under the counter standby, then ISP98 Rule 4.21(c) (Request to Issue Separate Undertaking) provides that the issuer of the counter standby “shall disregard their compliance or consistency with the standby, with the beneficiary’s demand under the standby, or with the beneficiary’s separate undertaking” and may return or forward any such documents.

Beneficiary statements typically are made to the issuer of the counter standby (bank to bank) and not to the applicant for the counter standby. They typically do not include
representations as to whether the applicant is obligated in any underlying transaction. In this regard it is assumed that the documentation for the transaction underlying a local bank undertaking will adequately establish the applicant’s contractual obligations to provide a local bank undertaking and the applicant’s contractual rights and remedies in case of a disputed drawing or a disputed use of proceeds from a drawing.

If a counter standby provides that it may be terminated on advance notice given by the issuer, then the required form of beneficiary statement should permit the local bank beneficiary to demand payment under the counter standby and hold the proceeds as security against a possible future drawing under its local bank undertaking. See ISP98 Form 2 for model wording and alternative and optional wording for automatic extension and for demand following a notice of non-extension.

9 Presentation via SWIFT. This counter standby form expressly permits presentation of a demand via authenticated inter-bank SWIFT message. ISP98 Rule 3.06 (Complying Medium of Presentation) permits such presentations without express wording in the standby as between SWIFT bank members.

10 Expiration. The terms of a counter standby and of a local bank undertaking should be drafted in light of the terms of the underlying obligation and should address the possibility that the counter standby or the local bank undertaking or both may expire prematurely relative to the underlying transaction.

ISP98 Rule 3.09 (Extend or Pay), while not specific to counter standbys, addresses a practice that is particularly associated with demands made under counter standbys. Typically the beneficiary of a counter standby issues a local undertaking that will expire several days before the counter standby will expire. If the counter standby issuer does not timely affirmatively extend its counter standby, then the local bank beneficiary of the counter standby may make a so-called “extend or pay” demand before the counter standby will expire. Under this ISP98 rule, an issuer examines any “extend or pay” demand for compliance as a demand for payment and, whether or not the demand complies, treats the demand as separately requesting an amendment extending the counter standby. See ISP98 Form 2, endnote 13.

Some counter standbys provide for automatic extension with a right to terminate a future automatic extension by giving advance notice. In such cases particularly, the counter standby and local bank undertaking should be aligned so that the local bank beneficiary may demand payment whenever the counter standby is about to expire before the local bank undertaking will expire. See endnote 8 to this ISP98 Form 6

11 Choice of law; choice of forum. A counter standby may usefully include a choice-of-law and choice-of-forum clause. A choice of law or forum or both in a counter standby would apply to the standby issuer’s obligations and not to the obligations of the local bank beneficiary under its separate undertaking. See ISP98 Form 1, endnote 19, on law/forum clauses, including the availability of arbitration under the ICLOCA rules.
Certificate. The certificate may be included in the demand made under this form of local bank undertaking. If in separate documents, the certificate, as well as the demand, should be dated and signed. See ISP98 Rules 4.07 (Required Signature on a Document), 4.12 (Formality of Statements in Documents), 4.16 (Demand for Payment), and 4.17 (Statement of Default or Other Drawing Event).

Incorporation of ISP98. This form of local bank undertaking states that it is subject to ISP98. ISP98 is available for use in any country that will enforce letters of credit and demand guarantees independently of the issuer’s reimbursement rights and the beneficiary’s rights in the underlying transaction.

Issuance of a counter standby subject to ISP98 does not require that the local bank undertaking also be issued subject to ISP98 (or by a bank). Unless an ISP98 counter standby otherwise states, the local bank undertaking could be issued as an independent undertaking subject to ISP98 or to other rules or to no rules, or it could be issued as a dependent undertaking. Similarly, the local bank undertaking could be issued subject to law other than the law applicable to an ISP98 counter standby or to any underlying transaction.

CHIDMS1/3001859.1 as of 31 March 2012
ISP98 Form 7
Model Standby Requiring Confirmation*

[name and address of beneficiary or nominated person or both] [date of issuance]

Issuance. At the request and for the account of [name and address of applicant] ("Applicant"), we [name and address of issuer at place of issuance] ("Issuer") issue this irrevocable standby letter of credit number [reference number] ("Standby") in favour of [name and address of beneficiary] ("Beneficiary") in the maximum aggregate amount of [currency/amount].

Expiration. The expiration date of this Standby is [date].

Nomination. Issuer nominates [name and address of nominated person] to advise and confirm this Standby.

Confirmation required. If the nominated person does not issue its confirmation on or before [date], then this Standby shall be automatically cancelled.

Presentations. If the nominated person issues its confirmation to Beneficiary, then all presentations must be made to the nominated person ("Confirmer") at a place of presentation stated in its confirmation ("Confirmation"). Presentations by Beneficiary to Issuer shall not affect Issuer’s obligations under this Standby and may be disregarded by Issuer, whether or not this Standby is confirmed.

Undertaking. Issuer undertakes to Beneficiary and to Confirmer that Issuer shall honour this Standby by reimbursing Confirmer for Confirmer’s payment if Confirmer rightfully honours a presentation made under its Confirmation, if the document(s) presented to Confirmer on or before the above-stated expiration date are promptly forwarded by Confirmer to Issuer for examination by Issuer, and if the forwarded documents include the following: Beneficiary’s demand that (i) identifies this Standby (by the name and address of the Issuer and of the Applicant and reference number for this Standby, as shown above) and identifies the Confirmation (by the name and address of the Confirmer and reference number for the Confirmation), (ii) is dated and signed by Beneficiary, and (iii) states that Applicant is obligated to pay to Beneficiary the amount demanded under the agreement between Beneficiary and Applicant titled [agreement title] and dated [date]. This is Issuer’s only undertaking. Issuer disclaims any obligation based on Confirmer’s dishonour of its obligations.

[Charges. Beneficiary shall be solely responsible for payment of Confirmer’s fees and charges under or in connection with its Confirmation. Issuer disclaims for itself and Applicant any responsibility for Confirmer’s fees, costs, or other charges under ISP98 Rule 8.02 or otherwise.]
ISP98. This Standby is issued subject to the International Standby Practices 1998 (ISP98) (International Chamber of Commerce Publication No. 590).

[Communications. Communications other than documents forwarded by Confirmer may be made to Issuer by telephone, telefax, or SWIFT message, to the following: [numbers/addresses]. Confirmer/nominated person should promptly communicate to Issuer whether, when, and how it advises and confirms this Standby. Beneficiary requests for amendment of this Standby, including amendment to reflect a change in Beneficiary’s address, should be made to Applicant, who may then request Issuer to issue the desired amendment subject to Confirmer’s consent.]17

[Issuer’s name]

______________________________
Authorized Signature

[Before the standby is issued, all text in [bold] should be completed and optional text in [italics] should be included or deleted (or redrafted).]

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This ISP98 Form 7 model standby assumes that the beneficiary has requested the applicant to arrange for confirmation by a confirmer, typically a bank, that is closer and better known to the beneficiary than the standby issuer. Accordingly, this form is focused on inducing the issuance of the desired confirmation. It requires that the confirmer timely issue a confirmation and that the beneficiary present to the confirmer only. It provides for payment by the standby issuer to the confirmer only.

This ISP98 Form 7 model standby authorizes issuance of the ISP98 Form 8 model confirmation.

This ISP98 Form 7 model standby may be usefully compared and contrasted, both functionally and structurally, to the ISP98 Form 6 model counter standby that supports issuance of a local bank undertaking.

The endnotes to this form include alternative and other optional terms of particular relevance to standbys that provide for confirmation, as well as references to relevant ISP98 rules. See the ISP98 Form 1 model standby endnotes for explanation of wording that is common to ISP98 Forms 1 and 7 and for alternative and optional wording.

This form is published for educational purposes and not as legal or professional advice. Potential users should consult with their own advisers in the drafting or use of a standby letter of credit.
ISP98 and letter of credit educational and training materials, including *The Official Commentary on the International Standby Practices* containing official interpretations of ISP98, are available from IIBLP at [www.iiblp.org](http://www.iiblp.org).

1 **Nomination to advise.** A standby that nominates a person to confirm typically also nominates that person to advise the standby. As to the limited significance of advising a standby, see ISP98 Rules 2.05 (Advice of Standby or Amendment) and 2.07 (Routing of Amendments).

2 **Nomination to confirm.** Under ISP98 Rule 1.09(a) (Definitions) a “confirmer” must be nominated by the standby issuer, and under Rule 1.11(c) (Interpretation of these Rules) a confirmation is generally treated as a separate standby issued by the confirmer for the account of the standby issuer.

3 **Confirmation required.** This ISP98 Form 7 is based on an underlying agreement between the applicant and the beneficiary that the applicant will arrange for a standby to be either issued or confirmed by a beneficiary-approved bank. Where the applicant applies for a standby to be confirmed by a beneficiary-approved bank, the focus is on the beneficiary’s satisfaction with the confirmation and on the confirmer’s satisfaction with the standby. In this context, a standby that nominates a beneficiary-approved confirmer but is not confirmed fails to satisfy the underlying agreement and likely requires a substantial change in the underlying agreement or standby terms or both.

If, however, the standby is to be useable even though no confirmation is issued, then the text of the standby should be redrafted. In particular, the issuer’s undertaking should be redrafted to substitute, e.g.: “If the person nominated to confirm does not issue its confirmation, then Issuer undertakes to Beneficiary to pay against presentation to Issuer on or before the expiration date at the following place for presentation: [address of place of presentation to Issuer] of Beneficiary’s demand that (i) identifies this Standby (by the name and address of the Issuer and of the Applicant and reference number for this Standby, as shown above), (ii) is dated and signed by Beneficiary, (iii) states that Applicant is obligated to pay to Beneficiary the amount demanded under the agreement between Beneficiary and Applicant titled [agreement title] and dated [date], and (iv) states that no confirmation of this Standby was issued[ despite Beneficiary’s tender of payment of confirmation fees and charges].

4 **Timely confirmation.** Confirmation may require time-consuming internal credit and country risk approvals and sanction clearance checks. Accordingly, unless confirmation has been pre-arranged, this period might be appropriately set at 30 calendar days. As a practical matter, the person nominated to confirm will require that the standby be issued before it is confirmed, and the issuer will charge fees for its exposure before as well as after the standby is confirmed.

The fact that a confirmation is or is not timely issued is an effective standby condition, whether or not the issuer receives a written notice thereof. It is not a non-documentary condition under ISP98 Rule 4.11(c)(ii) (Non-Documentary Terms or Conditions). In this regard, other ISP98
rules permit or require an issuer to treat a confirmer’s operations affecting the standby as within
the issuer’s operations. See endnote 6 on ISP98 Rule 2.01(d)(iii) (Undertaking to Honour by
Issuer and Any Confirmer to Beneficiary), which provides for an issuer’s obligation for wrongful
dishonor of a presentation made to the confirmer.

5 **Automatic cancellation.** This model form states that the standby is issued and, if not timely
confirmed, then it is automatically cancelled. For the reasons indicated in the preceding endnote,
it would not be practical to condition standby issuance on confirmation issuance. See ISP98
Rules 2.03 (Conditions to Issuance) and 2.06(a) (When an Amendment is Authorised and
Binding).

6 **Presentations to confirmer.** ISP98 Rule 2.01(a) (Undertaking to Honour by Issuer and Any
Confirmer to Beneficiary) obligates an issuer to honour a complying presentation made to the
issuer. ISP98 Rule 3.04 (Where and to Whom Complying Presentation Made) provides for
presentation to the issuer of a standby, whether or not confirmed. These rules are intended to
maximize a beneficiary’s rights against the issuer. However, these rules also maximize the
burdens and risks of the issuer of a confirmed standby. In this regard, because most standbys
require presentation of beneficiary prepared documents that have no intrinsic value and are easily
duplicated, there are risks of duplicate presentation under standbys that permit presentation at
more than one place. Accordingly, the effects of these rules are frequently and appropriately
limited in the text of the standby. This form of standby expressly requires that all presentations
be made to the confirmer.

An ISP98 standby that permits presentation to a confirmer thereby obligates the issuer to perform
the confirmer’s obligations if the confirmer wrongfully dishonours. This standby form, which
permits presentation to the confirmer, expressly disclaims that obligation. See endnote 15.

7 **No presentation to issuer.** This form of standby expressly disclaims issuer responsibility for
any attempted presentation by the beneficiary to the issuer, even if the standby is not confirmed.
This disclaimer is consistent with treating the standby as cancelled if not confirmed and is
included for the avoidance of doubt.

Endnotes 3 and 15 address the possibility of obligating the issuer directly to the beneficiary,
where the standby is not confirmed and also in certain circumstances where the standby is
confirmed.

8 **Undertaking to honour/reimburse.** The issuer’s undertaking in this standby form includes
rightful honour of the confirmation as an optional condition to payment under the standby. The
wording in this clause is based on ISP98 Rules 8.01(a)(ii) (Right to Reimbursement) and
1.11(c)(1) (Interpretation of these Rules). Under those rules an issuer’s obligation to reimburse a
confirmer is treated like an applicant’s obligation to reimburse an issuer. The issuer’s
undertaking in this standby form also includes conditions to payment under the standby based on
the confirmer’s forwarding the documents specified in the standby for examination under the
ISP98 rules that apply to a presentation to an issuer, i.e., ISP98 Rules 4 (Examination) and 5
Although largely theoretical, there are differences between reimbursing a confirmer and honouring a confirmer’s presentation. E.g., the letter of credit independence principle may be somewhat differently applied. A confirmer claiming reimbursement may be treated for some limited purposes as an agent of the issuer or as an agent of the beneficiary. Whether a confirmer rightfully honoured its confirmation may depend on the law where the confirmer acted and not on the law governing the standby issuer. Accordingly, the concerned parties may wish to include both or to exclude or disclaim one or another of these combined undertakings of the issuer to reimburse and to honour.

9 Confirmer’s rightful honour. If a standby provides for paying a confirmer that rightfully honours its confirmation, without further conditions, then the standby issuer may wish to clarify with the applicant that the issuer is entitled to rely on the confirmer’s claim of rightful honour. A standby may so provide simply by failing to disclaim a confirmer’s ISP98 undertaking in ISP98 Rule 8.01(a)(ii) (Right to Reimbursement), which provides that rightful honour of a confirmation obligates the issuer to reimburse. (This ISP98 Form 7 standby includes additional conditions that limit the issuer’s obligations to reimburse/honour, e.g., the forwarding of specified documents to the issuer.)

10 Expiration with automatic extension. If the standby is to provide for automatic extension of the expiration date or the like, then ISP98 Rule 2.07 (Routing of Amendments) and ISP98 Form 2 should be consulted (and the form of confirmation to be issued should be drafted to give the confirmer time to act in parallel with the issuer, e.g., to send an effective notice of non-extension of the confirmation.)

11 Prompt forwarding. A confirmer may receive a presentation on the expiration date, thereafter examine the presentation and decide to honour, and thereafter forward the documents to the issuer. This form of standby and ISP98 leave to applicable standard practice determinations as to whether a particular forwarding is “prompt” or how long after the expiration date an issuer may expect a claim for reimbursement or actual receipt of forwarded documents. The applicable standard practice mentioned in ISP98 Rule 1.11(a) (Interpretation of these Rules) includes the practice of issuers and nominated banks under commercial letters of credit that provide that they are available at or expire at the counters of a nominated bank.

A standby may instead require that the documents be forwarded to, or received by, the issuer within a fixed time period. If so, the parties should consider the effect of automatic extension under ISP98 Rules 3.13 or 3.14 (CLOSURE ON EXPIRY DATE). In this regard, the beneficiary under this form of standby is expected to rely on the place of presentation and the expiration date stated in the confirmation, leaving the confirmer with any risks resulting from differences in those terms as between the confirmation and the standby.

12 Issuer examination of documents. This optional text clarifies that reimbursement is subject to the issuer’s examination of the forwarded documents under ISP98 Rules 4 (Examination) and 5
(Notice, Preclusion, and Disposition of Documents) to determine whether the confirmer is entitled to reimbursement under the terms and conditions of the standby, including ISP Rule 8 (Reimbursement Obligations). It is intended to avoid possible arguments over the application of ISP98 rules to claims from a confirmer for honour or reimbursement.

To simplify an issuer’s response to a confirmer’s claim for payment, the standby may add that the forwarded documents must be accompanied by the confirmer’s statement that they were timely received and rightfully honoured by the confirmer under a confirmation issued by the confirmer as provided in the standby. See ISP98 Form 6 model counter standby, endnote 8 and related text.

13 Form of demand and statement. The requirements in a standby for demanding payment from the issuer should be repeated in the confirmation and supplemented by specific information as to the manner, time, and place of presentation to the confirmer. For additional and alternative model texts and forms of beneficiary payment demands and statements, see ISP98 Forms 1-4 and their endnotes.

14 Interest; advance payment. Because ISP98 does not provide for interest on late honour or reimbursement, any desired provision on issuer liability to pay interest, collection costs, or the like, should be added (or left to applicable law).

If the standby adds an undertaking to pay the confirmer in advance of the issuer’s examination of forwarded documents, then it should restate the issuer’s refund right under ISP98 Rule 8.03 (Refund of Reimbursement). If payment to the confirmer is to be made by the confirmer’s claiming on another bank, then ISP98 Rule 8.04 (Bank-to-Bank Reimbursement) and the standard ICC rules to which it refers should be consulted.

15 Confirmer’s wrongful dishonour. ISP98 Rule 2.01(d)(iii) (Undertaking to Honour by Issuer and Any Confirmer to Beneficiary) provides that “If the standby permits presentation to the confirmer, then the issuer undertakes also to honour upon the confirmer’s wrongful dishonour by performing as if the presentation had been made to the issuer.” This rule (like the similar rule obligating confirmers in case of wrongful dishonour by the issuer) is intended to maximize a beneficiary’s rights against an issuer and any confirmer. However, these rules also maximize the burdens and risks of the issuer and confirmer by making both responsible for what the other does under their respective obligations to act with independence, promptness, and finality. This form of standby does not restate that type of undertaking and instead expressly disclaims that undertaking to the beneficiary, consistent with the other clauses in ISP98 Form 7 that limit the issuer’s obligations to reimbursing the confirmer. This disclaimer covers confirmer dishonour, whether or not wrongful, so as to avoid argument over the scope of the term “wrongful dishonour” in ISP98 Rule 2.01(d)(iii). This disclaimer is consistent with the assumptions in this model form that the beneficiary relies on the confirmer’s confirmation and not on the issuer’s standby.

If, however, this disclaimer is not wanted, then the standby should restate the undertaking
described in ISP98 Rule 2.01(d)(iii), e.g.: “If Confirmer wrongfully dishonours a presentation made under its Confirmation, then Issuer undertakes to Beneficiary to honour this Standby by paying to Beneficiary the wrongfully dishonoured amount [against a presentation made to Confirmer on or before the expiration date that includes the above stated document(s)].” The bracketed text is intended to avoid argument based on the confirmer’s peculiar handling of the presentation to it, notably where the beneficiary’s claim of wrongful dishonour by the confirmer is based on confirmer preclusion rather than beneficiary compliance.

This model form and these endnotes to not include alternative wording for a standby that provides for the beneficiary, at its option, to make presentation on either the issuer or the confirmer or for a standby that provides for action against the confirmer only if the standby is wrongfully dishonoured by the issuer. As indicated in prior endnotes, a standby that provides the beneficiary with unlimited rights to present to either the issuer or the confirmer and then to enforce its claims against either or both is problematic for both. It may make both responsible based on facts and law known to, or peculiar to, one but not the other, e.g., closure of a place for presentation. These risks may be mitigated where the issuer and confirmer are affiliated or otherwise familiar with each other’s operations. One risk avoidance step may be to include in the standby (and a similar provision in any confirmation) that the issuer and confirmer may exchange information about the confirmed standby without further consent of or notice to the applicant or beneficiary, as well as that any payment made under either immediately reduces the amount available under both. In this regard, ISP98 Rule 4.11(c)(ii) (Non-Documentary Terms or Conditions) facilitates issuer reliance on communications about the standby sent or received by a confirmer.

16 **Responsibility for confirmer charges.** ISP98 Rule 8.02 (Charges for Fees and Costs) generally obligates an issuer to a nominated person (and the applicant to the issuer), to pay the customary charges of a confirmer or other nominated person that acts on the nomination, including those that the beneficiary fails to pay. This optional sentence in the standby allocates responsibility to the beneficiary and expressly disclaims any residual responsibility.

17 **Communications.** This optional clause (which was adapted from a similar optional clause in ISP98 Form 1) or a variation of it is particularly apt for a standby that provides for confirmation. For further clarification this clause may be expanded to state that the issuer and the person nominated to confirm should promptly advise each other of all communications affecting the standby (or confirmation) that are made between the beneficiary and either the issuer or the person nominated to confirm. See ISP98 Rules 2.05 (Advice of Standby or Amendment), 2.07 (Routing of Amendments, and 4.11 (Non-Documentary Terms and Conditions).
ISP98 Form 8
Model Confirmation of Standby*

[name and address of beneficiary as stated in standby] [date of issuance]

We [name and address of confirmer at place of issuance] (“Confirmer”) issue this irrevocable confirmation number [reference number] (“Confirmation”) in favour of [name and address of beneficiary] (“Beneficiary”) in the maximum aggregate amount of [currency/amount]. Confirmer is nominated to issue this Confirmation¹ under standby letter of credit number [reference number] (“Standby”) issued by [name of standby issuer and its address at place of standby issuance] (“Issuer”) on the application of [name and address of applicant] (“Applicant”).²

Confirmer undertakes to Beneficiary³ to pay Beneficiary’s demand for payment in the currency and for an amount available under this Confirmation that (i) identifies this Confirmation (by the name and address of the Confirmer and reference number for this Confirmation, as shown above) and identifies the Standby (by the name and address of the Issuer and of the Applicant and reference number for the Standby, as shown above), (ii) is presented to Confirmer at the following place for presentation to Confirmer: [address of place for presentation], on or before the expiration date, (iii) is dated and signed by Beneficiary, and (iv) states that Applicant is obligated to pay to Beneficiary the amount demanded under the agreement between Beneficiary and Applicant titled [agreement title] and dated [date].⁴

The expiration date of this Confirmation is [date].

Confirmer’s undertakings to Beneficiary are limited to presentations made to Confirmer under this Confirmation. Confirmer disclaims responsibility under ISP98 Rule 2.01 or otherwise for any presentation Beneficiary makes to Issuer.⁵

All of Confirmer’s obligations under this Confirmation shall terminate automatically upon Beneficiary’s making a presentation to Issuer under the Standby unless such presentation is made (i) through Confirmer or otherwise with Confirmer’s express consent or (ii) to enforce a presentation wrongfully dishonoured by Confirmer.⁶

[This Confirmation shall be automatically cancelled on [date] if Confirmer has not received before that date Beneficiary’s payment of Confirmer’s fees and charges for issuing this Confirmation, as follows: [currency/amount], and either payment or satisfactory assurance of payment of Confirmer’s other fees and charges in connection with this Confirmation, as follows: [description of other fees and charges].]⁷

This Confirmation is issued subject to the International Standby Practices 1998 (ISP98) (International Chamber of Commerce Publication No. 590).⁸
Communications to Confirmer about this Confirmation other than demands may be made by telephone, telefax, or SWIFT message, to the following: [numbers/addresses]. Beneficiary requests for amendment of this Confirmation, including amendment to reflect a change in Beneficiary’s address, should be made to the Issuer’s Applicant, who may then request issuance of the desired amendment of the Standby and this Confirmation.

[Confirmer’s name]

_________________________
Authorized Signature

[Before the confirmation is issued, all text in [bold] should be completed and optional text in [italics] should be included or deleted (or redrafted).]

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This ISP98 Form 8 model confirmation is intended to be used to confirm an ISP98 Form 7 model standby. It is intended to be self-contained, rather than a short advice in which the confirmer adds its confirmation to a standby that is attached to or reproduced in the confirmer’s advice. Like ISP98 Form 7, this form also assumes that the beneficiary intends to rely on and use the confirmation and not the standby.

This confirmation form is based on the ISP98 Form 1 standby, generally substituting “Confirmer” for “Issuer” and “Confirmation” for “Standby” and omitting most of the optional clauses. Like ISP98 Form 7, ISP98 Form 8 describes in the text what documents must be presented rather than attaching a form of demand.

The endnotes to this form include alternative and other optional terms of particular relevance to confirmations, as well as references to relevant ISP98 rules. See ISP98 Form 1, including endnotes, for explanation of wording that is common to ISP98 Forms 8 and 1 and for alternative and optional wording that may be adapted to a confirmation. See also ISP98 Form 7, including endnotes, for explanation of wording in this Form 8 that is determined by the text of the standby to be confirmed or that is common to both forms.

This form is published for educational purposes and not as legal or professional advice. Potential users should consult with their own advisers in the drafting or use of a standby letter of credit. ISP98 and letter of credit educational and training materials, including The Official Commentary on the International Standby Practices containing official interpretations of ISP98, are available from IIBLP at www.iiblp.org.
Nomination. ISP98 Rule 1.09 (Defined Terms) defines “confirmer” as one who adds its confirmation on the nomination of the issuer. A nomination to confirm should be stated in the Standby and, preferably, referenced in the Confirmation so as to clarify in both undertakings the Confirmer’s status as a confirmer. This confirmation form, including these endnotes, do not address issues that may arise where a purported confirmer (sometimes referred to as a “silent confirmer”) has not been nominated in the standby to add its confirmation.

Identification of Standby. A confirmation should state the confirmer’s separate reference number for the confirmation and also state the reference number and other identifying information for the standby, including identification of the applicant for the standby. In this regard, ISP98 Rule 1.11(c)(i) (Interpretation of these Rules) treats the standby issuer as the confirmer’s applicant.

Confirmer’s undertaking. A confirmer is a person that is nominated by the issuer of a standby to add its confirmation and that does so by undertaking to honour a complying presentation. See ISP98 Rules 1.09(a) (Definitions), 1.11(c) (Interpretation of these Rules), and 2.10(d) (Undertaking to Honour by Issuer and Any Confirmer to Beneficiary).

A confirmation may incorporate, rather than restate, the terms and conditions of the issuer’s obligations under the standby to which the confirmer has added its confirmation. This model form of confirmation (ISP98 Form 8) restates all of the terms and conditions affecting the confirmer’s obligations to the beneficiary. Restatement is common for confirmations of standbys in favor of beneficiaries that insist on confirmation to satisfy requirements for an approved local bank obligor. This model form of confirmation should qualify as a letter of credit undertaking of the confirmer under ISP98 (and likely also under applicable law) whether or not the standby issuer authorized issuance of the confirmation.

Form of demand and statement. The requirements for demanding payment under a confirmation should follow the requirements of the standby, supplemented by specific information as to the manner, time, and place of presentation to the confirmer. For additional and alternative model texts and forms of beneficiary demands and statements, see ISP98 Forms 1-4 and their endnotes.

Confirmer not responsible for presentations to issuer. ISP98 Rule 2.01 (Undertaking to Honour by Issuer and Any Confirmer to Beneficiary) provides that if a confirmation permits presentation to the Issuer, then the confirmer is responsible for the issuer’s wrongful dishonour. This rule is intended to maximize a beneficiary’s rights against a confirmer. This model confirmation overrides that rule on the assumption that the typical beneficiary intends to use the confirmation and not the standby and is willing to rely solely on the confirmer. Similarly, the typical confirmer will prefer to rely solely on its own processing of demands and is unwilling to accept the added uncertainty and risk of remedying the issuer’s possible wrongful dishonour of a presentation made directly to the issuer.

Prohibition on circumventing the confirmer. If the required documents consist of a demand and
statement prepared and signed solely by the beneficiary, then the beneficiary may easily make multiple contemporaneous presentations. If a beneficiary is permitted to present to the issuer in either the standby or the confirmation, then the confirmer receiving a demand will want to satisfy itself that neither it nor the issuer has received a conflicting demand or other communication from the beneficiary. This involves risk and delay, which the confirmer may refuse to accept. This model confirmation form includes wording intended to deter presentation other than to the confirmer by providing for a forfeiture of the beneficiary’s rights against the confirmer. The possibility of presentation on either the confirmer or the issuer affects not just the wording of the confirmation but also the wording of the standby. If a confirmation provides for transfer of drawing rights or other discretionary or automatic amendment of its terms, then even greater attention must be paid to prohibiting or limiting beneficiary requests or demands for action by the standby issuer that might affect the confirmer.

7 **Confirmer’s charges.** This optional clause assumes that the issuer is not responsible for confirmer charges (see the ISP98 Form 7 model standby optional disclaimer of responsibility for confirmer charges) and that the confirmer has not obtained payment or satisfactory assurances of payment from the beneficiary before issuing its confirmation. If the effect of non-payment is to be non-issuance of the confirmation rather than automatic cancellation, then this confirmation should be differently worded in light of ISP98 Rule 2.03 (Conditions to Issuance).

8 **Applicable practice rules, law, court, arbitration, and sanctions.** A confirmation is an independent undertaking. Questions as to where, how, and under what practice rules and law a confirmation may be enforced should be dictated by the confirmation and not by the standby it confirms. A confirmation may be issued subject to ISP98, even though the standby states that it is issued subject to different practice rules or no rules.

A confirmer may desire clarity that its confirmation is subject to the law of the place where its confirmation is issued (or where presentation to the confirmer must be made), and the beneficiary may also want clarity that the confirmer cannot defend dishonour of its confirmation on the basis of the law applicable to the issuer. In this regard, beneficiaries obtain confirmations to avoid the country risk as well as credit risk associated with the issuer. If the standby includes a choice of law or court or arbitration clause or a sanctions clause, particular attention should given to the possible effect or lack of effect of each such clause on the confirmer’s obligations. See ISP98 Form 1, endnote 19.

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