



# Treasury Management Services Agreement

Terms and Conditions

Effective Date: May 10, 2023

# CADENCE BANK TREASURY MANAGEMENT SERVICES AGREEMENT

## Table of Contents

### **A. General Provisions**

1. Introduction
2. General

### **B. Specific Provisions**

#### **1. Digital Banking Services**

- a. Digital Banking
- b. File Transfer Services
- c. Secure File Transfer Services
- d. Balance Reporting Services
- e. Data Exchange Services
- f. EDI Notification Services

#### **2. Risk Management**

Positive Pay Services

#### **3. Draft Service**

#### **4. Liquidity Management**

- a. Sweep Services
  - i. Investment Sweep
  - ii. Insured Cash Sweep
  - iii. Commercial and Advanced Loan Sweep
  - iv. Treasury Cash Sweep
  - v. Automated Investment Sweep Account Overnight Repurchase Agreement
- b. Zero Balance Account Services

#### **5. Payables Management**

- a. Account Reconciliation Services
- b. Automated Clearing House Services
- c. Automated Clearing House Block Services
- d. Controlled Disbursement Service
- e. Invoice to Pay
- f. Bill Payment Services
- g. Integrated Payables Services
- h. Digital Banking Funds Transfer Services

#### **6. Receivables Management**

- a. Lockbox Service
- b. Remote Lockbox
- c. Stop File Feature of Lockbox Service
- d. Match File Feature of Lockbox Service
- e. Corrective Workstation; Online Decisioning Feature of Lockbox Service
- f. eInvoice Presentment and Payment Service
- g. eLockbox Service
- h. Healthcare Receivables and Reconciliation Services
- i. Image Cash Letter Service
- j. Integrated Receivables Service
- k. Remote Deposit Capture Service
- l. Smart Safe Services
- m. Vault Services

#### **7. Foreign Exchange Services**

# CADENCE BANK TREASURY MANAGEMENT SERVICES AGREEMENT

Effective Date: May 10, 2023

In this Treasury Management Services Agreement (the "Agreement"), Cadence Bank is referred to as "Cadence" or "Bank" and the customer obtaining treasury management services from Cadence is referred to as "Company." The Service Instructions (as defined below) are part of and incorporated into this Agreement.

## A. GENERAL PROVISIONS

- 1. Introduction.** This Treasury Management Services Agreement contains terms and conditions for the Services (defined below) offered by Cadence (defined below). The General Provisions of this Agreement apply to all Services, and other provisions govern specific Services. By signing and submitting a request for Services or Service Instructions to Cadence, you agree to be bound by the General Provisions and the provisions contained in this Agreement governing each Service requested or used by you. You also agree to the implementation requirements provided to you by Cadence for each Service for which you submit Service Instructions.

As a new Service is added to the Treasury Management product line, this Agreement will be updated to include the terms and conditions for that Service, and a revised Agreement will be made available.

Please review this Agreement carefully and retain it for your records. As you use additional Services in the future, such Services will also be covered by the terms and conditions contained in this Agreement. This Agreement and the Account Agreement (defined below) serve as the governing documents for your Cadence Treasury Management relationship.

Should you have any questions about this Agreement, or the Account Agreement, please contact your Treasury Management Officer. Thank you for choosing Cadence as your Treasury Management service provider. We appreciate your business and look forward to serving you.

## 2. General.

- a. Related Agreements.** This Agreement shall be supplementary to, and be construed in conjunction with any and all other applicable deposit account terms and conditions and/or agreement(s) ("Account Agreements"), legal entity resolutions ("Resolutions"), Service Instructions (as defined below), addendums, and other documents and agreements covering Company Accounts (as defined below) with Cadence. All such written agreements constitute the full and entire agreement regarding the Services (defined below). To the extent there is a conflict in the terms of this Agreement and any other agreement or contract between Company and Cadence, the terms of this Agreement will control, unless the other agreement(s) specifically states otherwise.
- b. Services.** Cadence shall provide Treasury Management Services ("Services" or, individually a "Service") in accordance with the terms and conditions of this Agreement and as more

particularly described in separate Service Instructions. Service Instructions shall constitute Company's election as to specific Services offered hereunder and shall become effective as both parties hereto may execute one or more of the same from time to time either contemporaneous herewith or hereafter; all of which shall constitute counterparts and exhibits to this Agreement.

- c. General Provisions.** The General Provisions set forth in this Agreement apply to each and every Service received by Company from Cadence whether now or in the future, and whether or not that particular Service is provided for specifically in this Agreement or in other agreements between the Company and Cadence and further applies to any new Service introduced by Cadence and obtained by Company after the date on which this Agreement is delivered to Company.
- d. Specific Provisions.** The provisions specific to individual Services are set forth below, as supplemented by the Service Instructions applicable to each such Service. Company's submission of a request for any such specific Service and the approval of the Service Instructions for such Service, or Company's use of such Service, whichever occurs first, constitutes Company's agreement to such specific provisions, terms and conditions for such Service.
- e. Definitions.** Except as otherwise expressly provided in this Agreement, the following capitalized terms shall have the following meanings for the entire Agreement, conflicting definitions should be controlled by the section therein:
  - "Access Device" means all keys, access codes, combinations, access cards, personal identification numbers, User ID, User Password and any other applicable credentials and similar security codes or identifiers issued to or selected by Company personnel in connection with any Service.
  - "Accompanying Documentation" means documents presented by the payee of a Draft or their authorized agent that are required by Company.
  - "Account" means Company's account, as well as any master or related accounts automatically linked to that account, that Company has designated as the account from which Cadence shall debit for Entries to be prepaid under this Agreement, or into which or from which Company requests or authorizes Funds to be transferred.
  - "ACH" means automated clearing house.

- "ACH Positive Pay" means payment fraud protection on Designated Account(s) with verification of Presented ACH Transaction(s) against Business Rule(s) criteria provided to Cadence by Company when Presented ACH Transaction(s) is submitted to Cadence for payment.
- "Administrative Portal" means the interactive Internet site hosted by Cadence whereby Company may access reports, initiate payments on behalf of Payers, initiate refunds, and provision user rights and other operational parameters in connection with the E-Invoice Presentment and Payment Service.
- "Agent" means, in connection with any Service, a third-party service provider, processor or facilitator appointed by Cadence as Company's agent.
- "Agreed Format" means the format of the file that Company sends to Cadence, which has been set up and tested by Cadence before a Payment File has been sent in connection with the Payables Service.
- "Applicable Law" means any and all federal, state and local statutes, regulations, and rules that govern a Service provided under this Agreement.
- "Appropriate Banking Day" has the meaning set forth in the "Draft Services" portion of this Agreement.
- "Authorized Administrator" means each officer or employee of Company who is authorized to administer Company's use of one or more specific Services.
- "Authorized Wire User" means each officer and/or employee of Company who has been designated as having the authority to initiate wire transfers on Company's behalf. For purposes of wire transfers initiated through the SWIFT network or utilizing Digital Banking or any other Service or platform provided by Cadence, "Authorized Wire User" shall also mean those authorized to set up/initiate wire transfer deliveries in those channels, platforms or products, including, but not limited to, the Authorized Administrator and those authorized by the Authorized Administrator to initiate/approve wire transfers in such channels, platforms or products.
- "Available Funds" means funds on deposit in a Designated Account for use with a specified Service and available for withdrawal in accordance with Cadence's applicable funds availability schedule.
- "Business Day" means (i) each Monday through Friday on which Cadence's offices are open for business, excluding all holidays recognized by the Federal Reserve Bank System, and (ii) with respect to ACH transactions, each day the Federal Reserve's ACH systems for transmitting Entries are open for processing and Cadence's office is open for business.
- "Business Rule(s)" means instructions provided by Company to Cadence that determine whether or not Presented ACH Transactions and/or Presented Check Items are presented as Exception Item(s).
- "Cadence Check Printing Specification Sheet" means the written requirements of Cadence, as modified, amended or superseded from time to time, for checks utilized in connection with Accounts, which may include, without limitation, requirements regarding Company logos, electronic, facsimile, device or machine signatures, addresses and other information to be printed on checks.
- "Check" includes all "items" as defined in Section 4-104(a)(9) of the UCC, and all "substitute checks" as defined in the Check Clearing for the 21st Century Act (sometimes referred to as the Check 21 Act or Check 21) and Regulation CC of the Board of Governors of the United States Federal Reserve Board.
- "Check Positive Pay" means payment fraud protection on Designated Account(s) with verification of Presented Check Item(s) against Business Rules and information included in the outstanding Issue Files provided to Cadence by Company when Presented Check Item(s) is/are submitted to Cadence for payment.
- "Check Positive Pay with Payee Match" means payment fraud protection on Designated Account(s) with verification of Presented Check Item(s) against Business Rules and information included in the outstanding Issue Files, including payee name, provided to Cadence by Company when Presented Check Item(s) is submitted to Cadence for payment.
- "Check Setup" means the necessary information to complete the design of checks to be printed for and on behalf of Company, as detailed in the Cadence Check Printing Specification Sheet.
- "Check Report" means a report provided by Cadence to Company, describing Presented Check Items, which includes the date the check is presented, check number, amount and image of the Presented Check Item(s); and is received by Cadence from the bank of first deposit and is not reviewed for further validation.
- "Collected Funds" means (a) funds in the Company Account for which Cadence either has received final settlement or has posted a temporary credit or debit in anticipation of final settlement, (b) funds available to Company from a line of credit that may be drawn upon and swept into the Company Account on an automated basis, and (c) funds available to Company from an investment account that may be drawn upon and swept into the Company Account on an automated basis. Funds otherwise available from a line of credit or investment account that are or may be accessed on a manual sweep basis are not Collected Funds for the purposes of this definition.
- "Company Account" has the meaning set forth in Section 2.g. of these General Provisions.
- "Company Payment Site" means any interactive Internet Payment site hosted by Cadence where Payers may optionally view bills and make payments to Company over the Internet.
- "Corrected Entry" means an Entry submitted to correct an Incorrectly Formatted Entry.

- "Customer" means the person, entity or other organization holding the account at a Participating Depository Institution to which an Entry relates. The term "Customer" includes, without limitation, Company's customers and the employees of those customers, Company's employees and, with respect to the concentration of Funds, Company and its affiliates.
- "Data Collection Agency" means the third-party service provider selected by Cadence from time to time to provide data collection services.
- "Default Disposition" means the predetermined decision to pay or return Exception Items provided by Company to Cadence to be used when Company does not provide a pay or return decision to Cadence relative to Exception Items prior to the Disposition Deadline.
- "Designated Account" means, with respect to a specified Service, the Company Account or Company Accounts (if any) designated from time to time in the Service Instructions for such Service. Where no such account is specified, Cadence may treat any Company Account as a Designated Account.
- "Designated Persons" means the individuals designated by an Authorized Administrator (or by a Security Administrator designated by an Authorized Administrator) to Cadence in writing who shall be the Designated Persons for purposes of this Agreement.
- "Disposition Deadline" means, except as otherwise provided in this Agreement, the time by which Company is required to provide Cadence with a "pay" (honor) or "return" (dishonor) decision on each Draft presented for payment on an Appropriate Business Day or any Presented Check Items or any Presented ACH Transactions.
- "Documentation" means the printed user materials provided in connection with any Software.
- "Document Management Imaging System" means the use of a computer system and software to store, manage and track electronic documents and electronic images of paper-based information captured through the use of a document scanner.
- "Domestic Wire Transfer" means an outgoing funds transfer in USD sent either: (i) to the beneficiary's account at a bank located in the United States; or (ii) to a bank located in the United States, for credit to the beneficiary's account at a bank located outside the United States.
- "Draft" or "Drafts" means documentary drafts drawn on Company, payable at or through Cadence and received in collection letters or as demand items.
- "Draft Service" means the presentment to Company as a Draft is received and its disposition in accordance with any user guide, reference material, applicable law, regulation, rule or industry practice.
- "Drawdown Wire Transfer Request" is an instruction by Company to debit an account held by Company or another party at a different financial institution where the party holding the account to be debited must authorize the requested wire transfer. If the transfer is authorized, Company will receive an incoming wire for deposit into Company's account specified in the Drawdown Wire Transfer Request.
- "ECCHO Rules" means the operating rules and operating guides of the Electronic Clearing House Organization, as they may be modified from time to time.
- "Electronic Payment" means, unless otherwise specified in connection with a specific Service, a payment that is fulfilled via an ACH Entry.
- "Entry" or "Entries" means, with respect to ACH transactions, an ACH entry file, including any batches contained within a file, submitted by Company to Cadence for processing of the services, and with respect to Funds transfers, an electronic transfer of Funds to Company's accounts from third party accounts or from Company's accounts and for automatic deposit programs.
- "Entry Settlement Limit" means the maximum aggregate amount of In-Process Entries permitted to be outstanding at any time, which amount shall be separately communicated to Company by Cadence in writing from time to time.
- "Entry Window" means those specific times in each Business Day during which Cadence may collect and process Entries via its ACH systems.
- "EOB" means explanation of benefits.
- "ERA " means electronic remittance advice.
- "Exception Item(s)" means a Presented ACH Transaction or a Presented Check Item that does not match a Business Rule and/or Issue File provided by Company to Cadence.
- "Exception Report" means Exception Item(s) and corresponding image(s) available through Digital Banking.
- "Fed" means the Federal Reserve Bank, to which all Entries for recipients to be paid through other financial institutions must be sent.
- "Financial Agency" means an entity that is authorized by applicable law to accept deposits or is in the business of issuing money orders or transferring funds.
- "Funds" means Company's funds held at Cadence or another financial institution which are available for transfer under this Agreement, whether held in the form of investments, instruments, or balances.
- "Funds Transfer" means either or both Domestic Wire Transfers and International Wire Transfers.
- "Incorrectly Formatted Entry" means an Entry for which the ACH file, as determined by Cadence in its sole discretion, fails to conform to the requirements of any and all applicable NACHA Rules.

- "In-Process Entries" means the aggregate dollar amount of all credit or debit Entries initiated by Company and in process on any date for which settlement has not occurred with respect to credit Entries, or the applicable period for the return of items has not expired with respect to debit Entries.
- "Intellectual Property Rights" means, with respect to each Service, all rights, title and interests in and to the Software (including, without limitation, the source code, listings, magnetic media and any support materials related thereto) and Documentation relating to or utilized in connection with the Service, as well as the ideas and concepts incorporated in those items, and all modifications, improvements and enhancements thereof and additions thereto, including all trade secrets, copyrights and other associated proprietary and intellectual property rights pertaining thereto.
- "Intended Transmission Date" means the last date on which Cadence may transmit an Entry to the Fed in order for the Entry to settle with the recipient on the Requested Settlement Date.
- "International Wire Transfer" means an outgoing wire transfer sent either: (i) in USD to the beneficiary's account at a bank located outside the United States, or (ii) in foreign currency to the beneficiary's account at a bank located outside the United States.
- "IRS" means the United States Department of the Treasury's Internal Revenue Service.
- "Issue File" means a file provided by Company describing checks drawn by Company (or its authorized agent) on a Designated Account, which includes the exact and complete date, check number, amount and payee name (if Company subscribes to Check Positive Pay with Payee Match) of each Presented Check Item drawn on a Designated Account; is received by Cadence in the format and medium, by the deadlines, and at the place(s) specified in Cadence's Service Instructions for Positive Pay Services; and is verified by Cadence in compliance with the security procedures provided by Cadence.
- "Maintenance Window" means a period of time designated in advance by Cadence, during which software updates may be performed that could cause disruption of Services.
- "Mobile App" means any application utilized by Cadence to provide Services via a Mobile Device. Each user of a Mobile App must agree to the Mobile App agreement, if any, before utilizing the Services offered through the Mobile App, which are specifically incorporated herein as if fully set out. In the event of a conflict between the terms of any Mobile App agreement and this Agreement, the terms of this Agreement will control.
- "Mobile Device" means any data-enabled electronic mobile device (for example, a cell phone or tablet) that can send and receive information using technology compatible with the Mobile App.
- "NACHA Rules" mean the operating rules and operating guides of the applicable regional clearing house association and the National Automated Clearing House Association ("NACHA"), as they may be modified from time to time.
- "Network" means the network of parties, retained from time to time by Cadence, in its sole discretion.
- "OFAC" means the United States Department of the Treasury's Office of Foreign Asset Control.
- "Online Services" mean those Services available through internet-connected devices including, computers and Mobile Devices via the Mobile App.
- "Overlimit Entry" means an Entry the amount of which would cause the aggregate amount of In-Process Entries to exceed the Entry Settlement Limit.
- "Overlimit Prefund Entry" means an Entry that would cause the aggregate amount of all Entries submitted for Services to exceed the Prefund Entry Settlement Limit.
- "Participating Depository Financial Institutions" means, collectively, Cadence and all other financial institutions holding accounts of Company and Customers which are accessible through an applicable regional clearing house association.
- "Payables" means a payments outsourcing service that provides one or more of the following: check print and mail; card payment; Funds Transfer; and Electronic Payment processing options.
- "Payee Number" is a unique number assigned by Company to identify a Payee.
- "Pay Instructions" means instructions by Company to Cadence ordering Cadence to pay checks specified by Company, which instructions specify the exact and complete dates, check numbers and amount of the checks, and which instructions are received by Cadence by the Disposition Deadline.
- "Payment Data" means all information associated with Internet payments initiated by Customers using a Company Payment Site.
- "Payment File" refers to a file containing one or more electronic Payment Records sent by Company to Cadence for processing.
- "Payment Instruction" means, with respect to any Positive Pay Service, an instruction provided by Company to Cadence ordering Cadence to pay or return Presented Check Items or Presented ACH Transactions specified by Company, which instructions are received by Cadence in the format and medium, and by the deadline, specified by Cadence's Service Instructions for Positive Pay Services.
- "Payment Number" is a number assigned by Company to each payment within a Payment File to facilitate payment reconciliation.
- "Payment Record" means a detailed instruction to execute a payment, which detail must include the payment amount, Payee name, Payment Number and other applicable information.
- "Payment System Rules" mean the rules of any private or governmental group that govern a payment system through which funds may be transmitted in connection with a Service provided under this Agreement, including without limitation,

the NACHA Rules, the Visa rules, the MasterCard rules, the rules of the Electronic Check Clearing House Organization, the rules of the Federal Reserve System and the rules of the Consumer Financial Protection Bureau.

- "Prefund Entry Settlement Limit" means the maximum aggregate amount of all In-Process Entries initiated by Company but not yet settled that Cadence will permit to be outstanding for Services at any given time. Cadence has separately communicated the Prefund Entry Settlement Limit to Company in writing, and may increase or decrease this Limit by written notice to Company at any time.
- "Presented ACH Transaction" is an ACH debit or credit presented to Cadence for processing through ACH or other designated clearing systems.
- "Presented Check Item" is a check apparently drawn by Company on a Designated Account and presented to Cadence for payment either at a Cadence branch or through the check collection system.
- "Provider" means each of Cadence and any supplier, licensor, service provider or vendor to Cadence.
- "Regulation CC" means Regulation CC of the Board of Governors of the United States Federal Reserve Board pursuant to the Expedited Funds Availability Act, 12 U.S.C. §§ 4001 et seq.
- "Regulation E" means Regulation E of the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. §§ 1601 et seq.
- "Requested Settlement Date" means the date on which Company initially requests an Entry to settle with its recipient.
- "Security Administrator" means the person or persons designated by an Authorized Administrator to establish Designated Persons or authorized users of any Service.
- "Security Code" has the meaning set forth in Section 2.k. of these General Provisions.
- "Self-Service Code" means any back door, time bomb, drop dead device or other software routine designed to damage or disable a computer program or hardware automatically with the passage of time or under the positive control of a person other than a licensee of the program.
- "Self-Service Start Date" means the date identified by Cadence on which use of and access to the Services and User privileges shall be established, controlled and administered primarily by one or more Security Administrator(s) identified by Company.
- "Service Instructions" mean, for any Service provided under this Agreement, the specific instructions by which a Service will be provided to Company, and includes any service instruction, implementation form, exhibit or schedules completed by Company along with any user guides, service guides, software licenses, templates, operating procedures, security procedures, specifications, service level agreements, definition of scope and deliverables ("DSD") or other descriptions, materials or documentation provided or made available by Cadence and applicable to that Service.

- "Service Provider" means a third party that provides services, including, without limitation, subcontractors, couriers, vendors, processors and all other agents. With respect to Cadence, its Service Providers shall include any other financial institution and any payment system that Cadence may use in providing a Service.
- "Settlement Date" means, with respect to any Entry, the date on which such Entry is reported to the account of Cadence by the applicable Federal Reserve Bank in accordance with the Rules.
- "Software" means the computer software used in connection with any Service, and with any transfers made under this Agreement.
- "UCC" means the Uniform Commercial Code, as adopted in the state in which Cadence maintains the Company Accounts (as hereinafter defined).
- "USD" means United States dollars.
- "Vendor Database" means the database of Vendor data captured by the Vendor Portal.
- "Vendor Portal" refers to a self-enrollment website used in connection with the Payables Service where Payees can complete online enrollment to create their user profile and provide the necessary information to receive electronic payments. Enrolled Vendors receive payment notification via secure email and can access the Vendor Portal to view payments electronically. Vendors also have the ability to download payment and remittance details in an electronic data file.
- "Virtual Token" means a unique one-time password generated for Designated Persons each time they access the Payables Service. It is used to prove one's identity electronically as a form of authentication.

Other initially capitalized terms used but not defined herein have the meanings set forth in the sections of this Agreement in which such terms are used, or in the UCC.

- f. Fees.** Company will pay Cadence in immediately available funds when due the fees and charges listed in the then current fee schedule or otherwise chargeable to Company in connection with each Service provided ("Fees"). Notwithstanding anything herein to the contrary, Cadence may change the amount of such fees and charges, or add new fees and charges, after providing Company with at least ten (10) days notice prior to the effective date of the change or addition. Additionally, Company will pay and reimburse Cadence for all governmental and third party fees or taxes arising out of or related to Cadence providing Services to Company. For each Service provided to Company under this Agreement, Company authorizes and directs Cadence to debit the Company Accounts: (a) on or before the 15th of each month for the amount of all such fees then due, and (b) at other times as necessary to pay all other amounts owing from time to time under and as provided for in this Agreement. If the parties agree, Cadence will invoice Company on a monthly basis and Company shall pay such invoice immediately upon receipt. Fees shall be payable through the maintenance by Company of compensating collected balances in specified Company Account(s). The compensating collected balance requirement will be

measured by Cadence by profitability analysis of the Company's specified Company Account(s) and any such measurement shall be in Cadence's sole discretion using whatever criteria it deems appropriate. If the Company Accounts are of a type not eligible for profitability analysis, Fees which are charged to a Company Account shall be reflected on Company's monthly statement.

**g. Company Account.** Company will at all times maintain with Cadence one or more deposit accounts in the Company's name (each a "Company Account"). Company will at all times maintain with Cadence in the Company Accounts collected balances sufficient to reimburse Cadence for all items, orders for payment, and other amounts which Cadence pays on Company's behalf or are chargeable to Company in connection with any Service. Each Company Account and all other deposits and other accounts of the Company located at Cadence shall each be subject to the terms and provisions of all Account Agreements relating to those accounts, as they may be amended and modified from time to time.

**h. Data Review.** Company has the sole responsibility for confirming the accuracy and validity of all information, data, entries, and processing services prepared and performed by Cadence. Company shall carefully review all reports prepared by Cadence and shall reject in writing incorrect daily reports within five (5) Business Days after receipt and all other reports provided by Cadence within ten (10) Business Days after receipt or within such time as required by the applicable Service. Company's failure to so reject any report constitutes (a) Company's acceptance of the report, and (b) notwithstanding the terms of the General Provisions, and except, as prohibited by law, the release of Cadence from any and all liability of any kind arising under or in connection with the report. With respect to daily Services, Company must give Cadence notice within a reasonable time after receipt of the material or report containing an error but is agreed that for such errors, a "reasonable time" cannot exceed twenty-four (24) hours.

**i. Authorized Administrator; Dual-Controls Waiver.** Company shall designate each Authorized Administrator in writing who is authorized to administer Company's use of one or more specific Services. Each Authorized Administrator may designate in writing Security Administrators and/or Designated Persons for a specific Service, including but not limited to, authorized ACH users and authorized wire users. Cadence may require that the designation of any Authorized Administrator, Security Administrator, Designated Person, authorized ACH user or authorized wire user be made on Cadence's form of authorization certificate. Cadence is entitled to rely on the continuing authority of each Authorized Administrator, Security Administrator, Designated Person, authorized ACH user and authorized wire user until Cadence is notified otherwise in writing by Company and has a reasonable opportunity to act in response to such notice.

ii. Company acknowledges and agrees that each Authorized Administrator designated by Company in connection with this Agreement, and each Security Administrator, Designated Person and End User designated in connection with any Service, has the full authority, individually, and notwithstanding any other resolution, authorizing document or instruction previously delivered to Cadence requiring joint approval, dual controls or similar process for transacting upon Company Accounts (each and collectively, "Prior Limitations"), to take any and all actions with respect to the Services (in the case of the Authorized Administrator) or the specific Services for which such person is designated as Security Administrator, Designated Person or End User, including, without limitation, the giving and making of payment orders and instructions of any kind or sort. WHERE COMPANY HAS PROVIDED CADENCE WITH PRIOR INSTRUCTIONS, SUCH INSTRUCTIONS ARE EXPRESSLY WAIVED WITH RESPECT TO THE SERVICES AND ALL ACTIVITIES AND TRANSACTIONS CONSUMMATED THROUGH OR IN CONNECTION WITH THE SERVICES.

**j. Standard of Care; Limitation of Liability; Indemnity.**

i. Standard of Care. Cadence agrees to use substantially the same type of procedures and equipment in performing the Services requested by Company as Cadence uses in performing similar services on its own behalf. These standards of care, and Cadence's compliance with any instructions given it by Company, or believed by Cadence to be given it by Company, shall constitute proper, reasonable, and ordinary standards of care.

ii. Limitation of Liability. Subject to and without limiting any other provision in this Agreement, or in any other document from time to time entered into between Cadence and Company, Cadence's liability to Company for its failure to provide any Service or other service to Company is limited to the amount of liability imposed by applicable law, including, but not limited to, all liability provisions set forth in the UCC as adopted in the state where Cadence maintains the Company Accounts; provided that under no circumstances shall Cadence's liability exceed the amount of actual costs and damages incurred by Company directly as a result of such failure; provided further that Cadence shall not be liable under any circumstances for any consequential, special, punitive, incidental, or similar damages arising from or in connection with the Services to be provided to Company by Cadence.

iii. Calculation of Costs and Damages. In determining the actual costs and damages incurred by Company directly as a result of any failure by Cadence or any Service Provider, including any acts or omissions of Cadence or any Service Provider that constitute gross negligence or willful misconduct, such costs and damages shall be limited to interest on the funds at issue at the "federal funds rate" paid by Cadence at the close of business on each day such act or omission remains uncorrected; provided, however, if Cadence or such other Service Provider is unable to recover funds from a person or entity who or which receives such funds as a result of Cadence's



such Service Provider's acts or omissions and who has no claim to such funds, Cadence or such Service Provider, as appropriate, shall be liable for Company's actual loss, not to exceed the amount of unrecovered funds to which such unauthorized recipient has no claim, plus interest at the rate described above.

- iv. **Sole Responsibility to Correct Error.** Except as required by applicable law, Cadence's sole responsibility for any error is to correct that error, provided Cadence has received notice within a reasonable time. Correction of errors shall be Company's sole and exclusive remedy.

Notwithstanding the foregoing, in the event Cadence cannot correct an error, and solely in the event the Company incurs a direct actual loss as a result thereof which is due to the gross negligence or willful misconduct of Cadence with respect to any entry or entries, Cadence's maximum liability to the Company shall be limited to (a) actual money damages not to exceed the actual money damages sustained and proven by the Company, reduced on a comparative basis by the negligence, if any, of Company, or (b) the total amount due from the Company for the specific Services in connection with the uncorrected error(s) for the month during which those Services in connection with the uncorrected error(s) were performed, WHICHEVER IS LESS.

- v. **Indemnity. COMPANY WILL INDEMNIFY AND HOLD CADENCE, ITS SHAREHOLDERS, OFFICERS, EMPLOYEES, DIRECTORS, AGENTS, AFFILIATES, SUBSIDIARIES, PREDECESSOR AND SUCCESSOR COMPANIES, ATTORNEYS, AND CONTRACTORS, HARMLESS FROM ANY CLAIM, LOSS, PENALTY, ASSESSMENT, COST, OR DAMAGE, WHETHER IN CONTRACT OR IN TORT (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES), ARISING UNDER THIS AGREEMENT, OR IN CONNECTION WITH THE SERVICES PROVIDED UNDER THIS AGREEMENT, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THOSE ASSERTED BY THIRD PARTIES FOR REIMBURSEMENT OR DAMAGES AND THOSE WHICH ARISE OUT OF OR UNDER THE ELECTRONIC FUNDS TRANSFER ACT, ANY APPLICABLE STATE ELECTRONIC FUND TRANSFER RULES OR REGULATIONS, OR ANY RULES OR GUIDELINES OF ANY AUTOMATED CLEARING HOUSE. COMPANY WILL, AT ITS OWN EXPENSE, DEFEND ANY ACTION OR PROCEEDING BROUGHT AGAINST ANY PERSON SUBJECT TO INDEMNITY HEREUNDER.**

- k. **Security Procedures.** Except as otherwise set forth in this Agreement for any specific Service, Cadence and Company agree to use the following security procedures in connection with the Services:

i. **Access Devices.**

A. Prior to Company's first use of any Service, Cadence shall provide the Authorized Administrator an Access Device consisting of a customer identification code (the "Customer ID"), a user identification code ("User ID"), and a user password ("User Password"). Cadence shall provide each

Designated Person an Access Device consisting of an individual User ID and User Password.

B. Following Company's first use of any Service, Cadence shall provide the Authorized Administrator and/or Security Administrator an Access Device, consisting of a customer identification code (the "Customer ID"), a user identification code ("User ID"), and a user password ("User Password"). The Security Administrator shall assign to each Designated Person an Access Device consisting in whole or in part of an individual User ID and User Password. Unless otherwise specified in the Service Instructions for a Service, it is the responsibility of the Security Administrator to set-up Access Devices for each Designated Person.

In addition to the Access Devices described in this Section, the Service Instructions for each Service may require a Security Administrator and/or each Designated Person (sometimes called a "User") to select one or more multi-factor authentication options (which may include, from time to time, hard tokens or soft tokens, and/or such other options as Cadence may from time to time make available). Access Devices individually (and together with the multi-factor authorization option, when required) is referred to as "Security Codes".

Company agrees that use of the Security Codes will authenticate the identity of each User and verify all requests, communications or other instructions submitted through a Service. In order to prevent unauthorized access to Company Accounts and unauthorized use of any Service, Company agrees to maintain the confidentiality of the Security Codes, and to instruct all Authorized Administrators, Security Administrators and Users to maintain the confidentiality of the Security Codes. Company also agrees to promptly review each statement sent by Cadence for any Company Account that is accessible through any Service in order to detect any unauthorized transactions. To the fullest extent permitted by applicable law, Company is responsible for all transactions on any Company Accounts initiated using any Security Codes. Company is responsible for maintaining the confidentiality of all Security Codes, and for implementing the necessary internal controls, balancing and reconciliation functions, and audit procedures to prevent unauthorized use of the Services.

Company agrees that the use of the Security Codes constitutes a commercially reasonable security procedure for Company. Company also agrees to be bound by all requests, communications, or other instructions to Cadence that are initiated using the Services and in compliance with this security procedure (including any transfer, payment instruction initiation or cancellation), regardless of whether or not Company actually authorized the request, communications and other instructions. If any request, communications or other instructions initiated through any Service and accepted by Cadence in compliance with this security procedure contains any error, to the full extent allowed by law, Company shall be liable for, and shall indemnify Cadence against any claims, losses and expenses Cadence may incur that arises from or relates to the

erroneous request, communications or other instructions. Cadence's records demonstrating compliance with this security procedure will be deemed conclusive proof that the payment order or other instruction received by Cadence was authorized and that Company is bound by those requests, communications or other instructions.

Company agrees to download and install any and all security software required by Cadence and to install all updates, patches and/or any other amendments or modifications to the same when directed by Cadence to do so. Company may not be allowed to access and utilize one or more Services unless any and all required security software is installed on all desktop computers, laptop computers or Mobile Devices (as applicable) accessing the Services.

Following Company's first use of any Service, if Company requests, based on technical or administrative constraints, that Cadence perform any or all set-up functions for Company with respect to any Service, Cadence may agree to do so; provided, however, that Company hereby acknowledges that Company (and any Security Administrator) remain responsible for all assigning Access Devices and Security Codes to Users and actions taken by Company, the Security Administrator and Users with respect to

- ii. Multi-Factor Authentication. At Company's option, or as required for use of some Services, Authentication Tokens are available to Company as part of the security procedures and to authorize individuals to receive a randomly generated numeric authentication code and initiate certain transactions or issue certain payment instructions. Company may select that each Designated Person receives a physical token or soft token via email or Mobile Device to receive authentication codes to verify request, communication or other instructions ("Authentication Token"). To receive an Authentication Token, the Designated Person must (A) be authorized (by Cadence prior to Company's first use of any Service, and by a Security Administrator following Company's first use of any Service); (B) provide certain information designated by Cadence regarding each Designated Person with which Cadence can, when necessary, confirm the identification of each Designated Person. Cadence will provide the Security Administrator with physical Authentication Tokens upon request. The Authorized Administrator is responsible, prior to Company's first use of any Service, for delivering an Authentication Token to each applicable Designated Person, and, following Company's first use of any Service, the Security Administrator is responsible for assigning and delivering an Authentication Token to each applicable Designated Person.

A Designated Person should not request that soft Authentication Tokens be sent to unsecure devices. Company agrees to instruct and monitor each Designated Person accordingly.

Company agrees to instruct each Designated Person: to maintain the confidentiality and safeguard the security of the Authentication Token; immediately to notify Cadence (prior to Company's first use of

any Service) and a Security Administrator if the Authentication Token is lost so the Authentication Token can be disabled and the Mobile Device can be unregistered; and/or maintain the confidentiality and security of the process to request or access a soft Authentication Token and any devices that may request or access the same (including, but not limited to, computers, email accounts and Mobile Devices).

Company agrees to hold harmless Cadence from and against any loss caused by the failure by any Designated Person to select, change, or to maintain the confidentiality of any multi-factor authentication device or process and expressly assumes the risk of loss with respect to any action initiated using any Authentication Token or other multi-factor authentication process that has not been maintained and/or protected according to the terms of this Agreement.

Cadence shall not be liable to Company for any damages incurred for its failure to provide a soft Authentication Token or otherwise make available any multi-factor authentication process if such failure is because of circumstances or events outside the reasonable control of Cadence, including, but not limited to, power failures, telecommunications failures, Internet server outages, lack of cellular or mobile data service, or failure by Company (through a Security Administrator or otherwise) or the Designated Person to provide Cadence with accurate and/or complete delivery instructions.

If information from a Designated Person's wireless carrier or third-party provider indicates to Cadence that the mobile number provided to Cadence by such Designated Person has been changed, changed networks, is no longer registered to a Designated Person, or is otherwise not authorized or able to receive messages, Cadence may stop providing access to multi-factor authentication processes associated with that number. In that event, a Security Administrator or the Designated Person must update the applicable mobile number in the applicable Service before such number can be used for multi-factor authentication again. Company further agrees that Cadence will in no event have any liability: for any delays or failure in providing text messages or cellular telephone calls to a Designated Person, if the text message or cellular telephone call is intercepted altered and/or forwarded to any party other than the Designated Person, or if the text message or cellular telephone call is infected with intrusive or destructive programs during the delivery process. Under no circumstances will Cadence be liable for any consequential, special, punitive, incidental, or other damages arising from or in connection with any delay or failure to provide any Authentication Token or other component of a multi-factor authentication process.

- iii. Safe Keeping of Security Codes. Company acknowledges that while Cadence will attempt to ensure that Security Codes and all electronic communications between Company and Cadence are encrypted, scrambled or otherwise protected against interception by a person whose access to a

Service is unauthorized, Company nonetheless accepts and assumes all risk of loss or dissemination of information attributable to the electronic communications between Company and Cadence through the Services. Company, the Authorized Administrator, the Security Administrator and each Designated Person are responsible for safekeeping its Security Codes. Company, the Authorized Administrator, the Security Administrator and Designated Persons shall not, at any time, permit access to the Services by any person who does not need to obtain access to the Services consistent with Company's rights hereunder.

Prior to Company's first use of any Service, if a Designated Person loses or forgets a Security Code (or any portion thereof, including an Authentication Token), the Designated Person should contact Cadence for assistance.

Following Company's first use of any Service:

A. If a Designated Person loses or forgets a Security Code (or any portion thereof), the Security Administrator should provide assistance. If a Security Administrator loses or forgets a Security Code (or any portion thereof), another Security Administrator or, if there is none, the Authorized Administrator, should provide assistance. If an Authorized Administrator loses or forgets a Security Code (or any portion thereof), the Authorized Administrator should contact Cadence for assistance.

B. If a Designated Person loses an Authentication Token, the Designated Person shall immediately notify the Security Administrator who shall disable the lost Authentication Token. A Designated Person shall thereafter request from the Security Administrator a replacement Authentication Token. If the Security Administrator needs additional Authentication Tokens to assign to Designated Persons, the Security Administrator must contact Cadence in writing. The request for a replacement Authentication Token may be electronically sent to Cadence. After receiving a written communication requesting one or more Authentication Tokens, Cadence will mail the Authentication Token(s) to the Security Administrator who will assign the Authentication Token(s) to Designated Person(s).

C. If Company believes that one or more Security Codes have become known or obtained by unauthorized persons (whether or not employed by Company), the following procedures apply: if, under the terms of this Section, the Security Code is one for which the Security Administrator would be responsible for changing if the Security Code was lost, the Security Administrator shall immediately change the Security Code; or the Security Code is one for which the Security Administrator or Designated Person would be required to contact Cadence if the Security Code was lost, the Security Administrator or Designated Person shall immediately notify Cadence. If Company believes that an Authentication Token has become known or obtained by unauthorized persons (whether or not employed by Company), it is the responsibility of each Designated Person immediately to follow the procedures set forth above in this Section, for lost

Authentication Tokens. Additionally, Cadence may change or disable any Security Code or Authentication Token at any time and for any reason. If Cadence takes such action, Cadence will make every reasonable effort to notify Company promptly. Cadence assumes no responsibility to discover, audit, or report to Company any possible breach of security by Company's agents or representatives or anyone else for unauthorized disclosure or use of Security Codes or Authentication Token(s).

D. Company acknowledges that the security procedures in this Section constitute commercially reasonable security procedures for Company's business and the type and volume of transactions to be conducted hereunder.

**l. Actual Receipt.** Actual receipt by Cadence of proper

notice or delivery of any information (including stop payment, return, process, dishonor, and similar notices required under this Agreement or any agreement executed by Company from time to time) from Company before the deadline required by Cadence in its sole discretion is an express and condition precedent to Cadence's related obligation to perform any service or to meet any deadline imposed by law, regulation, or any person. Company bears the burden of proof of the time and manner of Cadence's actual receipt of any notice or transmittal of information.

**m. Term; Termination.** Subject to the following

provisions, the terms and conditions contained in this Agreement shall continue in effect so long as Company is using or has requested from Cadence a Service; provided, however, that either party shall have the right, upon thirty (30) days' written notice to the other, to terminate any or all Services then being provided by Cadence to Company with or without cause, provided that all obligations arising prior to termination shall not be affected by termination. Further, Cadence may terminate any or all existing Services at any time without notice to any party upon the happening of any of the following events or circumstances: (a) Company's violation or breach of any of the terms or conditions contained in this Agreement or in any agreement to provide specific Services; (b) misrepresentation by Company of any material fact in any statement, report, or representation given or made to Cadence in any document or writing; (c) receipt by Cadence of any legal process with respect to any of Company's deposit accounts; (d) Company's business failure, insolvency, or bankruptcy; (e) the default or violation by Company, or any subsidiary or affiliate of Company, in any document, instrument or agreement between Cadence and Company or between Cadence and that subsidiary or affiliate; (f) Cadence is required to terminate pursuant to any law, regulation or supervisory regulatory agency; (g) Cadence determines in good faith that cause exists, in its sole discretion, for terminating this Agreement; or (h) upon closing of Company Accounts. All sums Company owes to Cadence for any Service shall be due and payable in full immediately upon the termination of the service. All warranties, indemnities, representations, and covenants made before termination shall survive and be binding and

enforceable after termination of Services, and termination of this Agreement or any Service shall not affect the rights or obligations of either party which may have arisen or accrued prior to such termination. Upon termination of any Services for any reason, Cadence shall have no further obligations or duties.

**n. No waiver.** No delay or failure of Cadence to exercise any option or right set forth in this Agreement shall constitute a waiver of that option or right. Cadence's waiver of any right, agreement or option on one occasion shall not constitute or be deemed a waiver as to any future occasion.

**o. Representations and Warranties.**

i. Company represents, warrants, and covenants to and with Cadence: (i) it is duly organized, validly existing, and in good standing in the state of its organization; (ii) the execution, delivery and performance of all documents or agreements provided in connection with any Service are within its powers, have been duly and validly authorized, and do not contravene its charter, by-laws, operating agreement or governing documents or any indenture, agreement, undertaking, law, regulation or order binding it; (iii) no approval, consent or authorization of any government authority is necessary for Company to obtain any Service from Cadence; (iv) the terms and conditions contained in this Agreement are valid and binding obligations of Company enforceable in accordance with their terms; and (v) Company expressly warrants that Company is not a "Consumer" as defined in 12 CFR 1005.2(e) of Regulation E promulgated by the Consumer Financial Protection Bureau pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. §§ 1601 et seq., and that Company will use each Service solely for business, and not personal, family or household purposes; and (vi) Company expressly represents and warrants its intent to conduct transactions through the Services electronically, that any and all consents, approvals, signatures, confirmations, or other, similar actions, may be given electronically, and that all such transactions and actions, whether given electronically or otherwise as herein provided, be binding upon and enforceable against Company according to the terms of this Agreement.

ii. EXCEPT AS REQUIRED BY LAW, CADENCE MAKES NO REPRESENTATIONS, WARRANTIES, AGREEMENTS, OR GUARANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION: (i) ANY REPRESENTATIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO ANY ITEMS OR SERVICES PROVIDED BY CADENCE TO COMPANY; (ii) ANY WARRANTIES ARISING UNDER THE UCC AS ADOPTED IN THE STATE IN WHICH CADENCE MAINTAINS COMPANY'S ACCOUNTS; (iii) ANY WARRANTIES WITH RESPECT TO COMPLIANCE WITH THE ELECTRONIC FUNDS TRANSFER ACT OR REGULATION E OF THE BOARD OF GOVERNORS OF THE UNITED STATES FEDERAL RESERVE BOARD PURSUANT TO THE CONSUMER CREDIT PROTECTION ACT, AS AMENDED, 15 U.S.C. §§ 1601 ET SEQ.; (iv) ANY RULE OR REGULATION OF ANY AUTOMATED CLEARING SYSTEM; OR (v) ANY STATE

ELECTRONIC FUNDS TRANSFER STATUTE OR REGULATIONS.

**p. Arbitration; Actions; Jury Waiver.** Any controversy or claim arising out of or relating to any Service provided under this Agreement shall be settled by the alternative dispute resolution provisions in the Account Agreement.

**q. Notices.** Notices and communications from Cadence to Company regarding any Service may be in writing, postage prepaid by first class mail or hand-delivered, posting to the Digital Banking Portal, Mobile App or any other electronic interface through which the Services are accessed, or may be delivered electronically by facsimile, e-mail or text message (to the physical address, fax number, email address or cellular telephone number on file with Cadence). Except as otherwise expressly permitted hereunder, notices and communications from Company to Cadence regarding any Service shall be in writing, postage prepaid by first class mail, or hand-delivered to the following address:

Cadence Bank Treasury Management Operations  
2910 West Jackson Street, Bldg A  
Tupelo, MS 38801

Cadence may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by Cadence; provided that approval of such procedures may be limited to particular notices or communications.

**r. Changes.**

i. Cadence may make changes to the terms and conditions contained in this Agreement at any time from time to time by notice thereof to Company. Such changes shall automatically become effective ten (10) days after the date of such notice unless rejected by the Company within such ten (10) day period. If the Company rejects any such change, in writing, then all Services shall automatically terminate. Notwithstanding the foregoing, Cadence may change any term or condition without prior notice if Cadence, in its sole discretion, determines that the change is necessary: (A) to avoid potential loss to Cadence or the Company, (B) due to circumstances that substantially affect Cadence operations, or (C) to maintain or restore the security of a funds transfer system or deposit account. If such changes are made, Cadence will make reasonable efforts to give notice to Company as soon as possible.

ii. Any changes or modifications requested by Company to the Services provided by Cadence are subject to the written approval of Cadence. If Cadence so elects, price changes may be implemented concurrently with the requested changes or modifications. The Company shall reimburse Cadence for all costs and expenses required to implement any changes or modifications specifically requested by Company.

iii. The terms and conditions of this Agreement shall be deemed to be amended automatically, without notice to either party, to comply with any statute,

regulation, or ruling of any government agency to whose jurisdiction Cadence is subject.

- s. **Eligible Accounts.** Cadence, in its sole discretion, will designate the specific types of Cadence accounts that are eligible to be used in connection with any Service, and may change these designations from time to time. Cadence reserves the right to refuse to provide a Service to any Company Account.
- t. **Joint Use of Services.** If Company requests, authorizes, and/or allows one of Company's affiliates or any other entity (such affiliate or other entity, a "Delegated Servicer") to request, initiate, maintain or use any Service on behalf of Company or to otherwise have access to any of Company's Services, then Company agrees that any and all instructions, transactions, requests, documents and/or files initiated by such Delegated Servicer or received by Cadence from such Delegated Servicer (or any individual authorized by such Delegated Servicer) through or in connection with such Service, shall be deemed to have been made by or received from Company and to have been fully authorized by Company. If Company requests, authorizes, maintains or otherwise uses any Service on behalf of an affiliate of Company (or any other entity), then Company (a) represents and warrants that it has been authorized by such affiliate or other entity to request, initiate, maintain and use such Service and to transmit instructions, transactions, requests, documents and/or files in connection with such Service on behalf of such affiliate or other entity, (b) agrees that it shall be liable for obligations under this Agreement as if such instructions, transactions, requests, documents and/or files had been made on behalf of Company, and (c) agrees that any account of such affiliate or other entity maintained at Cadence and used in connection with the Services may be deemed a Company Account under this Agreement.
- u. **Third Party Processors.** Upon Company's submission of a request for Services on which Company has designated a third party to provide payment, processing or files transferring services related to a Company Account ("Processor") and the approval of the Service Instructions for the applicable Service, or upon use of such Service, with a Processor, Company agrees:
  - i. Company has separately authorized the Processor to initiate certain payment and processing electronically to and from a Designated Account.
  - ii. Company hereby authorizes Cadence: to provide the Processor with all software, processor codes and instructional materials necessary for the Processor to initiate files or entries electronically to and from each Designated Account electronically, to process each file or Entry (including all related instructions or information) to or from a Designated Account that is initiated electronically using the processor codes in accordance with Company's instructions (each, an "Authorized Transaction").
  - iii. Each Authorized Transaction shall be deemed a file or transaction initiated by Company, and Cadence may rely upon each Authorized Transaction as a transaction properly authorized by Company without

further verification. Cadence shall have no responsibility for erroneous data provided by the Processor. Cadence is authorized to process each Authorized Transaction until: Cadence receives written notice from Company that Company has revoked its authorization for the Processor to initiate files or transactions or entries to and from any or all Company Accounts; and Cadence has had a reasonable opportunity to act upon Company's notice.

- iv. Company agrees to develop, implement and maintain effective policies and procedures to ensure that its Processors who may, at any time, initiate an entry or file on behalf of Company are fully trained, aware of, and are following and electronic system or network rules, including the NACHA Rules, and all state and federal laws and regulations.
- v. Company represents and warrants that its Processor will implement and maintain adequate information security measures to protect against unauthorized access to or use of as required for the applicable Service.
- vi. Company shall maintain a process for conducting due diligence and ongoing monitoring of its Processor to confirm that required security procedures and compliance standards are being met.
- vii. Notwithstanding any other provision of this Agreement or any other agreement between Cadence and Company, neither Cadence nor any Provider shall have any liability for any losses, damages, claims, judgments, costs or expenses (collectively, "Damages") incurred by Company that arise from or relate to Company's authorization of Processor to initiate files, instructions, orders or entries electronically to or from any Designated Account, the Processor's use of any electronic system or network for the initiation of these files or Entries, or any dispute of any nature whatsoever between the Processor and Company. The liability of Cadence or any other Provider for any Damages incurred by Company as a result of the acts or omissions of any Provider shall be limited to interest on the Damages at issue, which shall accrue at the "federal funds rate" for each day on which such act or omission remains uncorrected; provided, however, if Cadence or any other Provider is unable to recover any amount paid to an individual or entity that has no claim to such funds, such Provider shall be liable for Company's actual loss, not to exceed the unrecovered balance of the amount paid to the recipient that has no claim, plus interest rate described above. In no event shall any Provider be liable to Company or any third party for any indirect, consequential, special, punitive or exemplary damages. Company shall indemnify, protect and hold the Providers and their respective officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person") harmless from and against any and all Damages incurred by a Provider that arise from or relate to Company's authorization of Processor to initiate files or Entries electronically to or from any Designated Account or the Processor's use of any electronic system or network for the initiation of these files or Entries. Company will, at its own expense, defend any action or

proceeding brought against any Indemnified Person in connection with such Damages. In addition to the foregoing, all disclaimers and limitations on the liability of Cadence and the obligation of Company to indemnify Cadence with respect to the Processor's initiation of files or Entries to or from any Designated Account, whether under this Agreement or any other agreement between Cadence and Company, shall apply equally to all other Providers.

- viii. Notwithstanding any other provision regarding termination set forth in any third-party agreement, this Agreement or in any other agreement between Cadence and Company, Cadence may terminate at any time, effective immediately, Processor's ability to initiate files and Entries. Cadence shall use reasonable efforts to promptly communicate notice of the termination to Company and the Processor, and will thereafter provide written confirmation of the termination if the initial notice of termination was not communicated in writing. Cadence, at any time, may require Company or the Processor to execute additional documents or agreements in order for the Processor to continue to initiate files, instructions, orders or entries electronically to or from any Company Account.
- v. **Third Party Service Providers.** Upon Company's submission of a request for Services on which Company has designated a third party to provide payment, processing or file transferring services related to a Company Account ("Service Provider") and the approval of the Service Instructions for the applicable service, or upon use of service, with a Service Provider, the Company agrees:
  - i. Company has separately authorized the Service Provider to initiate certain payment and processing electronically (including but not limited to ACH Services described herein) to and from a Company Account ("Designated Account").
  - ii. Company hereby authorizes Cadence: (i) to provide the Service Provider with all software, security codes and other devices that the Service Provider or its Designated Persons must use ("Service Provider Codes") and instructional materials necessary for the Service Provider to initiate files or entries electronically to and from each Company Account electronically, and (ii) to process each file or entry (including all related instructions or information) to or from a Designated Account that is initiated electronically using the Service Provider Codes in accordance with Company's instructions (each, an "Authorized Transaction").
  - iii. Each Authorized Transaction shall be deemed a file or transaction initiated by Company, and Cadence may rely upon each Authorized Transaction as a transaction properly authorized by Company without further verification. Cadence shall have no responsibility for erroneous data provided by the Service Provider. Cadence is authorized to process each Authorized Transaction until: (i) Cadence receives written notice from Company that Company has revoked its authorization for the Service Provider to initiate files or transactions or entries to and from any or all Company Accounts; and (ii)

Cadence has had a reasonable opportunity to act upon Company's notice.

- iv. Company represents and warrants that each ACH Entry electronically submitted to or received by Cadence from the Service Provider will fully satisfy and comply with all applicable requirements of all applicable laws and regulations. Company expressly warrants (i) that neither Company nor the Service Provider is a "Consumer" as defined in 12 CFR 1005.2(e) of Regulation E promulgated by the Consumer Financial Protection Bureau pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. §§ 1601 et seq., and (ii) that all ACH Entries initiated by the Service Provider are for commercial purposes, and not for personal or household purposes
- v. Company agrees to develop, implement and maintain effective policies and procedures to ensure that its Service Providers who may, at any time, initiate an entry or file on behalf of the Company are fully trained, aware of, and are following electronic system or network rules, including the NACHA Rules, Payment System Rules, and all state and federal laws and regulations. In the event Company or Service Provider is a Third Party Sender under the NACHA Rules, Company acknowledges and agrees that a separate Third Party Sender Agreement is required before Service Provider may initiate any ACH entries on behalf of its customers.
- vi. Company represents and warrants that its Service Provider will implement and maintain adequate information security measures to protect against unauthorized access to or use of the applicable Service or Company Accounts.
- vii. Company represents and warrants that its Service Provider will implement and maintain adequate information security measures to protect against unauthorized access to or use of the Services, including, without limitation: (i) access controls on information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing access to unauthorized individuals who may seek to obtain this information through fraudulent means; (ii) encryption of electronic Information while in transit over any network (LAN/WAN including MPLS) using well known (non-proprietary) encryption algorithms with a minimum key length standard in the financial services industry; (iii) procedures designed to ensure that information system modifications are consistent with the information security measures; (iv) monitoring systems and procedures to detect actual and attempted attacks on or intrusions into information systems; (v) response programs that specify actions to be taken when Service Provider detects unauthorized access to information systems, including immediate reports to Cadence (vi) training of staff to implement the information security measures; (vii) maintain all systems and applications current with latest release of software and/or security packs, security patches, and security hot fixes; (viii) regular testing of key controls, systems and procedures of the information security measures by independent third parties or staff

independent of those that develop or maintain the security measures; and (ix) appropriate firewalls and access control lists between all Service Provider and Cadence networks, with only required traffic allowed between networks.

- viii. Company shall maintain a process for conducting due diligence and ongoing monitoring of its Service Provider to confirm that required security procedures and compliance standards are being met.
- ix. Company acknowledges that Cadence is not responsible for ensuring that Service Provider's equipment and software is compatible with the Services and associated electronic software. All hardware and telecommunications equipment must be purchased and maintained by Service Provider.
- x. Notwithstanding any other provision of this Agreement or any other agreement between Cadence and Company, neither Cadence nor any of its suppliers, licensors, service providers or vendors (each, including Cadence, a "Provider") shall have any liability for any losses, damages, claims, judgments, costs or expenses (collectively, "Damages") incurred by Company that arise from or relate to (i) Company's authorization of Service Provider to initiate files or entries (including, but not limited to, ACH files) electronically to or from any Designated Account, (ii) the Service Provider's use of any electronic system or network for the initiation of these files or entries, (iii) any dispute of any nature whatsoever between the Service Provider and the Company, or (iv) from any error, delay or failure to perform any obligation hereunder which is caused by fire, natural disaster, pandemic, strike, civil unrest, any inoperable communications facilities or any other circumstance beyond the reasonable control of that Provider. In addition to the foregoing, all disclaimers and limitations on the liability of Cadence and the obligation of Company to indemnify Cadence with respect to the Service Provider's initiation of files or entries to or from any Designated Account, whether under this Agreement or any other agreement between Cadence and Company, shall apply equally to all other Providers.
- xi. Notwithstanding any other provision regarding termination set forth in any third-party agreement, this Agreement or in any Company other agreement between Cadence and , Cadence may terminate at any time, effective immediately, Service Provider's ability to initiate files and entries. Cadence shall use reasonable efforts to promptly communicate notice of the termination to Company and the Service Provider, and will thereafter provide written confirmation of the termination if the initial notice of termination was not communicated in writing. Cadence, at any time, may require Company or the Service Provider to execute additional documents or agreements in order for the Service Provider to continue to initiate files or entries electronically to or from any Company Account.
- xii. Notwithstanding any other provision regarding termination set forth in this Agreement or in any other agreement between Cadence and Company, Cadence may terminate at any time, effective immediately, Service Provider's ability to initiate

ACH Entries or any other entries, files or transfers on behalf of Company. Cadence shall use reasonable efforts to promptly communicate notice of the termination to Company and the Service Provider, and will thereafter provide written confirmation of the termination if the initial notice of termination was not communicated in writing. Cadence, at any time, may require Company or the Service Provider to execute additional documents or agreements in order for the Service Provider to continue to initiate ACH Entries or any other entries, files or transfers electronically to or from any Designated Account.

**w. Hardware, Software, Equipment, Installation and Security.** Where a Service requires certain Software, Hardware, or other Equipment for its use, or requires certain Software to be installed and maintained, or specific security processes or procedures, in case as indicated in the Service Instructions for such Service:

- i. Company must use equipment or a Mobile Device and software that meets certain technical requirements for the proper delivery of the data which is the subject of the Service via secure Internet access. Company may also require additional related services, including, but not limited to, telephone service, Internet service, or mobile service in order to use the Service. Company is responsible for any costs or expenses associated with meeting and maintaining the technical requirements or additional items necessary or required by Cadence to use the Service. Company agrees that it is solely responsible for the operation and maintenance of all equipment used in connection with the Service, and Company will cause the vendor recommended maintenance to be conducted by trained personnel (who may be employees of Company or third-party employees). Cadence is not responsible for any computer malfunction, computer virus, malware, or related problems that may be associated with using the Internet to deliver the data which is the subject of the Service. Cadence is not responsible for any errors or failures resulting from defects in or malfunctions of Company's computer hardware, software or Mobile Device. Company agrees to monitor computer operating system vulnerabilities and apply vendor patches promptly. Company agrees to scan its computer hardware and software on a regular basis using a reliable computer virus detection product and a reliable spyware detection product in order to detect and remove computer viruses and other malware. Company also is responsible for maintaining the security of Company's computer hardware, software or Mobile Device and any Security Codes created for the purpose of accessing the same or the Service. If Company allows any person to obtain or to use Company's computer hardware, software or Mobile Device or Security Codes, Company will have authorized that person to access the Service. Company agrees to take every precaution to ensure the safety, security and integrity of Company's hardware, software or Mobile Device used in connection with the Service. Company agrees to use only hardware, hardware configurations or Mobile Devices approved by Cadence from time to time.

ii. Unless otherwise expressly authorized, Company shall not copy, reproduce, retransmit, disseminate, display, publish, sell, broadcast, circulate, distribute, transfer, assign, commercially exploit, or create derivative works of the any Software obtained from or made available by Cadence in connection with the Service in any form for itself or for any individual, corporation, limited liability company, partnership, joint venture, company, trust or any other entity (for purposes of this Section, each a "Person"). Company further agrees not to reverse engineer or reverse compile any such Software, and acknowledges that any Software obtained from or made available by Cadence or any third party on behalf of Cadence contains confidential information and trade secrets, which Cadence has entrusted to Company in confidence. Company shall protect Cadence's property and interest in the trade secrets contained in such Software by controlling access to such Software, permitting none of its employees or any other person not an employee or agent of Cadence to examine, alter, attach, add to, modify, decode, reverse engineer, transcribe, extract or reproduce, in whole or in part, such Software in any way. Without limiting the generality of the foregoing, Company specifically agrees that it will not delete, mask or obscure any proprietary notices which Cadence places on any Software provided by Cadence or any third party on behalf of Cadence.

iii. Installation of all Software will be completed by Company using instructions provided by Cadence or any software vendor, as applicable. Company may obtain assistance from Cadence personnel or such other sources as appropriate. Company acknowledges that conflicts sometimes occur between programs or hardware and that loss of data can result. Company warrants that adequate backup exists and assumes all responsibility for program loss.

iv. Company shall maintain appropriate levels of firewalls and virus protection software on the personal computer or Mobile Device that access the Service. Company will be responsible for any damage arising from the failure to update virus protection or similar system security- or integrity-related software. Company shall keep any Security Codes confidential from others.

v. Company may select terminals and other equipment ("Equipment") for use in connection with the Service either from a vendor referred by Cadence ("Referred Equipment Vendor") or from another vendor of Company's choosing ("Other Equipment Vendor") provided that any such Other Equipment Vendor and the Equipment sold/leased by it shall have been first approved by Cadence. Cadence's right to approve Company's use of any Other Equipment Vendor or Referred Equipment Vendor (collectively the "Third-Party Vendors") is intended solely for the benefit of Cadence, and no such approval or consent shall be construed as a representation or warranty by Cadence regarding the ability of such Third-Party Vendor to provide Equipment or services meeting Company's needs. Cadence reserves the right to revoke its consent to the use of any Equipment at any time. Notwithstanding any consent or recommendation by Cadence to Company regarding

Equipment or Third-Party Vendors, the selection and use of any thereof shall be strictly at Company's risk. Cadence shall not be responsible to Company for any Equipment provided by a Third-Party Vendor, nor have liability for the malfunction of any Equipment.

vi. Company Acknowledgement.

Company acknowledges that the Service is provided by way of the Internet; that use of the Internet requires that Company receive and transmit information via connection to remote computers over telephone lines or other Internet connections; and that data, including e-mail, electronic communications, and confidential financial data transmitted over the Internet may be accessed by unauthorized third parties. Company agrees to use software produced by third parties, including, but not limited to, "browser" software that supports a data security protocol compatible with the protocol used by Cadence. Until notified otherwise by Cadence, Company agrees to use software that supports the Secure Sockets Layer (SSL) protocol or other protocols accepted by Cadence and to follow Cadence's Access Devices and procedures that support such protocols. Company acknowledges that Cadence is not responsible for notifying Company of any upgrades, fixes or enhancements to any such software; or any compromise of data transmitted across computer networks or telecommunications facilities, including, but not limited to, the Internet. With the exception of applications commonly known as web browser software, or other applications or access devices formally approved by Cadence in writing, Company agrees not to (A) use any software, program, application or any other device to access or log on to Cadence's computer systems, web site or proprietary software; or (B) automate the process of obtaining, downloading, re-engineering, transferring or transmitting any information to or from Cadence's computer systems, web site or proprietary software. In the event of any system failure, Cadence may reserve the right to require additional documentation, including authorizations, from Company before accepting any order or re-instituting Company's access to the Service.

x. **Cadence-Supplied Software.** Where, in connection with a Service, Cadence supplies Software to Company:

i. Cadence hereby grants Company a limited, nonexclusive, non-transferable, limited-term, royalty-free, revocable sublicense to use such Software and the associated Documentation solely to conduct transactions in connection with the Service and for Company's internal business purposes only. Except as specifically provided herein, Cadence does not grant to Company any other right or license, express or implied. Company may not sublicense, sell, lease, distribute or provide access to the applicable Service, the Software or Documentation to any third parties, nor use the Service, Software or Documentation in a service bureau, time-sharing or other similar arrangement, nor make any other use of the Service, Software or Documentation that is not expressly permitted hereunder. Cadence or a third party are the exclusive owners of and shall retain all rights, title and interest



in and to the Software, the Documentation and the Intellectual Property Rights.

- ii. **Proprietary Rights.** Company acknowledges that Cadence or the other Providers shall retain all rights, title and interests in and to the Intellectual Property Rights associated with the Service and/or the Software and Documentation associated therewith, except as expressly granted to Company hereunder. Company shall not take any action that is inconsistent with the Intellectual Property Rights of Cadence or any Provider, nor shall it take any actions or engage in any conduct that violates the Intellectual Property Rights of Cadence or any other Provider.

Any Software and Documentation made available by Cadence in connection with the Service include trade secrets and other proprietary information of Cadence and its suppliers, licensors, service providers and vendors and are confidential property of such person(s) or legal entity(ies). Company shall treat as confidential and shall not disclose or otherwise make available the Software or the Documentation (collectively, the "Confidential Information"), in any form, to any person other than Company's employees who have a need to know such Confidential Information. Company shall not attempt to nor shall it reverse engineer, disassemble, decompile or otherwise attempt to derive source code from Confidential Information, make the Confidential Information available to any third parties, modify, adapt, translate or create derivative works based upon such Confidential Information, or permit or authorize any third party to do any of the foregoing.

Company will instruct its employees who have access to the Confidential Information to keep the same confidential, by using the same care and discretion which Company uses with respect to its own confidential property and trade secrets. Company agrees that it shall not take any action to change or make any modification to the Service, the Software or the Documentation.

- iii. **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICE, THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED FOR COMPANY'S USE DURING THE TERM HEREOF "AS IS" AND "WHERE IS", AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CADENCE AND THE OTHER PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES AND DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH REGARD TO THE SERVICE, THE SOFTWARE OR THE DOCUMENTATION, OR USE OF THE SERVICE BY COMPANY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY AND NON-INFRINGEMENT. CADENCE DOES NOT WARRANT THAT THE OPERATION OF THE SERVICE OR SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE OR FREE FROM ANY OTHER PROGRAM LIMITATIONS. CADENCE DOES NOT MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE SERVICE, THE SOFTWARE OR THE DOCUMENTATION IN TERMS OF THEIR

CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. COMPANY ACKNOWLEDGES THAT IT MUST PROVIDE ALL EQUIPMENT AND PROVIDE AND MAINTAIN SERVICE THROUGH AN INTERNET SERVICE PROVIDER ("ISP") SUITABLE TO ACCESS THE SERVICE AND IS SOLELY RESPONSIBLE FOR ALL FEES, COSTS AND CHARGES ASSOCIATED WITH AND MAINTENANCE OF SUCH EQUIPMENT OR SERVICE. COMPANY ACKNOWLEDGES THAT ITS ISP MAY HAVE UNINTENDED EFFECTS ON COMPANY'S USE OF THE SERVICE, AND THAT CADENCE SHALL HAVE NO RESPONSIBILITY FOR SUCH EFFECTS. COMPANY ACKNOWLEDGES THAT THE SOFTWARE MUST INTERFACE WITH CADENCE'S COMPUTERS, AND ASSUMES THE RISK THAT CADENCE'S COMPUTERS MIGHT NOT BE OPERATIONAL OR COMPATIBLE AT ALL TIMES. COMPANY FURTHER ACKNOWLEDGES THAT CADENCE SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE SATISFACTORY PERFORMANCE OF COMPANY'S HARDWARE AND SOFTWARE USED TO INITIATE OR RECEIVE COMMUNICATIONS OVER THE INTERNET. COMPANY ALSO ACKNOWLEDGES THAT ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DOWNLOADED OR OTHERWISE OBTAINED AT COMPANY'S OWN DISCRETION AND RISK AND THAT COMPANY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO COMPANY'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM DOWNLOADING OR OBTAINING ANY SUCH MATERIAL.

- iv. **Additional Cadence Warranties.** Subject to all terms of this Agreement, Cadence warrants that it has the right to grant the sublicense to the Software and Documentation. In the event the Software or Documentation, or any portion thereof, is held to constitute an infringement of any third party's rights, and use thereof is enjoined, Cadence shall, at its election: procure the right for Company to use the Software and Documentation as contemplated by this Agreement; or notify Company of its intent to discontinue use of the Software and Documentation.

- y. **Security Incident.** In the event Company discovers or is notified of an incident relating to the Services, Cadence's data, the software or equipment accessed or utilized by Company, or under Company's control, or any other event that compromises, or potentially compromises, the security, confidentiality or integrity of Cadence's data, equipment, systems or customers (an "Incident"), Company shall, immediately, or as soon as practicable under the circumstances (i) notify Cadence of such Incident, (ii) investigate and mitigate, or if possible, remediate, the effects of the Incident (iii) provide Cadence with a written corrective action plan, that is satisfactory to Cadence, regarding how Company intends to mitigate or remediate future Incidents of such a nature and/or (iv) cooperate with Cadence with its efforts to investigate, mitigate and/or remediate the effects of the Incident.

In addition to, and not in lieu of any other indemnification obligations of Company under this Agreement, Company shall indemnify, defend and hold harmless Cadence from and against any and all

losses, claims, damages and expenses arising out of or in connection with an Incident and/or any a breach of Company's security obligations under this Agreement.

**z. Miscellaneous.**

i. No Partnership. Cadence is an independent contractor and not Company's agent, partner, or employee.

ii. Confidentiality. Cadence will use reasonable efforts to hold in confidence and not disclose to other than its affiliates, employees, agents and independent contractors all confidential information received by Cadence in the course of rendering its Services except to the extent disclosure is required by legal process or by any regulatory or supervisory agency. The Company acknowledges and agrees that Cadence may employ third-party servants, agents, independent contractors or other persons or entities to perform such service, and that Cadence will not be liable for disclosure by any third-party servants, agents, independent contractors or other persons or entities.

Cadence may advise potential users of its Services that Company has a relationship with Cadence and uses the Services provided under this Agreement.

Company agrees that all information regarding this Agreement, including pricing for Services shall be maintained by Company as confidential and shall not be disclosed to any third party other than Company's Service Providers except as required by Applicable Law. If so required, Company shall immediately notify Cadence and, at Cadence's request, cooperate with Cadence in pursuing a protective order.

iii. Information and Materials. Specifications, tapes, and programs generated by Cadence in connection with any Service are Cadence's sole property unless otherwise provided in this Agreement. All data, reports, items or other materials which Company is required to furnish or perform, including computer tapes or data, will conform to Cadence computer and other specifications unless waived in writing by Cadence. Cadence is authorized, but not required, to electronically record telephone conversations between Cadence and Company's agents or employees. Company will provide Cadence all records and data processing media necessary to perform the Services. The records will be legible, correct, complete and in the format specified on the Service Instructions. The records will contain all necessary information as determined by, and satisfactory to, Cadence.

If this Agreement is terminated, the Company will notify Cadence in writing within thirty (30) days of the effective date of termination whether Cadence should return or destroy any data processing media furnished by the Company and any records in its possession or produced as a result of the expiring Services. If the Company does not notify Cadence within thirty (30) days, Cadence may destroy, retain or return any such material, as Company would have then been deemed to have abandoned such media; therefore all risk of loss is with Company and

Cadence shall have no responsibility for said media, or liability to Company for same, if the media is destroyed, not returned, or otherwise dealt with by Cadence.

iv. Company's Failure to Furnish Satisfactory Records or Media. Cadence's performance is based on Cadence receiving timely, accurate and complete data for each Service, acceptable to Cadence, and which can be used on Cadence systems or equipment. If any of these requirements are not met by the Company, Cadence shall:

- (A) no longer be bound to any applicable delivery schedules;
- (B) be empowered to charge appropriate fees for converting non-standard data; and/or
- (C) deliver as complete and final whatever portion or part of the Services that can be performed with the data available.

v. Records. Absent manifest error, the records of Cadence shall be conclusive evidence with respect to the matters governed by this Agreement.

vi. Entire Agreement. The terms and conditions set forth in this Agreement constitute the entire agreement between the parties, supersede all prior agreements relating to the Services governed by this Agreement, and any other agreements (including but not limited to depository agreements) to the extent that they conflict with any terms herein, and except as provided in Section 2.r. of these General Provisions shall not be modified nor any provision waived by Cadence except by a written instrument duly executed by Cadence. Any waiver shall be effective only for the specific purposes, circumstances and duration provided in that waiver. Company acknowledges that, in entering into this Agreement, Company has not relied on any oral promises or on any representations made by Cadence other than those specifically set forth in this Agreement. These terms and conditions shall be deemed to be amended automatically, without notice to either party, to comply with any statutes, regulation or ruling of any governmental agency to whose jurisdiction Cadence is subject.

vii. Force Majeure. Notwithstanding any other provision of this Agreement, neither Cadence nor any Service Provider acting on its behalf shall have any liability for any error, delay or failure to perform any obligation under this Agreement which is due, directly or indirectly, to any cause beyond the reasonable control of Cadence or its Service Provider, including, without limitation, fire, flood, natural catastrophe or other acts of God, pandemic, outbreak or escalation of hostilities, war, terrorism, riots or civil disorders, strikes or work stoppage, electrical, computer, mechanical, utility or telecommunications failures or fluctuations. Company agrees that no financial institution, payment system, communication carrier or other third party through which Cadence may transmit information or funds in performing its obligations under this Agreement will be deemed to be Cadence's agent, and Cadence shall not be responsible for errors, delays, acts, or failures to act by such third party. All of Cadence's obligations

under this Agreement, whether express or implied, shall be suspended if at any time Cadence's performance of these obligations is prevented by, or is in conflict with, any Applicable Law or Payment System Rules.

viii. Commitment to Lend. Nothing in this Agreement nor any course of dealing between the Company and Cadence constitutes a commitment or obligation to lend money or extend credit to the Company or to otherwise advance money to the Company for any reason, including payment of any item contrary to Cadence's published availability schedules.

ix. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable for any reason, such holding shall not invalidate or render unenforceable any other provisions of this Agreement. To the extent permitted by applicable law, the parties hereto waive any provision of law which prohibits or renders unenforceable any provision hereof, and to the extent that such waiver is not permitted by applicable law, the parties intend that such provision be interpreted as modified to the minimum extent necessary to render such provision enforceable.

x. Interpretation. The parties agree that the parties have carefully reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities be resolved against the drafting party shall not be employed in the interpretation of this agreement. The article and section headings contained in this agreement are for reference purposes only and shall not affect the interpretation of this Agreement.

xi. Equitable Relief. Company acknowledges and agrees that, in the event of a breach or threatened breach of any provision in this Agreement involving Confidential Information or any infringement or misappropriation of any intellectual property rights with respect to any licensed products, money damages would be an inadequate remedy and Cadence shall be entitled to seek equitable relief from a court of law, including temporary or permanent injunctive relief. Any right to equitable relief hereunder shall not preclude Cadence from seeking and obtaining money damages.

xii. Terminology. Whenever terms such as "include" or "including" are used in this Agreement, they shall mean "include" or "including", as the case may be, without limiting the generality of any description or word preceding such term. Whenever the expression "satisfactory to Cadence", "in Cadence's judgment", "in Cadence's sole discretion" or similar words are used, or Cadence is granted the contractual right to choose between alternatives or to express its opinion, the satisfaction, judgment, choices and opinions are to be made in Cadence's sole and absolute discretion. Whenever the terms "state" or "states" are used in this Agreement, it shall mean one or more of the 50 states that make up the United States of America, the District of Columbia, and/or one or more of the politically organized territories of the United States of America.

xiii. Applicable Law. This Agreement shall be governed by the laws of the state where we maintain the Company Accounts or, if Cadence maintains accounts for Company in more than one state, the state where the first account with Cadence was opened and applicable federal laws and regulations in effect from time to time.

xiv. No Third Party Beneficiaries.

The parties acknowledge and agree that this Agreement constitutes a contract to extend financial accommodations solely to and for the benefit of Company. No third party beneficiary rights exist hereunder, nor are any intended. Company's rights and duties hereunder may not be assigned without the prior written consent of Cadence, which may be withheld in its sole discretion. However, Cadence may assign this Agreement or any or all of the Services without the prior written consent of Company.

xv. Binding Effect. This Agreement will take effect when the first Service is implemented hereunder by Company.

xvi. Special Provisions for Certain Public Entity Customers. If Company is a public entity such as a state, county, parish, municipality, political subdivision or department, bureau or other governmental entity of any of the foregoing (for example, a public hospital, a public university or college, or a public school district), and if governing law makes any term or provision of this Agreement or any Service Instructions regarding indemnification, limitation of liability, waiver, venue or arbitration inapplicable to, unenforceable against, or invalid with respect to Company, then each such inapplicable, unenforceable or invalid term and provision shall be deemed modified to the least extent necessary to become applicable, enforceable and valid and to encompass the intent of the parties, and this Agreement and any Service Instructions shall be enforced as so modified.

xvii. Audio Recordings. Cadence may, but is not required to, make audio recordings of any telephone conversations with Company, any customer representative, or with any Authorized User involving a payment order or any other matter relating to the services provided under this Agreement. Cadence shall have no liability for failing to record a telephone conversation with Company, and Cadence's failure to record any conversation shall not constitute a waiver of Cadence's right to record such conversations.

xviii. No Disclosure of Digital Banking Documentation. Company shall not sell, transfer, publish, disclose, divulge, furnish, display or otherwise make available any portion of any documentation related to any Service hereunder to others.

xix. Audit Rights. Upon reasonable notice, Cadence may audit, at its own expense, Company's hardware, Software, procedures, processes, and any and all relevant business records directly relating to this Agreement and/or any Service provided hereunder. If any errors or discrepancies are found or any failure by the Company to comply with the terms of this Agreement, Applicable Law or any applicable

clearinghouse rules, state or federal regulations or guidance for the audited period are found, Cadence may, in its sole discretion and option, immediately terminate this Agreement.

xx. **Blocked Accounts; Deposit Account Control Agreements.** Company acknowledges and agrees that Company Accounts constituting "blocked accounts" or subject to deposit account control agreements ("DACAs") (each and collectively, "Excluded Accounts") are governed by the terms and conditions of such blocked account agreements and/or DACAs. Company acknowledges that Cadence has no duty to determine whether Company Accounts are Excluded Accounts, and Company agrees not designate an Excluded Account as a Designated Account in connection with any Service, and to indemnify Cadence for any loss suffered in connection with Company's designation of an Excluded Account as a Designated Account in connection with any Service, including, without limitation, any loss incurred or damage resulting from Customer's utilizing any Service to access or transact upon an Excluded Account in violation of a blocked account agreement or DACA.

xxi. **Regulatory and Third Party Examinations and Audits.** Company also agrees to permit Cadence's regulators (including NACHA), card association networks, and/or agents to examine Company's hardware, Software, procedures, processes, and any and all relevant business records directly relating to this Agreement and/or any Service provided hereunder. Any such examination will be conducted during normal business hours upon written notice to Company, which agrees to cooperate fully. Upon request, Company will also provide Cadence with access to reports of audits, tests and/or other evaluations of information security policies and procedures conducted in the ordinary course of Company's business.

aa. **Business Associate Agreement for Covered Entities.** If Company is a "Covered Entity" as such term is defined in 45 C.F.R. § 160.103 ("Covered Entity") and, in providing Services to Covered Entity, Cadence is a "Business Associate" as such term is defined in 45 C.F.R. § 160.103 ("Business Associate") and may receive Protected Health Information, then the following provisions of this Business Associate Agreement ("BAA") also shall apply:

i. **Definitions:** Capitalized terms used in this Section that are not otherwise defined herein shall have the same meaning as those terms set forth in 45 C.F.R. Parts 160, 162, and 164. Other capitalized terms used herein have the respective meanings assigned as set forth in this Section or this subsection (i):

"Breach" means the acquisition, access, use or disclosure of Protected Health Information that is not permitted under the HIPAA Rules and compromises the security or privacy of the Protected Health Information.

"Contractors and Personnel" means each Party's respective employees, staff, agents, representatives, personnel, subcontractors, and vendors.

"Compliance Plan" means those written plans that document the respective policies and procedures of each Party and its respective Contractors and Personnel, and Covered Entity, for complying with the Privacy and Security Rules.

"Designated Record Set" has the same meaning as the terms "designated record set" in 45 C.F.R. § 164.501.

"Guidance" means the "Guidance Specifying the Technologies and Methodologies that Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under HITECH," issued by the Secretary.

"Electronic Protected Health Information" or "ePHI" means Protected Health Information that is transmitted by Electronic Media or that is maintained in Electronic Media.

"HIPAA" means Title II, Subtitle F, Administrative Simplification, of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as may be amended from time to time.

"HIPAA Rules" means the Rules and Regulations under the Health Insurance Portability and Accountability Act of 1996, which are found at 45 C.F.R. Part 160 and Part 164, as may be amended from time to time, and which include the HIPAA Privacy Rule, HIPAA Security Rule, HIPAA Breach Notification Rule, and HIPAA Enforcement Rule. Any regulatory references shall mean the referenced section in the HIPAA Rules as in effect or as amended.

"HITECH" means the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder, as may be amended from time to time. Subtitle D of the HITECH Act addresses the privacy and security concerns associated with the electronic transmission of health information, in part, through provisions that strengthen the civil and criminal enforcement of the HIPAA Rules § 13410(2) and revise section 1176 of the Social Security Act.

"Individually identifiable" means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity.

"Individually Identifiable Health Information" means information that is a subset of health information, including demographic information collected from an individual, and is created or received by a health care provider, health plan, employer or health care clearinghouse; and

relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (A) that identifies the individual, or (B) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

"Medical Information" means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of healthcare, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, mental or physical condition, or treatment.

"Privacy and Security Rules" means federal health care privacy requirements set forth in HIPAA, HITEC, the HIPAA Rules, and other applicable law, rules or regulations, as the same may be amended from time to time.

"Protected Health Information" or "PHI" has the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 C.F.R. § 160.103 and shall mean Individually Identifiable Health Information, whether oral or recorded in any form or medium.

"Required By Law" has the same meaning as the terms "required by law" in 45 C.F.R. § 164.103, and also incorporates the HITECH Act, or any other applicable law.

"Secretary" means the Secretary of HHS or designee.

"Security Incident" means the attempted or successful unauthorized use, modification, or destruction of information or interference with system operations in an information system.

"Underlying Agreement" means the agreement between Cadence and Company that may involve the exchange, sharing or other communication of PHI in connection with the performance of such agreement. For purposes of this BAA, "Underlying Agreement" refers both to the Service and the TMSA.

"Unsecured PHI" means PHI that is rendered usable, readable, or decipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the Guidance.

## ii. Scope and Use of PHI.

(A) Compliance Plan. Each Party represents that, to the extent required by Privacy and Security Rules, it has adopted a Compliance Plan, will be responsible for the training of its Contractors and Personnel regarding compliance and will maintain complete records regarding its compliance with the Privacy and Security Rules and the terms of this Agreement.

(B) Performance of Agreement. Each Party may use PHI, Individually Identifiable Health Information, or Medical Information solely to perform its

duties for the other Party and only as allowed under the terms of this Agreement, and/or as Required By Law. Each Party agrees that it will not use or disclose PHI, Individually Identifiable Health Information, or Medical Information in a manner that violates the Privacy and Security Rules, and/or applicable laws. Each Party further agrees that it will not allow its Contractors and Personnel to use or disclose PHI, Individually Identifiable Health Information, or Medical Information in a manner that violates the Privacy and Security Rules, and/or applicable laws.

(C) Disclosures. Any records maintained by either Party and its Contractors and Personnel in electronic form will be maintained by that Party and its Contractors for at least three (3) years.

(D) Safeguards for Protection of PHI, Individually Identifiable Health Information, or Medical Information. Each Party agrees that it will: (A) protect and safeguard from any oral and written disclosure all PHI, Individually Identifiable Health Information, or Medical Information regardless of the type of media on which it is stored (e.g., computer software, paper, microfiche, etc.) with which it may come into contact in accordance with applicable statutes and regulations, including, but not limited to the Privacy and Security Rules issued thereunder; (B) implement and maintain appropriate policies and procedures to protect and safeguard PHI, Individually Identifiable Health Information, or Medical Information; and (C) use appropriate safeguards to prevent use and disclosure of PHI, Individually Identifiable Health Information, or Medical Information other than as permitted by this Agreement and/or as Required By Law. Each Party agrees to maintain the other Party's PHI, Individually Identifiable Health Information, or Medical Information in a form and format segregable from the electronic information of any other business or entity.

(E) Contractors and Personnel. Each Party agrees that its respective Contractors and Personnel shall only access PHI, Individually Identifiable Health Information, or Medical Information for which they have a need to know; shall not in any way use, divulge, copy, release, sell, loan, review, alter, or destroy any PHI, Individually Identifiable Health Information, or Medical Information except as properly authorized within the scope of their activities as expressly provided under the Underlying Agreement; and shall not misuse PHI, Individually Identifiable Health Information, or Medical Information or handle PHI, Individually Identifiable Health Information, or Medical Information carelessly. Each Party agrees that its respective Contractors and Personnel with access to PHI, Individually Identifiable Health Information, or Medical Information agrees in a written agreement, to the same restrictions and conditions that apply through this Agreement, as required under 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2). Neither Party shall permit any Contractors and Personnel that fail to abide by any material term

of such agreement to have access to PHI, Individually Identifiable Health Information, or Medical Information.

- (F) Use of Contractors and Personnel. To the extent a Party uses one or more of its Contractors and Personnel to provide services under the Underlying Agreement, and such Contractors and Personnel receive or have access to PHI, Individually Identifiable Health Information, or Medical Information, that Party shall require such Contractors and Personnel to have Compliance Plans and to be responsible for any improper disclosures, Breach or Security Incident.
- (G) Reliance and Notification. The Parties are relying on each other's assurance that each Party and its Contractors and Personnel will comply with all applicable laws and regulations, including but not limited to the Privacy and Security Rules. Each Party shall promptly notify the other Party within five (5) business days of becoming aware of a use or disclosure in violation of this Agreement.
- (H) Requests for Information. Each Party shall not request the other Party to use or disclose PHI, Individually Identifiable Health Information, or Medical Information in any manner that would not be permissible under the Privacy and Security Rules if done by a Covered Entity.
- (I) HITECH. Each Party has certain obligations under HITECH and both Parties acknowledge and agree to abide by those obligations.
- (J) Investigation. In the event a Party determines that a potential Breach or Security Incident has occurred, that Party will immediately investigate the incident, conduct a risk assessment, and document its findings. In the event that after such investigation, the Party determines that a Breach has occurred and does not meet an exception, then and in such event, that Party will report that finding to the other Party as soon as possible, but no later than five (5) days after the discovery of the Breach, and will consult with the other Party's Privacy Officer. The Parties will jointly determine the nature and form of the notification to the individual and, if applicable, notification to the media or the Secretary.
- (K) Costs. In the event that a Breach has occurred, the Parties agree that the costs associated with notification and compliance related to the Breach of PHI under the control of the breached Party, will be at the cost and expense of the breached Party.
- (L) Breach or Misuse of PHI, Individually Identifiable Health Information, or Medical Information. Each Party recognizes that any breach of the terms of this Agreement may give the other Party the immediate right to terminate this Agreement and the Underlying Agreement, and to pursue other available legal action and remedies. Each Party agrees to mitigate, to the maximum extent practicable and using best efforts, any harmful effect that is known to that Party of a use of PHI, Individually Identifiable Health Information, or Medical Information by

the other Party in violation of this Agreement and/or applicable laws. Each Party acknowledges and agrees that any use of PHI, Individually Identifiable Health Information, or Medical Information by that Party or its Contractors and Personnel, in excess of the minimum necessary for the purposes of the Underlying Agreement, or as otherwise permitted hereunder, may constitute a Breach or Security Incident. Each Party shall track any Security Incident involving ePHI of which it becomes aware. Each Party shall report to the other Party in writing within five (5) calendar days of becoming aware of any Security Incident that results in actual unauthorized access, use, disclosure, modification or destruction of ePHI, and report unsuccessful Security Incidents to the other Party in the aggregate upon written request of the other Party, which requests shall be made no more frequently than once per year, and as reasonably appropriate. To the extent that a Security Incident also constitutes a Breach of Unsecured Protected Health Information, the breached Party shall notify the non-breached Party in writing within five (5) calendar days following the discovery of such Breach, and shall include all information required by 45 C.F.R. § 164.410, provided that in the event that some of the details are not known at the time of the initial report to the non-breached Party, the breached Party shall provide the additional information promptly thereafter.

iii. Amendment of PHI. Each Party shall promptly incorporate all amendments or corrections to PHI, Individually Identifiable Health Information, or Medical Information when notified by a Covered Entity that such information is inaccurate or incomplete.

iv. Security Standards.

(A) Electronic Data Interchange. Each Party represents that to the extent applicable to the services it provides to the other Party, it will comply with all applicable provisions of the HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange (EDI) Standards, at 45 C.F.R. Part 162. Each Party further agrees to ensure that any agent, including Contractors or Personnel, that conducts standard transactions, as such term is defined at 45 C.F.R. § 162.103, on its behalf complies with the EDI Standards.

(B) Security Standards. Each Party shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of ePHI that it creates, receives, maintains, or transmits on behalf of the other Party. Each Party represents that it has adopted policies and procedures to implement the security standards under the Privacy and Security Rules, which includes steps to: (A) ensure the confidentiality, integrity and availability of all electronic PHI received or transmitted to or from each Party; (B) protect against any reasonably anticipated threats or

hazards to the security or integrity of such PHI; (C) protect against any reasonably anticipated uses or disclosures of PHI that are not otherwise permitted by the HIPAA Rules; and (D) ensure compliance with these policies by its Contractors and Personnel. Without limiting the foregoing provisions, each Party shall comply with all the applicable security provisions of 45 C.F.R. Part 164, subpart C.

v. Compliance Standards.

- (A) Compliance with Privacy and Security Rules. Each Party acknowledges that it must comply with the same requirements of the Privacy and Security Rules that apply to the other Party. The Parties acknowledge that this Agreement is inclusive of changes in the HIPAA Privacy Rule as required by HITECH, the Privacy and Security Rules, and/or as Required By Law, as well as any and all changes in the future, and that each Party shall be exclusively responsible for updating their own Compliance Plan, policies and procedures, training their staff, and taking additional steps to fully comply with any future changes in requirements announced by the Department of Health and Human Services in the future.
- (B) Minimum Use of Protected Information. Each Party agrees to make uses, disclosures and requests for PHI, Individually Identifiable Health Information, or Medical Information consistent with the Covered Entity's minimum necessary policies and procedures.
- (C) Nondisclosure Requests. If a Party specifically advises the other Party that a patient of the Party has paid for services in full and that patient requests that information regarding the services for which the patient has paid is not to be disclosed to insurers or other health plans, then in such event, the other Party will comply with those instructions.
- (D) Restrictions on Use of Protected Information. The Parties may use PHI, Identifiable Health Information and Medical Information only as required to satisfy its obligations under this Agreement, the Underlying Agreement, and/or as Required By Law. Except as otherwise limited by this Agreement, each Party may use PHI, Identifiable Health Information and Medical Information (A) for its proper management and administration in connection with providing services under the Underlying Agreement, (B) to carry out its legal responsibilities; or (C) to provide data aggregation services relating to the health care operations of a Covered Entity if expressly required under the Underlying Agreement and/or this Agreement. Any use of PHI, Identifiable Health Information and Medical Information shall only be made if the Party obtains reasonable assurances as required by the Privacy and Security Rules from the person to whom the PHI, Identifiable Health Information and Medical Information is disclosed that such information will be held confidentially and used only as Required By Law or for the purpose for which it was disclosed to

the person and the Party will be notified immediately by such person of any instance of which it becomes aware in which the confidentiality of the patient information has been Breached.

- (E) Notification of Limitations in Notice of Privacy Practices. Each Party shall notify the other Party of any limitation(s) in the Party's notice of privacy practices under 45 C.F.R. § 164.250, to the extent that such limitation may affect the other Party's use or disclosure of PHI.
- (F) Notification of Changes in Permission. Each Party shall notify the other Party of any changes to, or revocation of, the permission by an individual to use or disclose his or her PHI, Individually Identifiable Health Information, or Medical Information, to the extent that such changes may affect the Party's use or disclosure of PHI, Individually Identifiable Health Information, or Medical Information.
- (G) Compliance with Access. The Parties acknowledge compliance with (A) providing access to PHI, Individually Identifiable Health Information, or Medical Information in electronic format upon request; (B) prohibition of the sale or use of PHI, Individually Identifiable Health Information, or Medical Information for marketing purposes; and (c) procedures to monitor and cooperate in audits by the Department of Health and Human Services upon request by a Party.
- (H) Ownership of Protected Information. Each Party hereby acknowledges that, as between the Parties, all PHI, Individually Identifiable Health Information and Medical Information shall be and remain the sole property of the originating Party, including any and all forms thereof developed by that Party in the course of its fulfillment of its obligations pursuant to the Underlying Agreement and/or this Agreement. Each Party further represents that, to the extent that Party requests that the other Party disclose PHI, Individually Identifiable Health Information and Medical Information to the Party, such a request is only for the minimum necessary such information for the accomplishment of each Party's purpose pursuant to the Underlying Agreement and/or this Agreement.
- (I) Automatic Updates to Agreement. The Parties acknowledge that this Agreement and the Underlying Agreement shall automatically be updated to the extent necessary to require each Party to comply fully with the then-current version of the Privacy and Security Rules, and/or as Required By Law, as modified from time to time without the necessity of changing this Agreement or the Underlying Agreement in writing.

vi. Availability, Audits and Inspections

- (A) Availability of Information. Each Party agrees that it will (A) make available PHI, Individually Identifiable Health Information, or Medical Information in accordance with 45 CFR § 164.524; (B) make available PHI, Individually

Identifiable Health Information, or Medical Information in accordance with 45 C.F.R. § 164.526 to allow each Party to amend PHI, Individually Identifiable Health Information, or Medical Information; and (C) make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528. The Party will provide such accounting to the other Party as soon as possible, but no more than five (5) days from the date of request by that Party. Each accounting shall provide: the date of each disclosure; the name and address of the organization or person who received the PHI, Individually Identifiable Health Information, or Medical Information; a brief description of the information disclosed; and for disclosures other than those made at the request of the subject, the purpose for which the information was disclosed and a copy of the request or authorization for disclosure. Each Party shall maintain a process to provide this accounting of disclosures for as long as the Party maintains PHI, Individually Identifiable Health Information, or Medical Information received from or on behalf of the other Party.

- (B) Access for Compliance. Each Party shall make its internal practices, books and records relating to the use and disclosure of PHI, Individually Identifiable Health Information, or Medical Information received from, or created or received by one Party on behalf of the other Party, available to the Secretary, governmental officers and agencies for purposes of determining compliance with 45 C.F.R. §§ 164.500-534.

#### vii. Term and Termination

- (A) Term. This Agreement shall commence on the commencement of services or performance pursuant to the Underlying Agreement and will remain effective until terminated. Both Parties may terminate this Agreement, without cause, on five (5) calendar days' prior written notice to the other Party. In the event of termination, neither Party shall be liable for the payment of any services performed by the other Party after the effective date of termination.
- (B) Termination for Improper Use. Each Party may immediately terminate this Agreement by written notice without penalty if that Party, in its sole discretion, reasonably suspects that the other Party has improperly used or disclosed PHI, Individually Identifiable Health Information, or Medical Information in breach of this Agreement.
- (C) Termination for Inadequate Safeguards. Each Party may immediately terminate this Agreement in writing without penalty if it determines, in its sole discretion, that any of the other Party's safeguards are unsatisfactory for the protection of the Party's PHI, Individually Identifiable Health Information, or Medical Information.
- (D) Termination After Repeated Violations. Each Party may immediately terminate this Agreement by written notice without penalty if

the other Party repeatedly violates this Agreement or any provision hereof, irrespective of whether, or how promptly, that Party may remedy such violation after being notified of the same.

- (E) Termination of Underlying Agreement. This Agreement will immediately terminate without notice upon termination of the Underlying Agreement or business relationship between the Parties without relieving either Party of its Agreement obligations hereunder.
- (F) Return/Destruction of PHI, Individually Identifiable Health Information, or Medical Information. Each Party agrees that upon termination of this Agreement, each Party will return to the other Party or destroy all PHI, Individually Identifiable Health Information, or Medical Information received from, or created or received by each Party on behalf of the other Party, regardless of form.
- (G) No Feasible Return/Destruction of PHI, Individually Identifiable Health Information, or Medical Information. To the extent such return or destruction of PHI is not feasible, the Parties shall extend the precautions of this Agreement to the retained PHI, Individually Identifiable Health Information, or Medical Information. The Parties shall remain bound by the provisions of this Agreement until such time as all PHI, Individually Identifiable Health Information, or Medical Information has been returned or otherwise destroyed.
- (H) Effect of Termination. All rights, duties and obligations established in this Agreement shall survive termination of this Agreement.

#### B. SPECIFIC PROVISIONS

##### 1. DIGITAL BANKING SERVICES

- a. Digital Banking Upon Company's submission of a request for Digital Banking, and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

i. Subscription to Services. Digital Banking is Cadence's online commercial information and transaction system which provides information on Company Account(s) activity and allows Company to conduct certain transactions on Company's deposit and loan accounts maintained with Cadence, all as more fully set out in the terms and conditions of this Agreement. By means of Internet access on a personal computer or other device, Company may access Digital Banking to utilize these services. Cadence may also make certain Services or certain features thereof accessible through a Mobile App via a Mobile Device. Cadence, in its sole discretion, will determine what Services and features of Services will be accessible through a Mobile Device. Not all Services and features may be accessible through a Mobile App via a Mobile Device even where such Services or features are available through a personal computer. Basic Digital Banking Services are those which are described herein and which are implemented through Company's execution of one



or more Service Instructions. Additionally, Company may subscribe to any of the further Digital Banking Services described in the various parts of this Agreement by executing one or more Service Instructions pertaining to such further Digital Banking Services. Such further Digital Banking Services may be subscribed to by Company at any time while this Agreement is in force, including subsequent to Company's execution of this Agreement.

Company's use of Digital Banking shall be subject to these terms and conditions, all instructions and guidelines established from time to time by Cadence, all applicable online, mobile, software and user documentation terms and conditions, and all Applicable Law. Company will only be granted access to, and agrees only to access Digital Banking to, transact or conduct Services for eligible Company Accounts. Company may only transact those Services for eligible Company Accounts that Cadence has implemented for Company. All Services shall be subject to all terms and conditions applicable to such Services set forth elsewhere in this Agreement or in any other agreement of Company with respect to Digital Banking Services.

## ii. Access to Digital Banking.

A. Authorized Administrator. Prior to Company's first use of Digital Banking, Company shall designate in writing to Cadence the Authorized Administrator who is authorized by Company to serve as Company's system and security administrator for Digital Banking. Cadence may require that the designation of any Authorized Administrator be made on Cadence's form of authorization certificate ("Authorization Certificate") or the Service Instructions. The Authorized Administrator shall be responsible for (i) granting and revoking authority permissions as to himself/herself as the Authorized Administrator; (ii) granting and revoking authority to a Secondary Authorized Administrator (as defined below), Security Administrator or to Designated Persons (each an "Authorized Payment User") to access Digital Banking and use the Digital Banking Services, including but not limited to applications accessed via Single Sign-On; (iii) defining the scope of authority and setting authority limits (1) for each Authorized Payment User with respect to the Digital Banking Services selected by Company and (2) for each Authorized Payment User who is granted authority to initiate and access Services, the designation of individual transaction amount and individual daily limits for such Services; (iv) defining those Company Accounts for which each Authorized Payment User shall have access and responsibility; (v) determining which Authorized Payment Users shall receive reports delivered through Digital Banking Services; (vi) assigning Authentication Tokens (as hereinafter defined) to an Authorized Payment User; (vii) granting and revoking the authority for Authorized Payment Users to access Digital Banking Services through the Mobile App; (viii) selecting a back-up system and security administrator from among the Authorized Payment Users (the "Security Administrator") if the Company will have three (3) or more Authorized Payment Users; and (ix) selecting a dual authorized administrator from among the

Authorized Payment Users ("Secondary Authorized Administrator") if the Company wants to utilize dual Authorized Administrator controls. Cadence may require that the designation of a Secondary Authorized Administrator be made on Cadence's Authorization Certificate. The Authorized Administrator shall grant to the Secondary Authorized Administrator (if applicable) the authority to perform the obligations of the Authorized Administrator in the Authorized Administrator's absence.

Following the first use of Digital Banking Services, the Authorized Administrator shall designate in writing to Cadence the Security Administrator for Digital Banking. Cadence may require that the designation of the Security Administrator be made on Cadence's Authorization Certificate. The Security Administrator shall be responsible for (i) granting and revoking authority permissions as to himself/herself as the Security Administrator; (ii) granting and revoking authority to Designated Persons to access Digital Banking and use the Digital Banking Services, including but not limited to applications accessed via Single Sign-On; (iii) defining the scope of authority and setting authority limits (1) for each Authorized Payment User with respect to the Digital Banking Services selected by Company and (2) for each Authorized Payment User who is granted authority to initiate and access Services, the designation of individual transaction amount and individual daily limits for such Services; (iv) defining those Company Accounts for which each Authorized Payment User shall have access and responsibility; (v) determining which Authorized Payment Users shall receive reports delivered through Digital Banking Services; (vi) assigning Authentication Tokens (as hereinafter defined) to an Authorized User; and (vii) granting and revoking the authority for Authorized Payment Users to access Digital Banking Services through the Mobile App. Company agrees that Digital Banking shall be accessed, and Digital Banking Services shall be conducted or transacted, only by the Authorized Administrator, or a Designated Person, and that Services shall be conducted only by an Authorized Payment User, in each case as authorized by the Company.

If Company desires to change its Authorized Administrator, Secondary Authorized Administrator (if applicable) or Security Administrator, Company shall provide prior written notice to Cadence of such change, signed by a person whose signature appears on the authorizing resolution for Digital Banking Services or the Security Administration Designation Form. The notice may be electronically sent to Cadence, and Cadence may request it be followed by a document with original signatures on it. No change of Authorized Administrator, Secondary Authorized Administrator (if applicable), or Security Administrator by Company shall be effective until accepted by Cadence, and Cadence has had a reasonable opportunity to update its records.

After Company has designated to Cadence the identity of the Security Administrator, Cadence shall provide the Security Administrator with instructions to access Digital Banking. The Security Administrator shall be responsible for specifically

granting and revoking the authority for an Authorized Payment User to access the Digital Banking. Company acknowledges that it is the Security Administrator's and not Cadence's responsibility to select and control those Authorized Payment Users accessing Digital Banking.

At all times, Cadence is authorized and directed to act on all instructions sent through Digital Banking using the Authorized Administrator, Security Administrator or Authorized Payment User Security Codes (as defined below), without any responsibility to determine whether or not such authority actually rests with the Authorized Administrator, Secondary Authorized Administrator (if applicable), Security Administrator or an Authorized Payment User.

**B. Security Codes for Digital Banking.** The Security Procedures described in the General Provisions shall apply to all access to, and use of, Digital Banking Services by the Authorized Administrator, Secondary Authorized Administrator (if applicable), Security Administrator and any Authorized Payment User.

In addition to the Security Procedures described the General Provisions, each Authorized Administrator, Secondary Authorized Administrator (if applicable), Security Administrator, and Authorized Payment User (sometimes called a "User") will be required to do the following in order to access and use Digital Banking Services:

(1) download and activate the secured browser designated by Cadence on designated computers owned and controlled by Company or its designated Authorized Administrator(s), Secondary Authorized Administrator (if applicable), Security Administrator or Authorized Payment User(s) (the "Secured Browser"). The Secured Browser provides Company with a multi-layered security program, which runs a series of self-tests with the internet browser to determine if the Secured Browser has been corrupted, infected or subject to any information security attacks. In the event the Secured Browser detects any attempted code manipulation or tampering, the online access will be disabled through the Secured Browser until Cadence and Company are able to verify the security of the Digital Banking Services. In addition, the Secured Browser shall encrypt all data exchanged between the Secured Browser and other network sites; and/or

(2) select one or more Multi-Factor Authentication options ( including soft token and/or one time passcode) ("MFA Option"). The Customer ID, User IDs, User Codes and User Passwords together with the Secured Browser and any selected MFA Option shall be referred to as "Security Codes".

CADENCE CANNOT AND DOES NOT GUARANTEE THAT COMPANY'S COMPUTERS ARE FREE FROM RISKS WHICH ARE INHERENT IN INTERNET-BASED APPLICATIONS. CADENCE SHALL NOT BE RESPONSIBLE AND SHALL INCUR NO LIABILITY TO COMPANY FOR ANY LOSS RESULTING FROM ACCESS GAINED, INFORMATION DISCLOSED OR FROM TRANSACTIONS MADE ON ITS ACCOUNT(S) THROUGH DIGITAL BANKING BY OR THROUGH ANY UNAUTHORIZED MEANS.

iii. **Authorized Transactions.** Cadence may rely upon any Services transacted or conducted through or by use of Digital Banking as properly authorized by Company (including, without limitation, any transfer of funds, any advance from a Digital Banking or Mobile App Accessible Loan or any instructions or information related thereto it receives from Company through Digital Banking). The Authorized Administrator, Secondary Authorized Administrator (if applicable), Security Administrator, and each Authorized Payment User to whom Cadence or the Authorized Administrator, Secondary Authorized Administrator and/or Security Administrator has provided access to Security Codes, or who has otherwise obtained access to Security Codes, is deemed an authorized representative of Company for purposes of all Services (including, but not limited to, Wire Transfer Services, Account Transfer Services, Loan Services, Bill Payment Services or ACH Services) transacted or conducted through or by use of Digital Banking, whether or not such person is authorized by this Agreement or any other agreement between and Company. The Company shall not permit Authorized Payment Users of Digital Banking that are not specifically authorized by the Company or the Authorized Administrator, Secondary Authorized Administrator (if applicable) and/or Security Administrator to access Digital Banking or initiate Wire Transfer Services, Account Transfer Services, Loan Services, Bill Payment Services or ACH Services. Company agrees to be bound by any wire transfers or ACH transactions initiated in compliance with the security procedures in Section 2.k. of the General Provisions above.

Company acknowledges and agrees that its

Authorized Administrator, Secondary Authorized Administrator (if applicable), Security Administrator and/or an Authorized Payment User is authorized to request advances on any Digital Banking or Mobile App Accessible Loans where advances are available, regardless of whether the Authorized Administrator, Secondary Authorized Administrator, Security Administrator and/or the Authorized Payment User is authorized to do so under the applicable loan documentation. Company authorizes Cadence to process and make advances on Digital Banking or Mobile App Accessible Loans without further verification or authorization if requested by the Authorized Administrator, Secondary Authorized Administrator, Security Administrator and/or an Authorized Payment User in accordance with the procedures and processes set forth herein.

Notwithstanding the terms of any agreement between Company and Cadence, once Company accesses Digital Banking to transact or conduct any Service, Cadence will not verify that the transaction is authorized and Company is solely responsible for the accuracy and completeness of any data or information received by Cadence. Cadence is authorized by Company to process transactions in accordance with information Cadence receives electronically through Digital Banking using the Security Codes. Company shall be solely responsible for the information contained in the instructions and Cadence shall have no responsibility for erroneous data provided by Company. **Cadence shall have no**

**liability for losses resulting from or related to Company's failure to limit access to Digital Banking, or to maintain the confidentiality of the Security Codes including Authentication Tokens.**

At the sole discretion of Cadence, Cadence may also require the use of other identifying information or other security procedures for any Services and Cadence may add to, change or delete any security procedure.

iv. **Basic Digital Banking Online Access.** Company shall designate on the Service Instructions all of Company's deposit and loan accounts maintained with Cadence which Company desires to access via Digital Banking. All accounts so designated shall be accessible by Company and Authorized Payments Users via Digital Banking for the purposes of allowing retrieval of daily balances, checks and other items presented or cleared, deposits made, fees assessed, the making of deposit transactions, the procurement of advances and the making of payments on loan accounts, and such other transactions and information as may be made available through Digital Banking from time to time.

v. **Transaction Processing.**

A. Wire Transfers: Wire transfers initiated through Digital Banking are subject to the conditions and limitations provided below, the terms and conditions set forth in the Funds Transfer Service section of this Agreement and the terms and conditions set forth in any other agreement related thereto entered into from time to time between Cadence and the Company.

B. Domestic Wire Transfers and Drawdown Wire Transfer Requests: Domestic Wire Transfers and Drawdown Wire Transfer Requests initiated through Digital Banking and received by Cadence during processing hours (as published from time to time at Digital Banking's resource center) on a Business Day that both Cadence and the Federal Reserve are open for business will be processed the same day; however, if the Federal Reserve is closed on a Business Day Cadence is open for business, the wire transfer will be processed by the Federal Reserve on the next Business Day the Federal Reserve is open for business. Domestic wire transfers and Drawdown Wire Transfer Requests initiated through Digital Banking and received by Cadence after processing hours (as published from time to time at Digital Banking's resource center) on a Cadence Business Day or at any time on a day on a Cadence non-Business Day will be processed on the next Business Day Cadence and the Federal Reserve are open for business.

C. International Wire Transfers: Company agrees that it assumes all risk of whatever type or manner for international Wire Transfers involving banks located outside of the United States. Cadence will not be liable to Company in any way in connection with an international funds transfer, whether for failure of delivery, delayed delivery, fluctuations in exchange rates or for any other reason. Furthermore, Company shall indemnify, defend, and hold Cadence and its affiliates, directors, officers, employees and agents harmless from any action, claim, cost, demand, expense (including attorneys' fees, expert witness'

fees, and court costs), fine, liability, or loss of any kind or nature whatsoever, whether brought by Company or any third party, which arise from or relate to Company initiating or conducting an international wire transfer, or the failure or delay in delivery of an international wire transfer, or fluctuations in exchange rates, or for any other reason arising from or related to an international wire transfer.. International Wire Transfers initiated by Company through Digital Banking and received by Cadence by its applicable designated cutoff time on a Cadence Business Day will be processed the same day. International Wire Transfers initiated by Company through Digital Banking and received by Cadence after its applicable designated cutoff time on a Cadence Business Day or at any time on a Cadence non-Business Day will be processed on the next Cadence Business Day. The foreign currency exchange rates quoted for International Wire Transfers on Digital Banking will be used for each foreign currency International Wire Transfer initiated through Digital Banking unless Company obtains a custom rate and related confirmation number from Cadence and properly enters the custom rate confirmation number in the designated field when initiating the wire transfer. The foreign currency exchange rates quoted on Digital Banking's resource center may differ from the exchange rates quoted by Cadence for other purposes. If Cadence makes an error in entering any foreign currency exchange rate on Digital Banking, Cadence reserves the right, in processing any International Wire Transfer initiated at the incorrect exchange rate, to substitute the correct exchange rate or to decline to process that wire transfer, as Cadence may determine in its sole discretion.

D. Email Notices; No Liability. Under no circumstances will Cadence be liable for any consequential, special, punitive, incidental, or other damages arising from or in connection with any delay or failure to provide any e-mail notice. Company, not Cadence, has final responsibility to confirm the receipt or transmission of any wire transmission to or from a Company Account.

E. Automated Clearing House (ACH) Transactions: ACH transactions initiated through Digital Banking and received by Cadence during processing hours (as published from time to time at Digital Banking's resource center) on a Cadence Business Day will be processed the same day. ACH transactions initiated through Digital Banking and received by Cadence after such processing hours on a Cadence Business Day, or on a Cadence non-Business Day, will be processed on the next Business Day. Company acknowledges that all ACH transactions fulfilled by Digital Banking are subject to the terms and conditions of the ACH Services section.

F. Recurring ACH Payments: The Recurring ACH Payment feature available in Digital Banking permits each of Company's Authorized Payment Users to establish a standing order of the Company to Cadence to submit a group of one or more Entries (referred to as an "ACH Batch") on an automated and recurring basis, without further act or instruction by Company unless payment requires approval by another user (a "Recurring ACH Payment"). In

setting up a Recurring ACH Payment on Digital Banking, Company shall specify when each ACH Batch is to be transmitted, including:

- (A) The Start Date, which is the date requested by Company as the Settlement Date for the first transmission of this ACH Batch.
- (B) The Creation Time, which is the time at which Company requests Digital Banking to activate each ACH Batch.
- (C) The Recurrence Pattern, which is the frequency with which Company requests Digital Banking to create each ACH Batch.
- (D) End Date, date of when the recurring creation of the ACH batch should stop. May be set to a specific number of occurrences or for a specific date.
- (E) The previous Business Day or future Business Day designation, which indicates whether an ACH Batch should be back-dated or future-dated if the requested Settlement Date is a holiday or other non-Business Day.

Digital Banking will activate and, subject to the overall terms of this Agreement and any additional approval required of Company, Cadence will process each Recurring ACH Payment according to the instructions provided by Company through Digital Banking via any Online Services. If Company has elected to require additional approval for recurring ACH Payment, Cadence will not process any ACH Batch until the necessary approval has been provided by Company. With respect to each properly established ACH Recurring Payment, Cadence has (A) no duty to make any inquiries regarding the performance of any contract or the completion of any transaction between Company and the recipient of any Entry, (B) no obligation to Company other than to transmit each ACH Batch according to Company's instructions, and (C) no liability if Cadence fails to transmit any ACH Batch due to an Overlimit Entry. In order to cancel a Recurring ACH Payment, Company must use Digital Banking via the Online Services (1) to delete the recurring payment feature from the ACH Batch, to disable the ACH batch, or (2) to delete the ACH Batch.

**G. Account Transfers:** Account Transfers initiated through Digital Banking via any Online Services and received by Cadence on a Business Day during processing hours (as published from time to time at Digital Banking's resource center) will be posted to the applicable accounts the same day. Account Transfers initiated through Digital Banking via any Online Services and received by Cadence after processing hours (as published from time to time at Digital Banking's resource center) or received on a Cadence non-Business Day will be posted to the applicable account on the next Cadence Business Day.

**H. Stop Payment Requests:** Stop Payment Requests initiated through Digital Banking via any Online Services and received by Cadence on a Business Day prior to the deadline (as published from time to time at Digital Banking's resource center) will be filed in relation to the applicable account the same day. Reasonable notification of a Stop Payment Request must be given to Cadence at least twenty-four (24)

hours prior to the relevant item being presented for payment. A stop payment request issued through Digital Banking via any Online Services will expire and become null and void as provided in the Account Agreement. The stop payment fee applicable to a stop payment order initiated electronically will apply to each stop payment request.

To the extent the procedures and timing requirements set forth herein for stop payment requests initiated through Digital Banking via any Online Services are inconsistent with any provisions applicable to stop payment requests set forth in the UCC, then those provisions are deemed to be varied by agreement as contemplated by Section 1-302 of the Uniform Commercial Code. Company agrees to hold Cadence harmless and indemnify it against any loss, expense, or cost incurred resulting from Cadence's refusal to pay any item upon which customer places a stop payment request.

**vi. Alerts.** The Authorized Administrator, the Secondary Authorized Administrator (if applicable) and/or the Security Administrator may authorize any Authorized Payment User to receive alerts relating to Digital Banking and Company Accounts ("Alert Services"). Each Authorized Payment User, when authorized by the Authorized Administrator, the Secondary Authorized Administrator (if applicable) and/or the Security Administrator, may request and receive from Cadence any of the alerts made available through Digital Banking by making alert selections through Digital Banking. According to an Authorized Payment User's alert selections, alerts may be sent via email, system notification through Digital Banking, text messaging or such other delivery channels as Cadence may offer from time to time. Each alert is customized to fit the particular channel through which it is being delivered. For added security, all alerts will mask the related account number(s). It is the Authorized Administrator's, the Secondary Authorized Administrator's (if applicable), the Security Administrator's and Authorized Payment Users' sole responsibility to ensure that the email addresses and telephone numbers provided to Cadence are current and accurate. If information from an Authorized Payment User's wireless carrier, internet service provider, or other third-party telecommunications provider indicates to Cadence that an email address and/or mobile phone number has been changed, changed networks, is no longer registered to the Authorized Payment User, or is otherwise not authorized or able to receive messages, Cadence may automatically stop delivery of any alerts to that email address or mobile phone number. In that event, the Authorized Administrator, Secondary Authorized Administrator (if applicable), Security Administrator or Authorized Payment User must update the email address or mobile phone number through Digital Banking before alerts can be delivered to such email address or mobile phone number again.

Cadence shall not be liable to Company for any damages incurred for its failure to provide Alert Services if such failure is caused, directly or indirectly, by circumstances or events outside the reasonable control of Cadence including, but not

limited to, power failures, telecommunications failures, Internet server outages, lack of cellular service, or failure by the Authorized Administrator, Secondary Authorized Administrator (if applicable), Security Administrator or Authorized Payment User to provide Cadence with accurate delivery instructions or information or to update such instructions or information when changed.

Cadence's liability to Company for its failure to provide Alert Services is hereby specifically limited to the amount paid by Company to Cadence for the alerts. Further, Cadence shall not be liable under any circumstances for any consequential, special, punitive, incidental, or similar damages arising from or in connection with alerts to be provided to Company by Cadence.

COMPANY WILL INDEMNIFY AND HOLD CADENCE, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AFFILIATES, PREDECESSORS, SUCCESSORS, ATTORNEYS, AND CONTRACTORS, HARMLESS FROM ANY CLAIM, LOSS, PENALTY, ASSESSMENT, COST, OR DAMAGE, WHETHER IN CONTRACT OR IN TORT (INCLUDING REASONABLE ATTORNEY'S FEES), ARISING UNDER THIS AGREEMENT, OR IN CONNECTION WITH THE ALERTS SERVICE PROVIDED UNDER THIS AGREEMENT, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THOSE ASSERTED BY THIRD PARTIES FOR REIMBURSEMENT OR DAMAGES AND THOSE WHICH ARISE OUT OF OR UNDER THE ELECTRONIC FUNDS TRANSFER ACT, ANY APPLICABLE STATE ELECTRONIC FUND TRANSFER RULES OR REGULATIONS, OR ANY RULES OR GUIDELINES OF ANY AUTOMATED CLEARING HOUSE.

vii. **Online Image Services.**

A. Online Image Services. Online Image Services permits Company, using Digital Banking, to retrieve and view online images of items, reports, and other documents issued or created in connection with Company's Accounts (the "Image Services"). The type of items, reports, and documents for which Image Services are available may be changed or updated from time to time by Cadence. Company's Authorized Administrator, Secondary Authorized Administrator (if applicable) or Security Administrator must authorize a Designated Person for Image Services.

B. Image Processing. Cadence will use commercially reasonable efforts to process and provide retrieval access to images of all items, reports, and documents and which Company has selected. Cadence does not, however, guarantee that Company will be able to retrieve and view all images at all times or that all items, reports, and documents for which Image Services may be otherwise available will adequately process to the Image Service archive system for retrieval and viewing by Company. Company acknowledges that the Image Services archive system may not be accessible from time to time or a retrieval request may not be completed and a Designated Person may be required to access Image Services at a later time. Company acknowledges that there exist many reasons and causes that certain images may not be available for

retrieval or that certain items or documents may not adequately process to the Image Services system, including, but not limited to, (i) an item bearing a deficient MICR line that does not post to the Images Services archive, (ii) errors based on account or routing number information, (iii) incompatible search criteria for certain items or documents, and (iv) images, reports, and other documents are retrievable through Digital Banking for a finite amount of time. Cadence shall have no liability or obligation for Company's inability to retrieve one or more images at any time.

C. Image Quality. Company acknowledges that the visual quality of a retrieved image depends on the visual quality of the item or document from which the image was created. The darkness, tint, tone, and clarity of both written and background characters contained in the original source item or document directly affects the quality of the image created. Cadence shall have no responsibility or obligation to enhance or improve the visual quality of any image based on the condition or visual quality of the original source item, image, or document.

D. Timeliness of Response. Company acknowledges that the timeliness of a response to a retrieval request for one or more images depends on the Company's Internet Service Provider ("ISP") and the medium through which Company connects to the Internet. Company acknowledges that certain ISPs and Internet medium connections produce a more rapid response than others, and that Cadence has no responsibility or obligation to enhance or improve the response time to Company's Image Services retrieval requests.

E. Time of Image Availability. Cadence from time to time will communicate to Company the time of day the various types of images created in connection with Image Services will be available for retrieval and the length of time the same will be retrievable through Digital Banking. The availability times may change from time to time as communicated to Company by Cadence.

F. Inadvertent Retrieval. In the event, due to operating error, any Designated Person inadvertently retrieves an image of an item, report or document related to an account owned by an entity other than Company, Company agrees that the Designated Person, upon recognition that the image is of an item, report, or document that does not relate to any Company Account, will immediately take the action necessary to delete the image from the Designated Person's screen. Company agrees that neither Company nor any Designated Person will use the inadvertently retrieved image for any purpose whatsoever. Company further waives any action or claim arising from the inadvertent retrieval of the image of any item, report, or document related to Company Accounts by another entity using Image Services.

viii. **Sharing of Data. Digital Banking and the Online Services allow a Designated Person to share reports, statement(s), images and other information ("Content") from a computer and/or a Mobile Device. Company hereby acknowledges**

and agrees that (a) any Content shared by a Designated Person may pass through private and public networks with varying levels of security, (b) Cadence is not responsible for the security or privacy of the Content shared by a Designated Person through a computer and/or Mobile Device, and (c) Cadence is not liable for any damages that occur as a result of any Content that is shared by a Designated Person through a computer and/or Mobile Device.

ix. **Equipment and Internet Service.** In connection with its use of Digital Banking and Online Services for the purposes provided in this Agreement, or otherwise, Company shall be solely responsible for satisfying the minimum hardware, software, and Internet browser requirements specified by Cadence from time to time and maintaining Internet service sufficient to access and use Digital Banking as provided herein. Company shall be solely responsible for ensuring equipment and software compatibility with Digital Banking and Online Services. All of the foregoing will be purchased and maintained by Company, at its sole expense. Cadence shall have no liability or responsibility for any failures or delays relating to any of the foregoing, including, without limitation, Company's ISP's performance or actions or omissions.

x. **Company's Additional Representations, Warranties and Covenants.** Company represents and warrants that each electronic communication submitted to Cadence by Company by use of Digital Banking fully satisfies and complies with all requirements of all Applicable Law.

xi. **Termination.** Notwithstanding any other provision regarding termination set forth herein or in any other agreement between Cadence and Company, Cadence may terminate Company's access to and its ability to transact any or all of the Online Services through Digital Banking at any time for any reason, effective immediately. Cadence shall use reasonable efforts to communicate notice of the termination to Company promptly, and will thereafter provide written confirmation of the termination if the initial notice of termination was not communicated in writing. Cadence may require Company to execute additional documents or agreements to continue to conduct or transact Online Services through or by use of Digital Banking at any time. The terms and provisions of Sections 1.a.vii., 1.a.viii., 1.a.ix. and 1.a.xi. of this Digital Banking portion of this Agreement shall survive the termination of this Agreement and Company's right to access and submit transactions through Digital Banking.

## b. File Transfer Service

i. **Online Access.** Company may access certain functions and features of other Services (as shown in the Service Instructions for Cadence File Transfer Service) by use of the Cadence File Transfer Service through one or more Cadence-designated websites, including, among other things, transmission and receipt of: Automated Clearing House Services files, notices and reports; Lockbox files; Positive Pay files and notices; Image Cash Letters; and receipt of

account analysis statements. Company's use of the Cadence File Transfer Service shall be subject to these terms and conditions, all instructions and guidelines established from time to time by Cadence, all applicable software and user documentation terms and conditions, and all Applicable Law. Company will only be granted access to, and agrees only to access, the Cadence File Transfer Service to transact or conduct the services shown in the Service Instructions for the Cadence File Transfer Service. Company may only access those Services and features that Company has otherwise requested pursuant to this Agreement and that Cadence has agreed to provide and has implemented for Company.

ii. **Internet Security.** Company shall designate in writing to Cadence those Designated Persons who will be permitted to access and conduct online services using the Cadence File Transfer Service. Company shall restrict access to the Cadence File Transfer Service only to such Designated Persons (who shall be deemed to include the Authorized Administrator and any designated Security Administrator). Following notice of Designated Persons, Cadence shall provide the Designated Person with the website through which the Cadence File Transfer Service may be accessed utilizing such person's Security Codes. Company agrees to hold harmless Cadence from and against any loss caused by the failure by any Designated Person to adhere to the Security Procedures outlined in this Agreement or otherwise specified in the Service Instructions for the Cadence File Transfer Service or any Service accessed through the Cadence File Transfer Service (including, without limitation, the safeguarding of any Security Codes), and expressly assumes the risk of loss with respect to any transaction initiated by any Designated Person whose Security Procedure has not been maintained according to such terms.

Company acknowledges that while Cadence will attempt to ensure that all electronic communications between Company and Cadence are encrypted, scrambled or otherwise protected against interception by a person whose access to Cadence File Transfer Service is unauthorized, Company nonetheless accepts and assumes all risk of loss or dissemination of information attributable to the electronic communications between Company and Cadence through the Cadence File Transfer Service.

If Company is unable to access the Cadence File Transfer Service or transact or conduct any activity through the Service, Company shall immediately notify Cadence of such inability but shall transact or conduct such activity through other means available to Company.

iii. **Authorized Transactions.** Cadence may rely upon any instruction, order or transaction given or initiated through the Cadence File Transfer Service as properly authorized by Company (including, without limitation, any instructions or information related thereto it receives from Company through the Cadence File Transfer Service). Each Designated Person is deemed an authorized representative of Company for purposes of all instructions, orders or

transactions given or initiated through or by use of the Cadence File Transfer Service, whether or not such person is actually authorized by this Agreement or any other agreement between Cadence and Company.

Notwithstanding the terms of any other agreement between Company and Cadence, once Company accesses the Cadence File Transfer Service to transact or conduct any activity, Cadence will not verify that the transaction is authorized and Company is solely responsible for the accuracy and completeness of any data or information received by Cadence. Cadence is authorized by Company to process transactions in accordance with information Cadence receives electronically from Company through the Cadence File Transfer Service. Company shall be solely responsible for the information contained in any instructions delivered to Cadence through the Cadence File Transfer Service and Cadence shall have no responsibility for erroneous data provided by Company. Cadence shall have no liability for losses resulting from or related to Company's failure to limit access to the Cadence File Transfer Service or maintain the confidentiality of any Security Codes. At the sole discretion of Cadence, Cadence may also require the use of other identifying information or other security procedures for certain activity conducted through the Cadence File Transfer Service and Cadence may add to, change or delete any security procedure.

- iv. **Transaction Processing.** Instructions, orders and notices provided to Cadence by Company through the Cadence File Transfer Service will be subject to the processing deadlines and timeframes specified for the underlying Service to which such instruction, order or notice relates. (By way of example, ACH files transmitted to Cadence through the Cadence File Transfer Service will be processed based on the time received by Cadence in accordance with the terms of the Automated Clearing House Services provisions of this Agreement.)
- v. **Equipment.** In connection with its use of the Cadence File Transfer Service for the purposes provided in this Agreement, or otherwise, Company shall obtain Internet browser software specified by Cadence. Company shall be solely responsible for ensuring equipment and software compatibility with the Cadence File Transfer Service. All hardware and telecommunications equipment will be purchased and maintained by Company.
- vi. **Company's Additional Representations, Warranties and Covenants.** Company represents and warrants that each electronic communication submitted to Cadence by Company by use of the Cadence File Transfer Service fully satisfies and complies with all requirements of all applicable laws and regulations.
- vii. **Termination.** Notwithstanding any other provision regarding termination set forth herein or in any other agreement between Cadence and Company, Cadence may terminate Company's access to and its ability to utilize or access Services or effect transactions through the Cadence File Transfer Service at any time, effective immediately. Cadence

shall use reasonable efforts to communicate notice of the termination to Company promptly, and will thereafter provide written confirmation of the Termination if the initial notice of termination was not communicated in writing. Cadence may require Company to execute additional documents or agreements to continue to access, utilize or effect transactions through the Cadence File Transfer Service at any time.

**c. Secure File Transfer Service**

The Secure File Transfer Service is a file transfer method for Company to exchange large files and sensitive data (and images if applicable) with Cadence over the Internet. Upon Company's submission of a request for and the approval of the Service Instructions for Secure File Transfer Services, or upon its use of any of these Services, whichever occurs first, Company agrees:

- i. **Access.** Company's use of the Secure File Transfer Service shall be subject to these terms and conditions, all instructions and guidelines established from time to time by Cadence, all applicable Software and Documentation terms and conditions, and all applicable state and federal laws and regulations, including Applicable Law relating to the security, maintenance, use, processing and storage of data. Company will only be granted access to, and agrees only to access, the Secure File Transfer Service to transact or conduct Treasury Management Services. Company may transact only the Secure File Transfer Service that Cadence agrees to provide and implements for Company. All Services utilized in connection with the Secure File Transfer Service shall be subject to all other terms and conditions applicable to those specific Services as set forth in this Agreement.

**ii. Security.** For accessing the Secure File Transfer

Service, both parties will carry out the confirmation and authentication processes necessary for the applicable protocol (FTPS, SFTP, or any other mutually agreed upon communication protocols, hereinafter "File Transfer Service Protocols") and Company will comply with all security requirements set forth herein. Company shall designate in writing to Cadence one or more Security Administrators for the Secure File Transfer Service. The designating document must contain the original signatures of the person whose signature appears on the Service Instructions for this Agreement. The Security Administrator will be the person who receives Company's user identification ("User ID"), user password ("User Password") and any other information required to utilize the Secure File Transfer Service. The Security Administrator will also be responsible for providing all information to Cadence, including, but not limited to, public keys necessary to utilize the Secure File Transfer Service.

If Company desires to change or add a designated Security Administrator, Company shall provide prior written notice to Cadence of such change, signed by a person whose signature appears on the Authorization Certificate for this Agreement. The notice may be emailed to Cadence. No change of designated Security Administrator by Company shall

be effective until accepted by Cadence, and Cadence has had a reasonable opportunity to update its records.

Company shall be responsible for initiating, undertaking and supervising all safety and security precautions and programs under its control, dominion or supervision in connection with the Secure File Transfer Service.

Company shall implement and maintain adequate information security measures to protect against unauthorized access to or use of the Secure File Transfer Service, including, without limitation: access controls on information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing Access Devices to unauthorized individuals who may seek to obtain this information through fraudulent means; encryption of electronic Information while in transit over any network (LAN/WAN including MPLS)

using well known (non-proprietary) encryption algorithms with a minimum key length of 128 bits; procedures designed to ensure that information system modifications are consistent with the information security measures; monitoring systems and procedures to detect actual and attempted attacks on or intrusions into information systems; response programs that specify actions to be taken when Company detects unauthorized access to information systems, including immediate reports to Cadence; training of staff to implement the information security measures; maintaining all systems and applications current with latest release of software and/or security packs, security patches, and security hot fixes; regular testing of key controls, systems and procedures of the information security measures by independent third parties or staff independent of those that develop or maintain the security measures; and appropriate firewalls and access control lists between all Company and Cadence networks, with only required traffic allowed between networks.

Company acknowledges and agrees that the foregoing represents the minimum measures acceptable to Cadence for Company's use of the Secure File Transfer Service and may not be sufficient to protect Company's information or data as otherwise maintained, used, processed or stored by Company.

Company will be responsible for safekeeping all Access Devices issued to Company personnel. This obligation will include, but not be limited to, development and implementation of written procedures and processes for safekeeping and security of the Access Devices. Company will make its written safekeeping and security procedures and processes available to Cadence at or prior to use of the Secure File Transfer Service and thereafter from time to time, at Cadence's reasonable request. Cadence will have the right to review and audit Company's safekeeping and security procedures, processes, and activities.

Company will be responsible for any losses or damages Cadence incurs in connection with a lost or stolen Access Device or other breaches of these security requirements.

Company acknowledges that while Cadence will attempt to ensure that all electronic communications between Company and Cadence are encrypted, scrambled or otherwise protected against interception by a person whose access to the Secure File Transfer Service is unauthorized, Company nonetheless accepts and assumes all risk of loss or dissemination of information attributable to the electronic communications between Company and Cadence through or in connection with the Secure File Transfer Service.

If Company, Security Administrator or any designated contact believes that one or more Access Devices have become known or obtained by unauthorized persons (whether or not employed by Company), Company shall immediately notify Cadence to enable Cadence to disable the affected Access Device(s).

Additionally, Cadence may change or disable any Access Device at any time and for any reason. If Cadence takes such action, Cadence will make reasonable efforts to notify Company promptly.

Cadence assumes no responsibility to discover, audit, or report to Company any possible breach of security by Company's agents or representatives or anyone else for unauthorized disclosure or use of Access Devices. Company acknowledges that the security procedures in this Section constitute commercially reasonable security procedures for Company.

If Company is unable to access the Secure File Transfer Service or transact or conduct any business through the Secure File Transfer Service, Company shall immediately notify Cadence of such inability and shall transact or conduct such business through other means available to Company.

Cadence, as owner or licensee, claims and reserves all rights and benefits afforded under federal copyright law in all software programs and user materials that constitute the Software used in connection with the Secure File Transfer Service and in all related Documentation. Company hereby authorizes Cadence to enter Company's premises in order to inspect the Software in any reasonable manner during regular business hours.

Company's obligations hereunder shall remain in effect for as long as Company continues to use the Secure File Transfer Service.

iii. **Authorized Transactions.** Cadence may rely upon any Service transacted or conducted through or by use of the Secure File Transfer Service as properly authorized by Company (including, without limitation, any instructions or information related thereto it receives from Company through the Secure File Transfer Service). Each Security Administrator to whom Cadence has provided access to Access Devices, or who has otherwise obtained access to Access Devices, is deemed an authorized representative of Company for purposes of all



Treasury Management Services transacted or conducted through or by use of the Secure File Transfer Service, whether or not such person is authorized by this Agreement or any other agreement between Cadence and Company.

Notwithstanding any other terms of this Agreement or any other agreement between Company and Cadence, once Company accesses the Secure File Transfer Service to transact or conduct any Treasury Management Service, Cadence will not verify that the transaction is authorized, and Company is solely responsible for the accuracy and completeness of any data or information received by Cadence. Cadence is authorized by Company to process transactions in accordance with information Cadence receives electronically from Company through the Secure File Transfer Service. Company shall be solely responsible for the information contained in the instructions and Cadence shall have no responsibility for erroneous data provided by Company. Cadence shall have no liability for losses resulting from or related to Company's failure to limit access to the Secure File Transfer Service or maintain the confidentiality of the Access Devices. At the sole discretion of Cadence, Cadence may also require the use of other identifying information or other security procedures for certain Treasury Management Services and Cadence may add to, change or delete any security procedure.

iv. **Agreements of Company.** In connection with its use of Secure File Transfer Services, Company agrees to purchase and/or provide the hardware, software, support services and communication equipment necessary to exchange files securely with Cadence. Company shall be solely responsible for ensuring equipment compatibility with Cadence's equipment and the Secure File Transfer Services. All hardware, internet and/or network connectivity and/or phone line(s) will be purchased and maintained by Company.

v. **Company's Additional Representations, Warranties and Covenants.** Company represents and warrants that all instructions or communications submitted to Cadence by the Company and/or use of Secure File Transfer Services fully satisfies and complies with all applicable Software and Documentation requirements and all applicable requirements of all Applicable Laws.

vi. **Disclaimer of Warranty.** COMPANY ACKNOWLEDGES THAT ITS HARDWARE, SOFTWARE AND NETWORKS MUST INTERFACE WITH CADENCE'S HARDWARE, SOFTWARE AND NETWORKS, AND ASSUMES THE RISK THAT CADENCE'S HARDWARE, SOFTWARE AND NETWORKS MIGHT NOT BE OPERATIONAL OR COMPATIBLE AT ALL TIMES. COMPANY AGREES THAT CADENCE SHALL HAVE NO LIABILITY TO COMPANY BASED ON NONPERFORMANCE, DEFECT OR FAILURE OF THE SECURE FILE TRANSFER SERVICE OR CADENCE'S HARDWARE, SOFTWARE AND NETWORKS TO PERFORM PROPERLY.

#### d. **Balance Reporting Service**

i. **Description of Service.** The Service allows authorized Company personnel to receive reports of account and transaction activity on Company deposit accounts, loans and other products and services maintained with Cadence.

ii. **Authorization.** Company authorizes Cadence to report to any Authorized Administrator or to those persons designated by Company in the Service Instructions for Balance Reporting Services information concerning all accounts and account clearings and transactions, including, but not limited to, checking, savings, disbursement, zero balance, money market and loan balance accounts, which Company now or in the future maintains with Cadence ("Balance Reporting Accounts"). Cadence will make available this information at times specified by Cadence from time to time. Company authorizes Cadence to engage the services of and make Balance Reporting Accounts information available to independent contractors and other data processors as Cadence deems necessary or desirable in order to provide Balance Reporting Accounts information to Company.

#### e. **Data Exchange Service**

With this Service, Company can obtain consolidated daily balance and float status information, as well as summary and detailed transaction level information, from multiple financial institutions in one consolidated data file. This Service is made available on an "as-is" and "as available" basis. Neither Cadence nor the Data Collection Agency provide any warranty, express or implied, regarding this Service. **All warranties, including implied warranties of merchantability and fitness for a particular purpose, are expressly disclaimed to the greatest extent permitted by law.** Cadence does not assume any liability for the unavailability of the Service or for information provided or withheld by any institution.

i. **In-Bound Data Exchange.** With this feature, Company may authorize other financial institutions to submit to Cadence that will be consolidated with account data from Cadence. Company will then retrieve the consolidated data file through our Digital Banking Service. Company is responsible for authorizing any other financial institutions to provide account data. Cadence's ability to process such information will depend, in part, on presentation of the information in a manner and format that is compatible with Cadence's system. Cadence is not responsible for the accuracy or timeliness of delivery of any account data furnished by other financial institutions.

ii. **Out-Bound Data Exchange.** With this feature, Company authorizes Cadence to extract account data on Company's accounts with us.

iii. **BAI Direct.**

With this feature, Company authorizes Cadence to extract account data on Company's accounts with Cadence and make it available to Company via file transmission.

f. **EDI Notification Service**

Cadence will provide Company with EDI Notification Services. By Digital Banking, electronic mail or other transmission medium mutually selected by Cadence and Company, Cadence will transmit to Company on a transaction basis the ACH text and addenda information for each incoming ACH Entry credited or debited to a Company Account.

2. **RISK MANAGEMENT**

a. **Positive Pay Services**

Upon Company's submission of a request for Positive Pay Services and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

b. **Definitions.** Unless otherwise defined in this Agreement, words or phrases used in this Positive Pay Section shall have the meanings set forth in Articles 3 and 4 of the UCC. Additionally, for purposes of this Service:

"Authorized Account" means the account(s) of Company, maintained at Cadence and specified in the Services Instructions, to which the Positive Pay Services will apply.

"Available Funds" means funds on deposit in an Authorized Account and available for withdrawal pursuant to Regulation CC and Cadence's applicable funds availability schedule and policies.

"Check Issue File/Entry" means a record describing checks drawn by Company on an Authorized Account, provided by Company to Cadence under Section 2.b. below.

"Exception Check" means a Presented Check that is identified as an exception through Digital Banking's utilization of information properly included in the applicable Check Issue File/Entry regarding any of: check number, check amount, check status (such as check voided or payment stopped) or, if Company subscribes to payee match service, payee name. Cadence shall be under no duty to make comparison of payee name unless this optional service has been selected by Company and Company's checks strictly comply with all technical specifications required to enable automated payee name comparison.

"Exception ACH Transaction" means a Presented ACH Transaction that is identified as an exception through Digital Banking's utilization of the ACH transaction filter/block definitions or the ACH authorization rules properly created by Company within the Digital Banking application.

"Exception Report" means a record describing Exception Checks and/or Exception ACH Transactions which is provided by Cadence to Company under Section 2.c. below.

"Issuance Date" means the earlier of the date on which any check drawn against the Authorized Account is mailed to the payee or given to the payee as reported to Cadence by Company in a Check Issue File/Entry.

"Positive Pay Settlement Deadline" means the Positive Pay Settlement Deadline specified in Digital Banking's resource center or otherwise specified in any notice given by Cadence to Company.

"Presented Check" means a check drawn on an Authorized Account and presented to Cadence for payment through the check collection system and for which no applicable return deadline has expired.

"Presented ACH Transaction" means an ACH transaction received by Cadence for posting to an Authorized Account through the ACH system and for which no applicable return deadline has expired.

"Pay Request" means the instructions of Company to Cadence ordering Cadence to pay an Exception Check or Exception ACH Transaction timely submitted to Cadence by Company through the Digital Banking application specifically provided for such purpose.

"Return Request" means the instructions of Company to Cadence ordering Cadence to return an Exception Check or Exception ACH Transaction timely submitted to Cadence by Company through the Digital Banking application specifically provided for such purpose.

c. **Check Issue File/Entry.** Company shall submit a Check Issue File/Entry to Cadence through Digital Banking or such other means as Cadence may provide from time to time so that such Check Issue File/Entry is actually received by Cadence not later than the same Business Day as the Issuance Date of the check(s) which are the subject of such Check Issue File/Entry. Each Check Issue File/Entry shall accurately state the Issuance Date, check number, exact amount and (at Company's option) the payee name of each check drawn on each Authorized Account since the last Check Issue File/Entry was submitted. Failure by Company to send a Check Issue File/Entry to Cadence prior to disbursement could result in checks presented for payment that do not have corresponding Check Issue File/Entry, thus checks deposited at a Cadence branch or ATM or through the check clearing network will be treated as "Exception Checks" and be included in the Exception Report with the exception reason of "paid-no-issues (PNI)." If Company provides a payee name but does not subscribe to Check Positive Pay with Payee Match and does not provide a payee name in the Check Issue File/Entry, Cadence may, but is not obligated to, compare the payee name to the corresponding Presented Check. If Company subscribes to Check Positive Pay with Payee Match and does not provide a payee name in the Check Issue File/Entry, Cadence may, but is not obligated to, treat the corresponding Presented Check Item as an Exception Check.

d. **Comparison of Presented Checks and Reporting of Exception Checks.** Cadence shall compare each Presented Check by Issuance Date, check number,

amount (as encoded) and, at Company's option (and if reported to Cadence by Company in a Check Issue File/Entry), payee name, against each Check Issue File/Entry received by Cadence and all established Business Rules. Cadence shall be under no duty to make any other comparison, including, but not limited to, signature, endorsement or check form. Cadence shall be under no duty to make comparison of payee name unless this optional service has been selected by Company and Company's checks strictly comply with all technical specifications required to enable automated payee name comparison. Cadence shall make available to Company through Digital Banking on each Business Day not later than the deadline (as published from time to time at Digital Banking's resource center), an Exception Report that indicates whether Cadence has received any Exception Checks and, if so, specifies the complete check number and amount of any such Exception Check.

**e. Payment and Return of Exception Checks; Overriding Default Instruction.** Company shall respond to the Exception Report via the Digital Banking application specifically provided for such response before the Positive Pay Settlement Deadline applicable to the Exception Report. Such response shall either authorize payment or provide return instructions for each Exception Check listed in the Exception Report. Any Exception Check for which no such response has been provided by Company in accordance with this Section shall be processed in accordance with Company's default payment/return instruction as set forth in the applicable Service Instructions. Company agrees that Cadence exercises ordinary care whenever it acts in accordance with this Section:

(i) If Company's default instruction is to pay all Exception Checks but Company nevertheless desires that any specific Exception Check be returned, Company shall submit through Digital Banking a Return Request which shall identify each Exception Check that Company desires to be returned by the complete check number and amount specified in the Exception Report and which shall also include a return reason selected by Company from a list of available choices, thereby instructing Cadence to return the Exception Check. Return Requests must be submitted by Company and actually received by Cadence not later than the Positive Pay Settlement Deadline applicable to the Exception Report identifying the subject Exception Check. Cadence shall return to the presenting bank any Exception Check that Company instructs Cadence to return, as provided in this Section and otherwise in accordance with this Positive Pay section, and such return shall constitute Company's waiver of any and all claims of wrongful dishonor. Otherwise, subject to the terms of any other agreement or terms or conditions governing the Authorized Account, no Exception Check listed on an Exception Report will be returned by Cadence, and Company's failure to submit a Return Request in accordance with this Section shall conclusively operate as Company's express consent and agreement to final payment of all Exception Checks listed in such Exception Report, and such failure shall constitute Company's waiver of any and

all rights to assert that such Exception Check was not properly payable or was for any reason wrongfully paid.

(ii) If Company's default instruction is to return all Exception Checks and Company nevertheless desires that any specific Exception Check be paid, Company shall submit through Digital Banking a Pay Request which shall identify each Exception Check that Company desires to be paid by the complete check number and amount specified in the Exception Report, thereby instructing Cadence to pay the Exception Check. Pay Requests must be submitted by Company and actually received by Cadence not later than the Positive Pay Settlement Deadline applicable to the Exception Report identifying the subject Exception Check. Cadence shall pay any Exception Check that Company instructs Cadence to pay as provided in this Section, and otherwise in accordance with this Positive Pay Section, and such payment shall constitute Company's waiver of any and all claims of wrongful payment. Otherwise, subject to the terms of any other agreement or terms or conditions governing the Authorized Account, no Exception Check listed on an Exception Report will be paid by Cadence, and Company's failure to submit a Pay Request in accordance with this Section shall conclusively operate as Company's express consent and agreement to return all Exception Checks listed in such Exception Report, and such failure shall constitute Company's waiver of any and all rights to assert that such Exception Check should not have been returned or was for any reason wrongfully dishonored.

**f. Reporting of Exception ACH Transactions.** Cadence shall make available to Company through Digital Banking by such time as is published from time to time at Digital Banking's resource center), an Exception Report that indicates whether Cadence has received for posting any Exception ACH Transactions and, if so, specifies the ACH Company Name, Standard Entry Class (SEC) Code and amount of such Exception ACH Transaction.

**g. Payment and Return of Exception ACH Transactions; Overriding Default Instruction.** Company shall respond to the Exception Report via Digital Banking e application specifically provided for such purpose before the Positive Pay Settlement Deadline applicable to the Exception Report. Such response shall either authorize payment or provide return instructions for each Exception ACH Transaction listed in the Exception Report. Any Exception ACH Transaction for which no such response has been provided by Company in accordance with this Section shall be processed in accordance with Company's default payment/return instruction as set forth in the applicable Service Instructions. Company agrees that Cadence exercises ordinary care whenever it acts in accordance with this Section:

(i) If Company's default instruction is to pay all Exception ACH Transactions but Company nevertheless desires that any specific Exception ACH Transaction be returned, Company shall submit through Digital Banking a Return Request which shall identify each Exception ACH Transaction that

Company desires to be returned by the complete ACH Company Name, SEC Code and amount specified in the Exception Report and which shall also include a Return Reason, thereby instructing Cadence to return the Exception ACH Transaction. Return Requests must be submitted by Company and actually received by Cadence not later than the Positive Pay Settlement Deadline applicable to the Exception Report identifying the subject Exception ACH Transaction. Cadence shall return to the presenting bank any Exception ACH Transaction that Company instructs Cadence to return, as provided in this Section and otherwise in accordance with the Positive Pay Section, and such return shall constitute Company's waiver of any and all claims of wrongful dishonor. Otherwise, subject to the terms of any other agreement or terms or conditions governing the Authorized Account, no Exception ACH Transaction listed on an Exception Report will be returned by Cadence, and Company's failure to submit a Return Request in accordance with this Section shall conclusively operate as Company's express consent and agreement to final payment of all Exception ACH Transactions listed in such Exception Report, and such failure shall constitute Company's waiver of any and all rights to assert that such Exception ACH Transaction was not properly payable or was for any reason wrongfully paid. (b) If Company's default instruction is to return all Exception ACH Transactions and Company nevertheless desires that any Exception ACH Transaction be paid, Company shall submit through Digital Banking a Pay Request which shall identify each Exception ACH Transaction that Company desires to be paid by the complete ACH Company Name, SEC Code and amount specified in the Exception Report, thereby instructing Cadence to pay the Exception ACH Transaction. Pay Requests must be submitted by Company and actually received by Cadence not later than the Positive Pay Settlement Deadline applicable to the Exception Report identifying the subject Exception ACH Transaction. Cadence shall pay any Exception ACH Transaction that Company instructs Bank to pay, as provided in this Section and otherwise in accordance with this Positive Pay Section, and such payment shall constitute Company's waiver of any and all claims of wrongful payment. Otherwise, subject to the terms of any other agreement or terms or conditions governing the Authorized Account, no Exception ACH Transaction listed on an Exception Report will be paid by Cadence, and Company's failure to submit a Pay Request in accordance with this Section shall conclusively operate as Company's express consent and agreement to return all Exception ACH Transactions listed in such Exception Report, and such failure shall constitute Company's waiver of any and all rights to assert that such Exception ACH Transaction should not have been returned or was for any reason wrongfully dishonored.

- h. Digital Banking as Exclusive Means.** Cadence shall not be obligated to comply with any Pay Request or Return Request received other than through Digital Banking or in a format or medium, or after any deadline, or at any place other than as permitted under this Positive Pay Section and may instead treat

any such Pay Request or Return Request as though it had not been received. Cadence shall not be responsible for detecting any Company error contained in any Check Issue File/Entry, Pay Request or Return Request submitted by Company to Cadence. Company acknowledges that Digital Banking is the sole and exclusive means for Company's transmission of each Check Issue File/Entry, Pay Request and Return Request and for Company's receipt of Exception Reports. Company assumes responsibility for familiarizing itself and its Authorized Users with the proper use of Digital Banking and the Positive Pay application. In no event shall Cadence be liable for any loss or other damage occurring as a result of Company's or any Authorized User's failure to use Digital Banking or the Positive Pay application properly and completely.

- i. General Remedies.** To the extent applicable and except as modified or limited in this Agreement or in any other agreement between Company and Cadence, the remedies provided under UCC Articles 3 and 4 shall govern this Positive Pay Section.
- j. Failure to Honor Return Request or Pay Request.** Except as provided below, if Cadence pays an Exception Check or Exception ACH Transaction listed in a Return Request made in accordance with this Positive Pay Section, or returns an Exception Check or Exception ACH Transaction listed in a Pay Request made in accordance with this Positive Pay Section, any liability of Cadence to Company shall be the lesser of (a) the amount of the Exception Check or Exception ACH Transaction; (b) Company's actual damages resulting from Cadence's failure to return or pay the Exception Check or Exception ACH Transaction; or (c) the limit of liability under this Agreement or any other agreement between Company and Cadence. Notwithstanding the foregoing, Cadence retains the right to assert as a defense to any claim by Company that Cadence failed to honor any Return Request (a) that Company failed to exercise reasonable care; (b) that Company sustained no actual damages because payment of the Exception Check or Exception ACH Transaction discharged for value an obligation of Company; and/or (c) any other defense available to Cadence or arising under any other agreement between it and Company or under any applicable law. Notwithstanding any other provision of this Agreement, and irrespective of any Pay Request made in accordance with this Positive Pay Section, Cadence shall have no liability to Company when Cadence, acting in good faith, returns an Exception Check or Exception ACH Transaction (a) that Cadence reasonably believed was not properly payable; or (b) if there are insufficient available funds on deposit in the Authorized Account; or (c) if required to do so by the service of legal process on Cadence or the instructions of any regulatory or government authority or any court.

**k. Warranties, Remedies and Limitation of Liabilities.**

i. Checks Paid Under Agreement. With respect to any check paid by Cadence in accordance with this Agreement:

- (A) Company waives and releases any claim that the check is not properly payable, with respect to any drawer's signature(s) on, or alteration of the amount of, the check;
- (B) If the name of the payee of the check is altered, (A) if Company subscribes to Check Positive Pay with Payee Match, Company waives and releases any claim that the check is not properly payable with respect to the payee name, and (B) if Company does not subscribe to Check Positive Pay with Payee Match, Cadence, without waiving any defenses under the UCC or other Applicable Law, shall be accountable for the amount of the check to the extent required by applicable provisions of the UCC, including UCC 4-401, and Regulation CC and the ECCHO Rules, as applicable; and
- (C) If the check is not properly payable based on a forged indorsement, Cadence, without waiving any defenses under the UCC, shall be accountable for the amount of the check to the extent required by applicable provisions of the UCC, including UCC 4-401, and Regulation CC and the ECCHO Rules, as applicable.

ii. Checks Dishonored Under Agreement. With respect to any check dishonored and returned by Cadence in accordance with this Agreement, Company waives and releases any claim that the check is properly payable and any claim against Cadence for wrongful dishonor under UCC 4-402, any other account agreement between Cadence and Company or otherwise.

iii. Dispute over Return of Presented ACH Transaction Entry. Company acknowledges that the return of a Presented ACH Transaction is subject to dispute on part of the sender. In event of such a dispute, Cadence must act according to applicable laws, regulations and rules, including the NACHA Rules, for which Company hereby holds Cadence harmless and free of liability under this Agreement.

iv. Identification of Presented ACH Transaction. Company and Cadence acknowledge that ACH transactions are originated according to certain NACHA Rules which require the use of an originator name and originator identification number imbedded in the transaction to identify its source, and this imbedded data is a critical component of Cadence's ability to monitor transactions which Company desires to review. Cadence shall act in good faith to process Company's instructions entered in the Business Rules. However, if the identifying information in the transaction is inconsistent or is described inconsistently by Company in the Business Rules, Cadence shall be held harmless for posting a Presented ACH Transaction to Company's Designated Account and any dispute related to such transaction shall be between Company and the originator of the transaction. Cadence may at its sole discretion make

modifications to the originating ACH Company-identifying information listed in the Business Rules if there is inconsistency between historical transaction information and the Business Rules, in which case, Cadence will notify Company that a modification was made.

v. Hold Harmless. Company shall accept liability to any party and hold Cadence harmless for any damages, losses, fines, fees, taxes, legal expenses or action at law arising from the return (dishonor) of any Presented ACH Transaction if such return resulted from the correct application of Company's Payment Instructions and/or Business Rules.

vi. Properly Payable. Any Presented ACH Transaction that is paid in accordance with the Service shall be considered properly payable and company agrees that Cadence shall have no liability to Company for paying Presented ACH Transactions in accordance with this service.

vii. Indemnity and Hold Harmless. Company agrees to indemnify and hold Cadence harmless from any and all liabilities, claims and expenses of any kind or nature whatsoever for any encoding errors in the validation process, any missed deadlines for returning checks or otherwise arising out of its use of the Positive Pay Services (including the reasonable fees and disbursements of counsel in connection with any investigative, administrative, or judicial proceeding, whether or not any indemnified person shall be designated a party thereto); provided that Company shall have no obligation to any indemnified person hereunder with respect to any such liabilities, claims or expenses arising from the gross negligence or willful misconduct of such indemnified person.

viii. Conformity and Sampling. Company shall be responsible for assuring that all items drawn on each Authorized Account at all times conform to check specifications as may be provided to Company by Cadence from time to time. Notwithstanding any provision of this Agreement to the contrary, before becoming eligible to use the Positive Pay services hereunder, Company shall provide Cadence with a sample grouping of items, in an amount specified by Cadence, for Cadence's inspection to determine, in Cadence's sole discretion, that such sampling satisfies Cadence's quality control and processing specifications with respect to encoding, paper stock and other criteria. In the event that Cadence determines that the sampling does not satisfy its specification requirements, whether initially or at any time during the term of this Agreement, Cadence may advise Company of such and Company will not be eligible to use Positive Pay services until such time as a new sampling is provided to Cadence and determined by Cadence to be satisfactory. Further, Company shall provide Cadence with a sample Check Issue File/Entry for Cadence's inspection to determine, in Cadence's sole discretion, that such Check Issue File/Entry is compatible with the Positive Pay application. In the event that Cadence determines that the Check Issue File/Entry does not satisfy its specification requirements, whether initially or at any time during the term of this Agreement, Cadence may advise

Company of such and Company will not be eligible to use Positive Pay services until such time as a new Check Issue File/Entry is provided to Cadence and determined by Cadence to be satisfactory.

- ix. **Termination.** Upon termination of this Section, if requested by Company and upon payment of a reasonable fee, Cadence will provide Company with such archived data, if any, pertaining to Company's use of this Service as may be available to Cadence. Nothing in this Section creates any duty on the part of Cadence to archive any Company data.

### 3. DRAFT SERVICE

- a. **Presentment of Drafts.** All Drafts that are received by Cadence pursuant to this Agreement shall contain on the face of the instrument the words "draft" and that such draft is "payable through Cadence." Any item that does not contain the words required hereunder, or that is ambiguous on its face, may be treated by Cadence as a Draft, and Company shall indemnify and hold Cadence harmless for any liability that Cadence might incur as a result of so treating such item.

The effect of a Draft is to designate Cadence as a collecting bank to make presentment, and the Draft does not authorize Cadence to pay the Draft. Company shall specify the due date on any Draft (the "Due Date"). Due Dates for domestic Drafts may be from twenty-four (24) hours to seven (7) days from presentment of the Draft for payment. Due Dates for international Drafts may be longer, in the determination of Cadence, but in no event longer than thirty (30) days. If a Draft fails to specify a Due Date, Cadence will assume a Due Date of twenty-four (24) hours for domestic Drafts and ten (10) days for international Drafts, in each case from presentment of a Draft. Cadence shall make presentment of the Drafts and all Accompanying Documentation to Company on the same Business Day if received by such cutoff time as Cadence may establish from time to time, or if not received prior to the published time on the following Business Day (an "Appropriate Banking Day").

Automobile Dealer Drafts. Cadence will deliver the Drafts to Company, or their designated branch for pick up by commercial courier, or delivery to Company's agent at Cadence offices, as provided in the Service Instructions. Cadence will notify Company of any Drafts received by the established cutoff time on the same Business Day that we receive them. The day of this notice is called the "Appropriate Banking Day."

Oil & Gas Lease Drafts. Cadence will produce a collection letter specifying the Draft payee(s), Draft amount, receiving date of the Draft and the Draft Due Date for each Oil & Gas Lease Draft received by Cadence. Cadence will provide to Company a copy of the collection letter, an image of the front and back of the draft, and any attachments. If Company receives the copy and deems it illegible, it is the responsibility of Company to notify Cadence immediately upon receipt.

- b. **Draft Disposition.** Automobile Dealer Drafts. If Company wishes to dishonor any Draft, Company must do so by the Due Date. To dishonor it, Company must physically return the Draft to Cadence. If Company dishonors a Draft, Cadence will return it to the payee stamped "returned at request of drawer." The records of Cadence with regard to dishonor of Draft shall be deemed conclusive and binding upon Company. If Company fails to notify Cadence of a "return" (dishonor) decision and deliver the Draft to Cadence by the Disposition Deadline, Cadence will (provided there are Available Funds in the Designated Accounts to pay the Draft) pay the same and charge the Designated Accounts.

Oil & Gas Lease Drafts. Payment Instructions must be received on or before the Due Date on the collection letter. These instructions should be in written form and may be emailed to Cadence. Company must include in your payment instructions the following information:

- (i) Maker's Name
- (ii) Amount of Draft
- (iii) Draft Number
- (iv) Payment Instructions
- (v) Your Account Number
- (vi) Authorized Signature of Account Holder

Once payment is made with respect to any Draft, Cadence will either mail the Draft to Company or Company may arrange to have them picked up at an agreed-upon Cadence office at an agreed-upon time.

- c. **Payment for Drafts.** Company must tender sufficient Available Funds to pay all Drafts that have not been timely dishonored by Company. If Company does not have sufficient Available Funds in the Designated Account through which a Draft is payable, Cadence may deem that Draft dishonored and may return it, regardless of Company's instructions to Cadence, without liability for wrongful dishonor. Company authorizes Cadence to charge the Designated Accounts or any other Company Account immediately and without notice for the amount of any Draft it has accepted.
- d. **Responsibilities of Cadence.** Cadence assumes no responsibility for the genuineness of any Draft or endorsements on any Draft or the sufficiency or genuineness of the Accompanying Documentation. Notwithstanding any other provision of this Agreement, Cadence reserves the right to decline to act as collecting bank with respect to any Draft. Where it exercises such right, Cadence will promptly notify the party presenting the Draft to Cadence of such determination and, upon doing so, will have no further obligation with respect to such party, the Draft or Company.
- e. **Foreign Currency.** In the event that the Services shall require the payment, transfer or deposit of funds in a currency other than USD, all such transactions shall be at the rate established by Cadence from time to time, and such sums may be deducted from Company's Designated Account for the Service.

#### 4. LIQUIDITY MANAGEMENT

**a. Sweep Services.** Under this Service, Company can direct

Cadence to transfer available collected balances in Designated Account(s) to a designated investment account for overnight investment, to deposit accounts held on Company's behalf at another financial institution through a third party insured cash sweep service, or to pay down one or more loans with Cadence. The Service Instructions for the Service will specify, among other things, the Designated Account(s) and the minimum amount to remain on deposit in the Designated Account(s) ("Target Balance").

**i. Investment Sweep.**

(A) Through the investment sweep option, Company establishes an investment sweep account ("ISA") at Cadence. Collected balances in a Designated Account above the Target Balance are transferred at the end of each day into the ISA and invested by Cadence overnight. On any day on which the balance in the Designated Account is less than the Target Balance, monies will be transferred back to such Designated Account from the ISA in an amount (if available) sufficient to cause the balance in the Designated Account to equal the Target Balance.

(B) Balances in the ISA are invested overnight in certain Company-specified mutual funds offered by Cadence.

By using the investment sweep option, in addition to the terms and conditions of this Agreement, Company agrees to execute and comply with all the terms and provisions of the documents identified in the Service Instructions.

**ii. Insured Cash Sweep.**

(A) Company may use the insured cash sweep option to transfer available collected balances in a Designated Account to demand deposit accounts held on Company's behalf at other depository institutions ("ICS Accounts").

(B) To enroll in the insured cash sweep option, Company must execute separate agreements specified in the Service Instruction and setting forth additional terms and conditions regarding the deposit and holding of Company funds in the ICS Accounts the ("ICS Agreements"). Company shall have the option under the ICS Agreements to designate any financial institutions that Client wishes to exclude from holding any funds.

(C) Collected balances in Designated Account above the Target Balance will be transferred at the end of each day to ICS Accounts. On any day on which the balance in such Designated Account is less than the Target Balance, monies will be transferred back to the Designated Account from the ICS Account in an amount (if available) sufficient to cause the balance in such Designated Account to equal the Target Balance.

#### iii. Commercial and Advanced Loan Sweep.

(A) **Commercial Loan Sweep.** Company may use the commercial loan sweep option to pay a Loan at Cadence by transferring available collected balances in a Designated Account to the amounts outstanding on a Loan.

(1) To enroll in the commercial loan sweep option, Company will designate in the Service Instruction for the Service each Loan which is to be paid and whether principal of such Loan or principal and interest of such Loan are to be paid.

(2) Collected balances in such Designated Account above the Target Balance will be transferred at the end of each day for application to the principal or principal and interest (as designated by Company) of each identified Loan. If a Loan is a revolving line of credit and if at the end of any day the balance in such Designated Account is less than the Target Balance, Client agrees that an advance will be made on such Loan in an amount (if available) sufficient to cause the balance in such Designated Account to equal the Target Balance.

(B) **Advanced Loan Sweep.** Upon Company's submission of a request for the advanced loan sweep option and the approval of the Service Instructions Form for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

(1) Cadence is authorized to advance available credit under Company's Loan Agreement (as described on the Service Instructions) at such times as: (a) all available collected funds have been depleted from Company Account(s) and/or (b) the available collected balance of the Company Account(s) is below the Minimum Target Balance described in Subsection (C) of this Advanced Loan Sweep section below and specified in the Service Instructions. Advances made hereunder shall be made in amounts sufficient to meet the Minimum Target Balance of the Company Account provided that: (a) said amounts are available under the Loan Agreement and (b) the aggregate amount of funds required by the Company Accounts on any Business Day is not greater than the amount of funds available under the Loan Agreement on the same Business Day. In the event that the aggregate amount of funds required by the Company Accounts on the Business Day is greater than the amount of funds available under the Loan Agreement, Cadence may, at its sole option and discretion, elect to do one or more of the following in such event, without notice to Company:

i. Advance the funds available under the Loan to pay a portion of the Items presented against the Company Accounts; and/or

ii. Pay any or all of the remaining Items presented for payment against the Company Accounts, thereby causing an overdraft to be created in the Company

Account (subject to Cadence's standard overdraft policies and charges); and/or

iii. Dishonor in whole or in part, any or all of the Items presented for payment against the Company Accounts and return same.

(2) Available collected funds in Company Accounts in excess of the Maximum Target Balance described in Subsection (C) of this Advanced Loan Sweep section below and specified in the Service Instructions ("Surplus Funds") will be used to pay down any principal balance outstanding on the Loan until its principal balance reaches zero. Notwithstanding the terms of this Agreement and the actions contemplated hereby, Company shall not be excused from making and will be required to make all payments of principal and interest as required under the terms of the Loan Agreement. Surplus Funds remaining in the Company Account on any Business Day after paying the outstanding principal balance under the Loan down to zero will remain in the Company Account and be available for use by Company.

(3) To initiate the transactions more particularly described above, Minimum and Maximum Target Balances will be established on the Company Account and are specified on the Service Instructions. The Minimum Target Balance is the account balance that initiates funding transfers from the Loan; this amount may not be less than zero and may not be greater than the Maximum Target Balance specified in the Service Instructions. The Maximum Target Balance is the account balance that initiates paydowns of the outstanding principal balance under the Loan; this amount may not be less than the Minimum Target Balance specified in the Service Instructions.

iv. **Treasury Cash Sweep** - Company will earn interest income on available balances in the Treasury Cash Sweep account by collection of available balances and investment of such balances in a savings sub-account on an overnight basis. Upon Company's submission of Service Instructions for Treasury Cash Swept services, and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

(A) **Appointment of Cadence as Agent.** Company hereby appoints Cadence as its agent and directs Cadence to make the transfers contemplated hereby of Company's available Treasury Cash Sweep balances for Overnight Periods to obtain interest thereon. As used in this Agreement, the term "Overnight Period" shall mean that period of time which begins on the close of each Business Day at Cadence's main office at Tupelo, Mississippi and ends upon the opening of the next succeeding Business Day at said main office.

(B) **Account; Minimum Balance and Target Balance.** Company authorizes Cadence at the beginning of each Overnight Period to determine the available balance in Company's

Treasury Cash Sweep account and to determine the amount by which such available balance exceeds a Target Balance. The Treasury Cash Sweep account and the Target Balance determined for the Treasury Cash Sweep account are specified in the Service Instructions along with additional information necessary to carry out this Agreement.

(C) **Available Funds.** If Company's available Treasury Cash Sweep account balance is less than the Target Balance, such balance will not be collected and transferred pursuant to this Agreement, and shall remain in Company's Treasury Cash Sweep account. If Company's available Treasury Cash Sweep account balance is greater than the Target Balance, the amount in excess of the Target Balance will be transferred to a savings sub-account for the Overnight Period as provided in Section 4.a.iv.(D) below. Company expressly agrees that Cadence has no responsibility to transfer Treasury Cash Sweep account balances if the amount available is less than the Target Balance.

(D) **Sub-Accounts.** To carry out its limited authority hereunder, Cadence shall be authorized to transfer from the Designated Account to sub-accounts (savings) of Cadence and recapture the same, with the interest earned thereon, after the Overnight Period.

(E) **Rate of Return.** Unless otherwise agreed by the parties, the interest rate paid to Company shall be an administered rate established by Cadence from time to time and which is subject to change at any time without prior notice to Company. The initial interest rate is specified in the Service Instructions.

(F) **Interest Accrual.** Interest on available balances will be accrued daily to Company's Treasury Cash Sweep account and will be credited monthly and thereafter available for use by Company.

(G) **Termination.** Notwithstanding anything in this Agreement to the contrary, termination by Company of this Service shall be effective two (2) Business Days after written notice of termination is received by Cadence. Termination by Cadence shall be effective two (2) Business Days after written notice is given by Cadence to the Company.

v. **Automated Investment Sweep Account Overnight Repurchase Agreement.** Company may earn interest income on available balances in the Automated Investment Sweep Account ("AISA") by collection of available balances and investment of such balances in Investment Securities as defined in 12 U.S.C. 24(7) (the "Securities") for Overnight Periods (as defined above) subject to repurchase; and Cadence maintains a program through which such investment is available to Company from Cadence.

Upon Company's submission of Service Instructions for Automated Investment Sweep Account Overnight Repurchase Services and the approval of the Service Instructions for this Service, or upon its



use of the Service, whichever occurs first, Company agrees:

- (A) **Appointment of Cadence as Agent.** Company hereby appoints Cadence as its agent and Cadence hereby accepts such appointment and agrees to invest for Company's available AISA balances in Securities for Overnight Periods subject to repurchase by Cadence as described in this Agreement. As used in this Agreement, the term "Overnight Period" shall mean that period of time which begins on the close of each Business Day at Cadence's main office at Tupelo, Mississippi and ends upon the opening of the next succeeding Business Day at said main office.
- (B) **Account; Minimum Balance and Target Balance.** Company authorizes Cadence at the beginning of each Overnight Period to determine the available balance in Company's AISA and to determine the amount by which such available balance exceeds a Target Balance. The AISA and the Target Balance determined for the AISA are specified in Service Instructions, along with additional information necessary to carry out this agreement.
- (C) **Investable Funds.** If Company's available AISA balance is less than the Target Balance, such balance will not be collected and invested pursuant to this Agreement, and shall remain in Company's AISA. If Company's available AISA balance is greater than the Target Balance, the amount in excess of the Target Balance (the "Investable Funds") will be invested in Securities for the Overnight Period as provided in Section 4.a.v.(L). below. Company expressly agrees that Cadence has no responsibility to invest AISA balances if the amount available for investment is less than the Target Balance.
- (D) **Purchase of Securities.** Company authorizes Cadence to purchase Securities at the beginning of each Overnight Period with Investable Funds. Cadence agrees to use commercially reasonable efforts to purchase Securities for the benefit of Company. Securities in which a Company's Investable Funds are invested will be (a) maintained in the custody of a financial institution selected by Cadence which may be changed from time to time; (b) pooled with the securities of other AISA customers of Cadence in an account designated on the records of a financial institution selected by Cadence which may be changed from time to time as a customer securities account (the "Pooled Account"); (c) identified daily on the books and records of Cadence on a customer-by-customer basis; and (d) not subject to substitution by Cadence while so invested.
- (E) **Repurchase of Securities.** At the end of each Overnight Period during which the Company's Investable Funds are invested in Securities (the "Repurchase Date"), Cadence will repurchase the Company's Securities from the Pooled Account for an amount equal to the amount of Investable Funds invested in Securities which interest shall be calculated and accrued in the manner set forth in the Service Instructions. Company may not require Cadence to repurchase Securities other than as provided herein.
- (F) **Daily Confirmations.** Cadence shall send to Company daily confirmations with respect to the purchase and repurchase of Securities. The confirmations shall specify the issuer, maturity date, coupon rate, par amount, market value and CUSIP or pool number, as appropriate, of Securities.
- (G) **Rate of Return.** The rate of return paid to Company upon the repurchase by Cadence of Securities shall be an administered rate established by Cadence from time to time and which is subject to change at any time without prior notice to Company. The initial rate of return is specified on the Service Instructions.
- (H) **Interest Accrual.** Any and all return paid on Securities will be accrued daily to Company's AISA and will be credited monthly and thereafter available for use by Company. Any gain or loss in the market value of Securities will inure solely to the benefit or the detriment of Cadence.
- (I) **Non-Transferable Rights.** Company's rights are not assignable or transferable under this Agreement, nor shall Company hypothecate, pledge, assign, loan or transfer Securities or Investable Funds subject to this Agreement. Notwithstanding the foregoing, in the event of failure of Cadence while Company's funds are invested in Securities pursuant to this Agreement, Company shall have the right to direct disposition of the Securities.
- (J) **Nature of Transactions.** Although the parties intend that all transactions hereunder constitute sales and purchases of Securities and not loans, in the event any such transactions are deemed to be loans by any appropriate federal or state regulatory authority, Cadence shall be deemed to have pledged Securities to Company as security for performance by Cadence of its obligation to purchase and repurchase Securities, and grants to Company a security interest in the Account and in the total amount of Securities equal to the amount of Investable Funds invested in Securities pursuant to this Agreement.
- (K) **Commercially Reasonable Efforts to Invest.** Cadence will have no liability to Company for lost income or otherwise if Cadence is unable, using commercially reasonable efforts, to invest Investable Funds in Securities as provided in this Agreement because of the unavailability of any Securities or otherwise.
- (L) **Sub-Accounts.** To carry out its limited authority hereunder, Cadence shall be authorized to transfer to accounts, ledgers, trailers, or other methods of accounting for the transactions ("Sub-Accounts"), which are Sub-Accounts of Cadence as contemplated by this Agreement,

funds sufficient to make the purchases of Securities and to repurchase Securities first through Sub-Accounts, and receive and receipt for the proceeds thereof, as authorized by this Agreement.

(M) **Termination.** Notwithstanding anything in the General Provisions to the contrary, the termination by Company of this Service shall be effective two (2) Business Days after written notice of termination is received by Cadence. Termination by Cadence shall be effective two (2) Business Days after written notice is given to the Company by Cadence.

(N) **Disclosures Required by FDIC.** **Company's funds invested in Securities pursuant to this Agreement are NOT deposits and therefore are NOT insured by the Federal Deposit Insurance Corporation ("FDIC"). In the event of failure of Cadence while Company's funds are invested in Securities pursuant to this Agreement, Cadence expects, but does not guarantee, that FDIC will recognize Company's interest in the Securities as shown on the books and records of Cadence and (a) will transfer this Agreement to a successor institution or (b) if there is no successor to Cadence under this Agreement, will pay Company to acquire Company's interest in the Securities according to FDIC's normal procedures.**

**b. Zero Balance Account Service.**

Upon Company's submission of a request for Zero Balance Account Services and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

i. **Account Services.** Company shall designate one or more demand deposit accounts as a "Zero Balance Account", and a single separate demand deposit account as the "Master Account". At the close of each Business Day, Cadence shall create a zero balance in each Zero Balance Account by depositing funds from or transferring funds to the Master Account. Company agrees to maintain, or to cause to be maintained, in the Master Account and Zero Balance Accounts at all times and in collected, immediately available funds, an aggregate amount sufficient to pay all charges to and checks or other items presented against or payable from each Zero Balance Account and Master Account. Company authorizes and directs Cadence, at any time and without prior notice to Company, to transfer to each Zero Balance Account from the Master Account, or other deposit accounts of Company maintained at Cadence, funds in the amounts sufficient to pay any checks, items or charges presented against or payable from each Zero Balance Account. Upon prior written agreement with Cadence, Company may add, remove, or change the designation of an account as a Zero Balance Account or the Master Account, and Cadence may make any changes without prior notice to Company. Subject to approval of Cadence and receipt of such approval documentation as Cadence may require, Company may (a) designate a Cadence demand deposit account held by an affiliate of

Company as a Zero Balance Account or a Master Account for purposes of this Agreement, and/or (b) designate or permit the use of any Company Account as a Zero Balance Account or Master Account for an affiliate's Zero Balance Account Services; in each such case the full terms of this Zero Balance Account Services section shall apply as if all Zero Balance Accounts and Master Accounts used in connection with such Zero Balance Account Services were Company Accounts.

ii. **Items Drawn on Zero Balance Account.** All items drawn on or presented in connection with Zero Balance Accounts must be in a format approved by Cadence and shall contain such routing transit numbers and other information required by Cadence. The magnetic encoding on each item will include correct routing transit number, account number and serial number. Upon Cadence's request, Company will provide a sample of checks and deposit slips (as directed on the check printing specifications) to Cadence from each check printing, including subsequent reorders, for the purpose of testing MICR quality. Cadence is not responsible for incorrect posting of items that do not meet these requirements.

iii. **Overdrafts.** If at any time the Master Account, after deducting any amounts payable from or chargeable to the Master Account, fails to contain collected, immediately available funds in the amount required to pay the total aggregate amount of checks, items and charges payable against or chargeable to the Master Account and each Zero Balance Account, the Company shall be liable for Cadence's demand deposit checking account "insufficient funds" charges as in effect from time to time, if any, and Cadence may, in its sole discretion, do any one or more of the following:

(A) Pay in any order any or all of the checks, items, or charges and charge the amount of any payment to the applicable account, thereby causing an overdraft to be created in the account subject to Cadence's overdraft policies and charges; or

(B) Dishonor in any order any or all of the checks or items and return the same to the presenter, in which case the policies, charges, and rules provided for in the deposit account agreement applicable to Company's Accounts shall apply, including but not limited to, provisions relating to insufficient funds and returns policies or charges.

**5. PAYABLES MANAGEMENT**

a. **Account Reconciliation Services.** Upon Company's submission of a request for Account Reconciliation Services and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees that Cadence is authorized and directed by the Company to perform the following reconciliation services for items drawn against Company Accounts, as specified and for the period selected by Company from time to time:

i. **CD-ROM Option.** Cadence provides one or more CD-ROMs containing data for a period of up to three months for one or more Company Accounts. The CD-ROM Option allows Company to display checks, deposit slips, deposited items, and statement images on the monitor of a PC or laptop computer.

ii. **Partial Reconciliation Service.** Cadence provides a file/report of all paid checks listed by check number or paid date. Forms of output available include a printed list, files transmitted via FTP, Secure Web Mailbox, CD-ROM, or E-Mail.

iii. **Full Reconciliation Service.** Cadence matches the actual paid checks against the Company's reported record of check numbers, issue dates and dollar amount for all checks issued. Company reports of issue records shall be a data transmission or other acceptable media in Company format and must be compatible with Company equipment.

iv. **Deposit Reconciliation Service.** Company will prepare a printed listing of deposits by location from Company's specially encoded deposit tickets. Summary and detail reports are available with optional output media.

v. **Requirements.**

(A) **Company shall:**

- (1) ensure all documents to be processed for reconciliation of the Company Accounts are MICR encoded to Cadence's specification with a check number for check reconciliation and with a location number for deposit reconciliation.
- (2) supply to Cadence on a timely basis all information required in the Account Reconciliation Services instructional materials provided from time to time, including the total dollar amount of all checks issued or written. Voided or canceled items will be removed from the issue records supplied to the Company.
- (3) supply Cadence with a list of special cutoff dates. Otherwise, the cutoff will occur on a monthly basis at month end.
- (4) provide Cadence with a supply of sample checks sufficient for Cadence's test purposes each time new documents are received by the Company.

(B) **Cadence shall:**

- (1) Following the receipt of sample documents from the Company, Cadence shall satisfactorily test the MICR encoding of such documents prior to the commencement of services.
- (2) For Partial Reconciliation Services. List the paid checks as specified herein by check number sequence, including dollar amount and date paid, and reconcile report with Company's account statements for the period.
- (3) For Full Reconciliation Services. Process all check information supplied by the Company. Cadence shall produce a report listing the paid and outstanding checks as specified herein in check number sequence, including dollar amount, date of issue, dates paid, items

outstanding, debits and credits, and voids, and reconcile the report with Company's account statements for the period.

(4) For Deposit Reconciliation Services. Produce a report for the period showing deposits posted, sorted by location sequence and date of deposit, including deposit subtotals for each location sequence.

(5) Forward the completed reconciliation in a predetermined time period following receipt of all required information.

CDs will be delivered to the Company's address associated with the Company Accounts.

b. **Automated Clearing House Services**

i. **Definitions.** Capitalized terms used in relation to Automated Clearing House (ACH) Services and not defined in this Agreement shall have the meanings set forth in the Rules.

ii. **Transfer Services Authorization.** Company authorizes and directs Cadence upon a Designated Person's request and as otherwise permitted by this Agreement, to transfer Funds of Company, by ACH, for payment directly to Company or to any third party designated by the Designated Person. Company further authorizes and directs Cadence to concentrate its Funds to or from all sources from which Funds are available for transfers made under this Agreement. In connection with the foregoing, Cadence agrees to process Entries. Company shall be responsible for generating, accepting, and authorizing all Entries and delivering the same to Cadence in the form specified in this Agreement and otherwise in accordance with these terms. Cadence shall not be obligated at any time to transfer from any Company Account any amount in excess of the collected balance on deposit in the Company Account at the time of the request or time of transfer. Cadence shall have the right, but shall not be obligated, to refuse any transfer for the purpose of determining whether Company has authorized the transfer and shall incur no liability for any delay caused by its determination.

iii. **Obligations of Company.**

(A) Provision of Requested Items. Company shall provide all items specified in this Agreement, and any additional items reasonably requested by Cadence, in a complete, accurate, and timely manner, and in the form specified by Cadence. Company shall provide, at its expense, all electronic equipment, and other media required in order to satisfy the media and format requirements required by Cadence from time to time.

(B) Direct Send ACH. If Company subscribes to Direct Sent ACH via the Secure File Transfer Protocol, Company agrees to follow the security procedures set forth in the Agreement and the User Guides for such Service.

(C) Signed Authorization. Prior to the initiation of the first Entry to a Company Account, Company will execute on its own behalf and will obtain

completed and duly executed written authorization agreements ("Authorization Agreements") from its Customers that desire preauthorized electronic transfers to or from their accounts with Participating Depository Financial Institutions ("Customer Accounts"). The Authorization Agreements shall authorize Company to initiate Entries with respect to its Customers' Accounts. The Authorization Agreements shall be in a form that complies with the Rules, Regulation E of the Board of Governors of the United States Federal Reserve Board, the Electronic Funds Transfer Act, and all other applicable federal and state laws and regulations. Company agrees to provide a copy of the Authorization Agreement to the Customer at the time it is executed. Company agrees to retain and maintain the original or other copy of the Authorization Agreement and its records relating to the Authorization Agreement as required by the Rules. Upon request of Cadence, an Originating Depository Financial Institution ("ODFI"), or a Receiving Depository Financial Institution ("RDFI"), Company shall promptly furnish an original or copy of the Authorization Agreement to the requesting party within two (2) business days or as otherwise required by the Rules. If the Customers' Authorization Agreements are changed, Company shall not initiate any Entries to or from those Customers' Accounts, except in accordance with the Authorization Agreement as changed. Company shall not initiate any Entries to or from any Customers' Accounts after expiration, termination, or cancellation of those Customers' Authorization Agreements. Company agrees to release and hold harmless Cadence from and against any loss, cost, demand, action or cause of action arising from any dispute between Company and any Customer with respect to any Authorization Agreement.

- (D) Regularly Scheduled Debit Entries. Company shall comply in all respects with the requirements of the Rules and all state and federal laws and regulations, including notification to Customers (i) if the amount of any debit Entry differs from that of the next previous debit Entry relating to the same Authorization Agreement or the pre-authorized amount or range of amounts; (ii) if any change is made by Company to the date on which a debit entry is scheduled to be transferred from a Customer's Account; or (iii) under any other circumstances required under the Rules.
- (E) Form and Format. All Entries shall be in the form of an unbalanced file. As used in this paragraph, an "unbalanced file" means an Entry that contains only the originating items for that Entry without any corresponding offset or settlement transaction. All Pre-notifications and Entries shall be furnished to Cadence prior to the opening of business on the applicable Settlement Date in computer readable media as provided under the Rules, and in the record format specified by Cadence from time to time.

Cadence may reject any Entry which Cadence determines in its sole discretion not to be in compliance with its then applicable media and format requirements, the Rules, any federal or state laws or regulations, or the terms and conditions of this Agreement. The parties agree that Cadence has no responsibility to determine whether Company has complied with any federal or state law or regulation.

- (F) Release and Pre-Notification of Entries Released. Company shall transmit ("Release") Entries and Pre-notification thereof to Cadence through Digital Banking. Pre-notifications and Entries Released after Cadence's Release deadline specified at Digital Banking's resource center or otherwise specified in any notice given by Cadence to Company will be processed by Cadence the next Business Day. Cadence may change said deadline from time to time as provided herein. All transactions shall be Released by Company to Cadence in the manner and within the time limits prescribed by the Rules.
- (G) Delivery. Company shall be solely responsible for transporting, transmitting, or delivering to the delivery point, by the times and on the dates specified by Cadence, all Entries, Entries files, and other data, information, instruments, and documents to be supplied to Cadence in connection with ACH Services. Cadence may reject any Entry determined by Cadence, in its sole discretion, to have been submitted after or before the time required by any applicable schedule or deadline.
- (H) Other Duties. All Designated Persons shall be trained personnel familiar with the Software and Rules and procedures described in this Agreement and with the ACH Originators Handbook by NACHA (Company shall be responsible for providing necessary training).
- (I) Limitations. Company agrees that Cadence is not required to process an Overlimit Entry. Cadence will suspend any Overlimit Entry submitted by Company and may, following its receipt of an Overlimit Entry, suspend all In-Process Entries. Company acknowledges that any Overlimit Entry or other In-Process Entries suspended by Cadence will not settle on their scheduled Settlement Date. If Company wishes to initiate an Entry that would cause the amount of In-Process Entries to exceed the Entry Settlement Limit, Company may submit to Cadence its request to initiate an Entry that otherwise would be an Overlimit Entry. Company must submit its request at least two (2) Business Days prior to the date on which Company wishes to initiate the Entry that otherwise would be an Overlimit Entry. Cadence may require from Company financial or other information in connection with Cadence's consideration of the request. Cadence may grant or deny Company's request at its sole discretion. In addition to the foregoing, Cadence generally reserves the right to limit the nature and amount of the preauthorized

debit/credit Entries processed under this Agreement or to refuse to process any debit/credit Entries under this Agreement if, in Cadence's sole judgment (i) there is reasonable cause to believe that any Entry will be returned or will not settle in the ordinary course of the transaction for any reason, (ii) to do otherwise would violate any limit set by the applicable clearing house association or any governmental authority or agency to control payment system risk, or (iii) a pre-authorized credit Entry or the return of a pre-authorized debit Entry would create an overdraft of a Company Account. If any of the foregoing actions are taken by Cadence with respect to a particular pre-authorized debit/credit Entry, Cadence will notify Company as promptly as practicable.

- (J) Providing Information Upon Request. Within two (2) Business Days of Cadence's request, Company shall provide to Cadence all information necessary to respond to any inquiries from NACHA about Company or Company's WEB Entries (as defined below).
- (K) Prohibited Entries. Notwithstanding any provisions of this Agreement to the contrary, Company agrees that it will not act as a Third-Party Sender (as defined in the Rules) to initiate any Entry on behalf of another party unless Cadence has agreed Company may do so, and Company has entered into the Third Party Sender Agreement with Cadence.
- (L) Examination. Company also agrees to permit Cadence, its regulators and/or agents to examine Company's books, records, practices and systems to confirm that Company and any of Company's Service Providers maintain the security practices and procedures required by this Agreement to protect the financial information Company obtains from Customers and to verify Company's (and its Service Providers') ongoing compliance with this Agreement and the NACHA rules. Any such examination will be conducted during normal business hours upon written notice to Company, which agrees to cooperate fully by providing Cadence with access to reports of audits, tests and/or other evaluations of information security policies and procedures conducted in the ordinary course of Company's business.
- (M) Annual Review. Company acknowledges that Cadence may, from time to time and not less than annually, review Company's use of the ACH Service and, in its discretion, modify the terms and conditions of or discontinue providing the ACH Service to Company.

iv. **Scope of Cadence's Services.** If the Entries comply with the Rules and requirements of this Agreement, Cadence will process and transmit the Entries to the Participating Financial Depository Institutions, subject to the Rules. Cadence has no obligation to act on, correct, reverse, adjust, or stop payment or posting of Entries or Entry data that does not comply with the requirements or deadlines of Cadence or the Rules. Cadence has no obligation to

detect errors with respect to any Entry. However, if Cadence detects an error with respect to any Entry, Cadence will attempt to give Company notice of the error, and Company agrees to furnish to Cadence corrections promptly via the Software or as Cadence shall direct from time to time. If Company discovers that any Entry is in error, Company immediately shall give telephonic notice to Cadence of the complete nature of the error and Entries affected, confirmed immediately thereafter in writing ("Company Error Notice"). Company has no right to reverse, adjust or stop payment or posting of any Entry after the Entry has been transmitted by Cadence or subsequent to any earlier time as the Rules or Cadence may prescribe from time to time, except in accordance with procedures contained in the Rules, or any other applicable agreement. However, Cadence shall use reasonable efforts to act on a request by Company for cancellation of an Entry prior to transmitting it to the ACH Operator or, in the case of an On-Us Entry, prior to crediting or debiting an RDFI's account, but Cadence shall have no liability if such cancellation is not effected.

Cadence has no obligation to determine whether the recipient identified in any Entry, whether submitted alone or included within any batch of Entries, is the account holder for the account to or from which funds are to be transferred. If any Entry contains any inconsistent information or other discrepancy regarding the name of the intended recipient and the account to or from which the funds are to be transferred, Cadence shall make the transfer on the basis of the account number, even if that number identifies an account held by a person or entity other than the named recipient.

#### v. Payment.

- (A) Credit Entries. Cadence reserves the right to require that Company pay Cadence in immediately available funds at the time of transmittal the amount of each credit Entry submitted by Company.
- (B) Debit Entries. Cadence shall on the applicable Settlement Date credit the Account with the amount of each debit Entry transmitted to Cadence by its ACH. In the event any Entry is properly returned by an RDFI after Cadence has provided credit, (i) Company shall, upon demand, repay Cadence the amount of the returned Entry or depository transfer check, or (ii) Cadence may, at its election, set off such amounts against any Company Account.
- (C) Deletion/Reversal. Actual receipt by Cadence of proper notice or delivery of any information (e.g., stop payment, return, processing, dishonor and similar notices required by this Agreement, the Rules, or any other instrument) from Company before the deadline required by Cadence in its sole discretion is an express condition precedent to Cadence's related obligation to perform any service or to meet any deadline imposed by law or regulation. Company bears the burden of proof of the time and manner of Cadence's actual receipt of any notice or transmittal of information.

vi. **Rejected Entries.** Company shall be responsible for remaking any Entries rejected during processing or rejected by any Participating Depository Financial Institutions ("Rejected Entries"), except Entries rejected as a result of Cadence's error, if sufficient data is made available to Cadence to permit it to remake those Entries in a correct manner ("Correcting Entries"). In the case of Rejected Entries which are debits or any adjustment memoranda or Entries relating to a debit Entry, upon notification by Cadence, Company immediately will provide Cadence with sufficient available collected funds to reimburse and indemnify Cadence for any funds which were received or subject to any adjustment. Company shall retain for not less than five (5) Business Days after midnight of the Settlement Date all information necessary to remake any Entries, file or make any Correcting Entries, and, if requested by Cadence, shall supply such information to Cadence. Company agrees and acknowledges that if Cadence receives a Notification of Change ("NOC") file from an RDFI that results from an Entry Company submitted, Company is required to ensure future entries are modified to reflect the corrected information received in the NOC.

vii. **Returned and Disputed Entries.** Returned Entries will be delivered by Cadence to Company and Company shall reimburse Cadence immediately in collected funds for the amount of these items and any fees associated with these items, including without limitation fees and/or fines assessed by a payment network against Cadence or Company. Cadence reserves the right to require that Company supply drafts for redeposited return items. If Company notifies Cadence that an Entry was in an incorrect amount, was not properly authorized, was erroneous or unauthorized under any applicable law or regulation, or was otherwise improperly, erroneously or unlawfully processed or paid, Company agrees to pay to Cadence, in immediately available funds, the full amount of the Entry, plus any expenses for costs (including legal fees) incurred by Cadence in connection with that Entry, including without limitation fees and/or fines assessed by a payment network against Cadence or Company. Company further agrees that Cadence may, as appropriate, pay the amount to the Customer or may return the amount to Company; provided, however, that upon payment of the amount by Company to the Customer, Cadence shall be absolved and released from any expenses or costs incurred by Company with respect to such Entry. When a returned Entry indicates "payment stopped" as the reason for the return, Company shall not reinitiate that Entry unless Company subsequently received the Customer's authorization for re-initiation of that Entry.

viii. **Notice of Entries.**

(A) Company shall provide each Customer with positive written notice of each credit Entry to the Customer's Account ("Positive Credit Notice"), and shall otherwise fully comply with the provisions of the Electronic Funds Transfer Act, Regulation E of the Board of Governors of the United States Federal Reserve Board, and

any applicable state law, rules or regulations governing electronic fund transfers.

(B) Company shall provide written notice to each Customer of the amount and scheduled date of each debit Entry prior to the scheduled date of the debit Entry. All such written notices of debit Entries, and any other means of debit Entry notice selected by Company, shall fully comply with the Electronic Funds Transfer Act, Regulation E of the Board of Governors of the United States Federal Reserve Board and any applicable state law, rules or regulations governing such electronic fund transfers.

ix. **Entry Settlement.** Company shall provide Cadence with immediately available funds not later than the time set by Cadence from time to time on each Settlement Date sufficient in amount to pay all Entries initiated by Company which are to be settled on that date. Company hereby authorizes and instructs Cadence to make deposits and withdrawals from any Company Account as appropriate to provide the ACH Services specified in this Agreement. Notwithstanding anything in this Agreement to the contrary, Cadence reserves the right to require that sufficient collected funds be in the Company Accounts prior to the time any Entry is processed by Cadence under this Agreement. In the case of an Entry received for credit or debit to an account maintained with Cadence (an "On-Us Entry"), Cadence shall credit or debit the RDFI's account, as the case may be, in the amount of such Entry on the Effective Entry Date shown in such Entry, provided the requirements of this Agreement have been met.

x. **Effect of Rules.** The parties hereto expressly agree to be bound by the Rules as now or hereafter in effect, including, without limitation, that Company shall be bound by and comply with all limitations and requirements imposed upon an "Originator" under the Rules. Any changes in the Rules shall be deemed to automatically amend this Agreement, effective as of the date the changes in the Rules become effective. It is agreed that no Rule shall be deemed to diminish Cadence's rights under this Agreement, except in the case of direct conflict, in which event the Rules shall control. Without limiting the foregoing, Cadence may issue from time to time operating rules and procedures to Company describing the operating procedures for the ACH Service. From time to time, Cadence may also issue updates to such operating rules and procedures. Company agrees that it will access and utilize the ACH Services in accordance with the operating rules and procedures.

xi. **File Suspension.** Notwithstanding anything in this Agreement to the contrary, Cadence shall not be liable if a file suspends in connection with an Entry as the result of an error by Company or Cadence's inability to contact a Designated Person, after using reasonable efforts to make contact.

xii. **Effective Entry Date.** Any Entry having an Effective Entry Date coinciding with a day which is not a Business Day will not post until the next Business Day. Company assumes sole responsibility for scheduling Effective Entry Dates around days which

are not Business Days. The total dollar amount of Entries Released by Company to Cadence on any one day shall not exceed the daily transaction limit set forth on the Electronic Transaction Limit Form, as revised from time to time.

xiii. **ACH Services by Third-Party Processor.** In addition to any other provisions of this Agreement relating to Company's use of Processors:

(A) **Compliance.** Company represents and warrants that Processor will comply in all respects with the requirements of the NACHA Rules and all state and federal laws and regulations. Company acknowledges that Cadence may, in its sole discretion, review and audit Processor's compliance with the terms of this Agreement, the Rules and Applicable Law, and agrees that it will take all reasonable steps to ensure Processor's cooperation and participation in any such audit, including, without limitation, such audit-related requirements in Company's agreement with Processor.

(B) **Security.** Company represents and warrants that its Processor will implement and maintain adequate information security measures to protect against unauthorized access to or use of the ACH Services, including, without limitation: access controls on information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing Access Devices to unauthorized individuals who may seek to obtain this information through fraudulent means; encryption of electronic information while in transit over any network (LAN/WAN including MPLS) using well known (non-proprietary) encryption algorithms with a minimum key length of 128 bits; procedures designed to ensure that information system modifications are consistent with the information security measures; monitoring systems and procedures to detect actual and attempted attacks on or intrusions into information systems; response programs that specify actions to be taken when Processor detects unauthorized access to information systems, including immediate reports to Cadence; training of staff to implement the information security measures; maintain all systems and applications current with latest release of software and/or security packs, security patches, and security hot fixes; regular testing of key controls, systems and procedures of the information security measures by independent third parties or staff independent of those that develop or maintain the security measures; appropriate firewalls and access control lists between all Processor and Cadence networks, with only required traffic allowed between networks.

(C) **Obligation.** Company shall maintain a process for conducting due diligence and ongoing monitoring of its Processor to confirm that required security procedures and compliance standards are being met.

(D) **Equipment.** Company acknowledges that Cadence is not responsible for ensuring that Processor's equipment and software is compatible with the Services and Software. All hardware and telecommunications equipment must be purchased and maintained by Processor.

(E) **Additional Indemnity.** In addition to all other provisions of this Agreement, Company shall indemnify, protect and hold each Provider and their respective officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person") harmless from and against any and all Damages incurred by such Provider that arise from or relate to Company's authorization of Processor to initiate Entries to or from any Designated Account, the Processor's use of any electronic system or network for the initiation of Entries, or any dispute of any nature whatsoever between or amount the Processor and Company. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages. In addition to the foregoing, all disclaimers and limitations on the liability of Cadence and the obligation of Company to indemnify Cadence with respect to the Processor's initiation of Entries to or from any Designated Account, whether under this Agreement or any other agreement between Cadence and Company, shall apply equally to all other Providers.

xiv. **Company's Duty to Examine Daily Balance Reporting.** Entries Released by Company and transmitted by Cadence will be reflected on Company's ACH status history and daily balance reporting pages accessible by Company through Digital Banking. Company shall examine such pages daily and shall immediately notify Cadence of any discrepancy between Company's records and the information shown on such pages. If Company fails to so examine such pages, or if Company so examines such pages but fails to immediately notify Cadence of any such discrepancy, then Company agrees that Company will be precluded from asserting any claim against Cadence, and Company agrees that any loss will be entirely Company's.

xv. **Company Representations and Agreements.** With respect to each and every Entry Released by Company, Company represents and warrants to Cadence and agrees that (a) each person shown as the Receiver on any Entry Released to Cadence by Company has authorized, in accordance with the Rules and, where applicable, the federal Electronic Funds Transfer Act and Regulation E, the initiation of such Entry and the crediting or debiting of such person's account in the amount and on the Effective Entry Date shown on such Entry and that Company shall retain and make available to Cadence all such authorizations for not less than three (3) years following their expiration; (b) such authorization is operative at the time of Release, crediting, and/or debiting by Cadence as provided herein; (c) Entries Released to Cadence by Company are limited to those entry types designated in the ACH Service InstructionsService Instructions; (d) the Receiver of a

Reversing Entry has been notified, on or before the settlement date of the reversing entry, of the fact that the Reversing Entry has been sent to the Receiver's account and the reason for the reversal; (e) Company shall perform its obligations under this Agreement in accordance with all applicable laws and regulations, including, but not limited to, (i) the federal Electronic Funds Transfer Act and Regulation E, (ii) laws and regulations pertaining to resolution of errors alleged by consumers, (iii) laws, regulations and orders respecting the United States Treasury Department's Office of Foreign Assets Control (OFAC) or FinCEN, and (iv) the federal Unlawful Internet Gambling Enforcement Act of 2006 ("UIGEA"); (f) Company may not send any restricted transaction or any transaction which violates United States law; (g) in the event that Cadence may be liable to any person for damages which are in any way connected with the subject matter of this Agreement, Company shall cooperate with Cadence in loss recovery efforts and in efforts to defend against such liability; (h) Company shall be bound by and shall comply with the Rules as in effect from time to time; and (i) Company accepts Cadence's right to terminate or suspend, the right to audit Company's compliance with this Agreement and Rules and the right to impose restrictions on Company's ACH activity.

xvi. **Returned Check Entries.** If any Entry initiated by Company relates to a check or other item (within the meaning of Revised Article 4 of the Uniform Commercial Code) that previously was returned unpaid due to insufficient or uncollected funds (a returned check or "RCK Entry"), Company represents and warrants to Cadence that the RCK Entry complies with the Rules and this Agreement. In addition to this general representation and warranty, Company represents, warrants and promises that, with respect to each RCK Entry initiated by Company, the item to which the RCK Entry relates:

- (A) Is a negotiable demand draft drawn on or payable through or at a Participating Depository Financial Institution, other than a Federal Reserve Bank or Federal Home Loan Bank;
- (B) Contains a pre-printed serial number;
- (C) Is in an amount less than \$2,500 or the maximum amount allowed by the Rules;
- (D) Indicates on its face that it was returned due to insufficient or uncollected funds in the Customer's account;
- (E) Is dated 180 days or less from the date that Company initiated the RCK Entry;
- (F) Is drawn on an account held by a consumer Customer; and
- (G) Has been previously presented (A) no more than two times in its physical form, if the entry is an initial RCK Entry; or (B) no more than one time in its physical form and no more than one time as an RCK Entry, if the entry is a reinitiated RCK Entry;
- (H) Company has good title or is otherwise entitled to enforce the returned item to which the RCK Entry relates;

- (I) All signatures on the returned item to which the RCK Entry relates are authentic and authorized;
- (J) The returned item to which the RCK Entry relates has not been altered;
- (K) The returned item to which the RCK Entry relates is not subject to any defense or claim in recoupment that could be asserted against Company or Cadence;
- (L) Company has no knowledge of the insolvency or bankruptcy of the maker or drawer of the returned item to which the RCK Entry relates;
- (M) The amount of the returned item, item number and account number contained on the returned item to which the RCK Entry relates are accurately reflected in the RCK Entry, and the amount of the RCK Entry does not include any service charge, fee or other amount associated with the returned item;
- (N) After initiating the RCK Entry, Company will not re-present the item to which the RCK entry relates or a copy of such item unless the related RCK entry has been returned unpaid;
- (O) The information encoded after issue in magnetic ink on the returned item to which the RCK Entry relates is correct;
- (P) Any restrictive endorsement set forth on the returned item to which the RCK Entry relates is void or ineffective;
- (Q) Company will retain a reproducible and legible copy of the front and back of the returned item to which the RCK Entry relates for seven (7) years from the applicable Settlement Date and, within two (2) Business Days of Cadence's request, shall provide to Cadence a copy of the front and back of that returned item (indicating, if applicable, that the item has been finally paid);
- (R) Before receiving the item to which the RCK Entry relates, Company provided the Customer who signed that item with written notice that clearly and conspicuously stated Company's policy for re-presenting electronically items returned for insufficient or uncollected funds.

xvii. **Accounts Receivable Entries.** If Company uses any check or draft provided by a Customer via the U.S. Mail or at a dropbox location as the source document to initiate a debit Entry to that Customer's account (an accounts receivable or "ARC Entry"), Company represents and warrants to Cadence that the ARC Entry will comply with the Rules and this Agreement. In addition to this general representation and warranty, Company represents, warrants and promises that, with respect to each ARC Entry initiated by Company:

- (A) The check or draft to which the ARC Entry relates:
  - (1) Contains a pre-printed serial number;
  - (2) Is drawn on the deposit account of a consumer Customer and not on any credit card or other loan account;
  - (3) Was completed and signed by that Customer;



- (4) Will not be presented or otherwise used to obtain payment; and
- (5) Will be destroyed by Company within fourteen (14) days of the Settlement Date of that ARC Entry;

The ARC Entry accurately reflects the amount, routing number, account number, and the serial number of the check or draft to which the ARC Entry relates, and does not include any service charge, fee or other amount;

Company shall retain a reproducible and legible image or copy of the front of the check or draft to which the ARC Entry relates for two (2) years from the Settlement Date of the ARC Entry and, within two (2) Business Days of Cadence's request, shall provide to Cadence a copy of that check or draft (designated on its face as "Copy");

Before receiving the check or draft to which the ARC Entry relates, Company provided clear and conspicuous written notice to the Customer that Company's receipt of the Customer's check will authorize Company to initiate an ARC Entry debiting Customer's account according to the terms of the Customer's check.

Company has reasonable procedures by which Customers may opt-out of the conversion of their checks or drafts to ARC Entries and, at the time the ARC Entry was initiated, Company had not received any opt-out notice from the Customer who had signed the related check or draft;

In processing an ARC Entry, Company will electronically capture the MICR line from the check or draft, and will not key-enter the routing transit number, account number or check serial number except to correct errors relating to MICR misreads, mis-encoding or processing rejections; and

The ARC Entry is not being used to transmit a credit Entry, other than a reversal, to the Customer's account.

In addition to any other provision of this Agreement, Company agrees to indemnify Cadence from and against any fine, action, claim, demand, loss, liability or expense, including attorneys' fees and costs, resulting directly or indirectly from either Company's breach of any representation and warranty or covenant in this paragraph or Company's failure to comply with the NACHA Rules or this Agreement in connection with any ARC Entry.

xviii. **Back Office Conversion Entry.** If Company uses any check or draft provided by a Customer at the point of purchase or manned bill payment location as the source document for conversion to a debit Entry to that Customer's account during back-office processing ("BOC Entry"), Company represents and warrants to Cadence that the BOC Entry will comply with the Rules and this Agreement. In addition to this general representation and warranty, Company represents, warrants and promises that, with respect to each BOC Entry initiated by Company:

- (A) The BOC Entry is only for an in-person transaction for which there is no standing

authorization with the Customer for the origination of Entries to the Customer's account;

- (B) The BOC Entry accurately reflects the amount, the routing number, account number, and the serial number of the check to which the BOC Entry relates;

- (C) Company has conspicuously posted notice, in a prominent location of Company's intent to convert the check presented to an ACH Entry with the following or substantially similar language:

When you provide a check as payment, you authorize us to either use information from your check to make a one time electronic fund transfer from your account or to process the payment as a check transaction. For inquiries, please call [retailer telephone number];

- (D) Company will provide a copy of the above referenced notice to Customer at the time of the transaction;

- (E) In processing a BOC Entry, Company will electronically capture the routing number, account number, and check serial number from the MICR line from the check, and will not key-enter the routing number, account number or check serial number except to correct errors relating to MICR misreads, misencoding or processing rejections;

- (F) Company shall retain a reproducible and legible image or copy of the front of the check or draft to which the BOC Entry relates for two (2) years from the Settlement Date of the ARC Entry and, within two (2) Business Days of Cadence's request, shall provide to Cadence a copy of that check (designated on its face "Copy"). Company will establish and implement commercially reasonable methods to securely store (i) the check used to initiate the BOC Entry until it is securely destroyed, and (ii) all banking information related to the BOC Entry;

- (G) Company has established and implemented commercially reasonable procedures to verify the identity of the Customer;

- (H) The Company has established and maintains a working telephone number that is answered during normal business hours, and such telephone number is displayed in the notice referenced above; and

- (I) The check (or any substitute, image or copy thereof) that is used to initiate the BOC Entry will not be presented for payment in any manner unless the BOC Entry is returned by the RDF;

xix. **Telephone-Initiated Entries.** If Company obtains oral authorization from a consumer Customer via the telephone to initiate a single debit Entry or a recurring Entry to that Customer's account (a telephone-initiated or "TEL Entry"), Company represents and warrants to Cadence that the TEL Entry complies with the Rules. In addition to this general representation and warranty, Company represents, warrants and promises that, with respect to each TEL Entry initiated by Company:

- (A) Company obtained the consumer Customer's oral authorization for the TEL Entry either:
    - (i) During a telephone call initiated by the Customer; or
    - (ii) When there is an Existing Relationship (as defined in the Rules) with the Customer; or
    - (iii) Within two (2) years after the Customer purchased goods or services from Company.
  - (B) Company did not engage in any fraudulent or deceptive business practice in connection with the transaction for which the TEL Entry authorization was obtained, regardless of whether Company was otherwise in compliance with the Rules;
  - (C) For an authorization related to a single or one-time Entry, Company either tape recorded the consumer Customer's oral authorization of the TEL Entry or, before the Settlement Date of the TEL Entry, provided the Customer with written notice confirming the oral authorization;
  - (D) Company shall retain the original or a duplicate tape recording of the consumer Customer's oral authorization of the TEL Entry, or a copy of the written notice confirming this authorization, as applicable, for two (2) years from the date of the authorization and, within two (2) Business Days of Cadence's request, shall provide to Cadence a copy of the tape recording of or the written notice confirming the Customer's oral authorization;
  - (E) For a single or one time Entry, the following information was provided in connection with the oral authorization and also in any written confirmation notice given to the consumer Customer:
    - (1) The date on or after which the Customer's account would be debited;
    - (2) The amount to be debited from the Customer's account;
    - (3) The Customer's name;
    - (4) The Customer's account to be debited;
    - (5) A telephone number answered during normal business hours that the Customer could call with questions;
    - (6) The date of the Customer's oral authorization; and
    - (7) A clear and concise statement explaining that the Customer's oral authorization will be used to initiate a single ACH debit Entry to the Customer's account;
  - (F) If Company provided the consumer Customer with written notice confirming the Customer's oral authorization of the single or one time TEL Entry, then:
    - (1) Company disclosed to the Customer during the telephone call the method by which the notice would be provided; and
  - (2) The written notice contained the information specified in subparagraph (e) above, and explained the Customer's right to contact Company at the designated telephone number to correct any errors appearing in the notice;
  - (G) If Company is getting Customer's oral consent for a recurring Tel Entry, the following information was provided in connection with Customer's authorization:
    - (1) the amount of the recurring transactions or a reference to the method of determining the amounts of recurring transactions;
    - (2) the timing (including the start date), number and/or frequency of the electronic fund transfers or other similar reference, to the Customer's account;
    - (3) the Customer's name;
    - (4) the Customer's account to be debited;
    - (5) a telephone number answered during normal business hours that the Customer could call with questions; and
    - (6) the date of the Customer's oral authorization.
  - (H) For an authorization related to recurring TEL Entries, Company must comply with the requirements of Regulation E for the authorization of preauthorized electronic transfers, including, but not limited to, the requirement to send a copy of the authorization to the Customer.
  - (I) Before initiating the TEL Entry, Company utilized commercially reasonable procedures to verify:
    - (1) The identity (name, address and telephone number) of the consumer Customer who orally authorized the TEL Entry by confirming pertinent information with that Customer; and
    - (2) The routing transit numbers for the Customer's account to be debited;
  - (J) The TEL Entry is not being used to transmit a credit Entry, other than a reversal, to the consumer Customer's account; and
  - (K) Within two (2) Business Days of Cadence's request, Company shall provide to Cadence all information necessary to respond to any inquiries from NACHA about Company or Company's TEL Entries.
- xx. **Internet-Initiated Entries.** If Company obtains authorization from a consumer Customer via the Internet to initiate either a single debit Entry or recurring debit Entries to that Customer's account ("WEB Entry"), Company represents and warrants to Cadence that the WEB Entry complies with the Rules and the federal Electronic Funds Transfer Act, as implemented by Regulation E. In addition to this general representation and warranty, Company represents warrants and promises that, with respect to each WEB Entry initiated by Company:

- (A) Company obtained authorization for that Entry in accordance with NACHA Rule specifications for WEB Entries. Company agrees to provide a hard copy of the authorization to the Customer if requested to do so.
- (B) Company has employed a commercially reasonable fraudulent transaction detection system to screen that Entry.
- (C) Company did not engage in any fraudulent or deceptive business practice in connection with the transaction for which the WEB Entry authorization was obtained, regardless of whether Company was otherwise in compliance with the Rules.
- (D) Company has employed commercially reasonable methods of authentication to verify the identity of the Customer authorizing that Entry.
- (E) Company has used commercially reasonable procedures to verify the validity of the routing transit numbers for the Customer's account to be debited.
- (F) All transmissions of information related to the WEB Entry (whether between Company and its Customer, between Company and Cadence, or between Company and any third party), were either (1) encrypted using a commercially reasonable security technology, or (2) transmitted via a secure Internet session that utilizes a commercially reasonable security technology. In either case, the technology used to secure the transmission must comply with the technical specifications for WEB Entries that Cadence provided separately to Company.
- (G) Company agrees:
  - (1) to develop, implement and maintain effective security policies and procedures (including administrative, technical and physical safeguards) to ensure that the financial information Company obtains from Customers is protected. These policies and procedures shall comply with the technical specifications for WEB Entries that Cadence provided separately to Company and, at a minimum, shall include adequate levels of physical security to protect against theft, tampering, or damage; personnel and access controls to protect against unauthorized access and use; and network security to ensure secure capture, storage, and distribution;
  - (2) to conduct or cause to be conducted annual audits of Company's security policies and procedures to protect Customer's financial information. The results of each annual audit shall be documented in a written report. Company shall deliver a copy of this report to Cadence within ten (10) days after Company completes or receives the report, as applicable.
  - (3) the Entry is not being used to transmit a credit Entry, other than a reversal, to the

consumer Customer's account. Company agrees to indemnify Cadence from and against any fine, action, claim, demand, loss, liability or expense (a "Loss"), including attorneys' fees and costs, resulting directly or indirectly from Company's initiation of any WEB Entry, including without limitation any Loss related to or arising from Company's breach of any representation, warranty or covenant made with respect to any WEB Entry or Company's failure to comply with the Rules or this Agreement in connection with any WEB Entry.

- (H) Cadence reserves the right, at any time and without notice to Company, to decline to process any one or more WEB Entries submitted by Company in the event that Cadence, in its sole discretion, determines that: (i) Company has failed to maintain the security practices and procedures required by this Agreement, (ii) Company has failed either to perform an annual audit or to provide the report of the annual audit to Cadence within the time period required by this Agreement; (iii) Company has failed to satisfy any other requirement of this Agreement, (iv) the rate of WEB entries returned to Customer is deemed excessive, or (v) Company's activities place Cadence at a higher risk than when Cadence initially approved Company to originate WEB Entries.

xxi. **Point of Purchase Entry.** If Company obtains authorization from a consumer Customer to initiate a single debit Entry to that Customer's account ("POP Entry"), Company represents and warrants to Cadence that the POP Entry complies with the Rules and the federal Electronic Funds Transfer Act, as implemented by Regulation E. In addition to this general representation and warranty, Company represents, warrants and promises that, with respect to each POP entry initiated by Company:

- (A) The Company has provided notice to its Customer that a check received for payment will be converted to an electronic funds transfer in substantially the following form:
 

"When you provide a check as payment, you authorize us to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction";
- (B) The above referenced notice is posted in a prominent and conspicuous location;
- (C) The source document (check) has not been previously voided or negotiated at the time of payment;
- (D) The Company is using a check reading device to capture MICR information from the check, including the routing number, account number and check serial number, which will be used to generate the debit Entry to the Customer's account;
- (E) The Company will not enter the MICR information from the check manually after the

check reader has captured the data, except due to a misread or capture error;

- (F) The Company has accurately keyed in the amount of the transaction;
- (G) An authorization has been provided to the Customer for their signature, authorizing the debit to the Customer's account;
- (H) The source document has been voided and returned to the Customer; and
- (I) A receipt has been provided to the Customer containing:
  - (1) the Company's name;
  - (2) a telephone number for inquiries regarding the transaction or the debit;
  - (3) the date of the transaction;
  - (4) the Check serial number of the source document;
  - (5) the merchant number (or other unique number that identifies the location of the transaction);
  - (6) the terminal city;
  - (7) the terminal state;
  - (8) the Company's address;
  - (9) a transaction reference number; and
  - (10) the transaction amount.

#### xxii. International ACH Transactions

- (A) International ACH Transactions (IATs) are required to use the IAT Standard Entry Class (SEC) code and provide additional information set forth in the applicable user guide provided by Cadence as updated from time to time.
- (B) An IAT is defined as a debit or credit entry sent through the U.S. ACH network that is part of a payment transaction involving a financial agency's office that is not located in the territorial jurisdiction of the United States. A "financial agency" means an entity that is authorized by applicable law to accept deposits or is in the business of issuing money orders or transferring funds. For the purposes of this definition:
  - (1) An office of a financial agency is involved in the payment transaction if it (A) holds an account that is credited or debited as part of the payment transaction, (B) receives payment directly from a person/organization or makes payment directly to a person/organization as part of the payment transaction, or (C) serves as an intermediary in the settlement of any part of the payment transaction.
  - (2) For IAT purposes, the term "payment transaction", refers to an instruction of a sender to a bank to pay, or to obtain payment of, or to cause another bank to pay or to obtain payment of, a fixed or determinate amount of money that is to be

paid to, or obtained from, a receiver and any and all settlements, accounting entries, or disbursements that are necessary or appropriate to carry out the instruction.

- (C) Company agrees to develop, implement and maintain effective policies and procedures to ensure that its employees, agents, authorized representatives, contractors and/or third-party service providers who may, at any time, initiate an Entry on behalf of the Company are fully trained, aware of, and are following the NACHA Rules, including, but not limited to, the rules governing IATs.
- (D) IATs will be scanned by Cadence prior to posting the transaction to ensure that such transactions comply with Applicable Law, including, but not limited to, the rules promulgated by OFAC. OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals" or "SDNs." All assets of SDNs are blocked and U.S. persons are generally prohibited from dealing with them.
- (E) In the event that a scan of an IAT indicates the completion of the transaction may violate Applicable Law, Cadence will suspend the IAT until the IAT is determined to not violate Applicable Law or as otherwise directed by Applicable Law or the appropriate law enforcement authorities.
- (F) Notwithstanding any other provision of this Agreement or any other agreement between Cadence and Company, neither Cadence nor any Provider shall have any liability for any losses, damages, claims, judgments, costs or expenses (collectively, "Damages") incurred by Company that arise from or relate to Cadence's failure or refusal to complete an IAT.
- (G) Because IATs are international transactions, they require additional time for settlement. Settlement for IAT origination complies with the standard timeframes for domestic ACH (on the effective date specified), but settlement with the foreign receiver may take an additional one (1) to two (2) Business Days. As a result, some IATs may take three (3) or more Business Days for the recipient to receive credit. However, Company is required to have immediately available funds sufficient to pay all IAT Credit Entries at the time of transmission.
- (H) Company shall indemnify, protect and hold Cadence and its respective officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person") harmless from and against any and all damages, losses, penalties, fines and/or assessments ("Damages") suffered or incurred that arise from or relate to Company's initiation of IAT Entries or Company's use of any electronic system or

network for the initiation of these Entries. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages.

xxiii. **Interbank Same Day ACH.** Unless Company expressly elects otherwise, Company may originate qualified ACH transactions under the NACHA Rules, with a same-day effective date, so the Receiver accounts at another financial institution can receive ACH transactions on a same-day basis. In order to process same-day Entries, it is Company's responsibility to originate qualified ACH transactions under the Rules within the specific entry window for same day processing. Company is responsible for managing its use and selection of the same day settlement feature of the Service, and Cadence is under no obligation to confirm Company's intention for ACH transactions to settle the same day. Any unqualified same day effective-dated transactions originally intended for same day processing are subject to being originated on the next available processing day. Further, Cadence has no responsibility for Company electing not to utilize the same day settlement option even if Company's intention is to settle on the same day. Unless Company expressly elects not to use same day settlement, Company is responsible for payment of all associated fees for the same day settlement whether or not Company's failure to elect not to use same day settlement option was in error.

xxiv. **Pre-Funding.** In Cadence's discretion, Company may be approved to initiate Entries on a pre-funded basis. When so approved, Cadence will transmit credit Entries to Receivers where such Entries are presented to Cadence prior to the cutoff time not less than one (1) Business Day prior to the Effective Settlement Date of such credit Entries, and Designated Accounts have collected available funds sufficient to cover the amount of such Entries. Upon receipt of such Entries, Cadence will debit or place a hold on such funds to cover such Entries.

xxv. **High-Risk Originators.** Cadence recognizes some ACH Originators – by industry or by transaction type – present greater risk than others. If Company, in Cadence's sole discretion, is classified as a high-risk ACH Originator, Company agrees to supply Cadence with additional information relating to its ACH activity upon request. Notwithstanding Company's supplying such information to Cadence, Company acknowledges and agrees that Cadence shall – in addition to any other rights in this Agreement – have the right to audit Company's compliance with the terms of the Service and the Rules at such frequency as Cadence determines appropriate, and further agrees to participate in such audit as reasonably required by Cadence. In addition, Company agrees at all times to maintain an Unauthorized Return rate of not greater than .5% of all Entries originated.

xxvi. **Limitation on Liability.** Without limiting the provisions of the General Provisions, Cadence shall not be responsible for Company's acts or omissions (including without limitation the amount, accuracy, timeliness of Release or due authorization of any Entry received from Company or Company's failure

to comply with the Rules) or those of any other person, including without limitation any Federal Reserve Bank or communications facility, any Receiver or RDFI (including, without limitation, the return of an Entry by such Receiver or RDFI), and no such person shall be deemed Cadence's agent.

xxvii. **All Entries Deemed Genuine.** All Entries, requests for cancellation, amendments of Entries and other information Released to Cadence and showing Company as originator shall be deemed to have been Released and authorized by Company, and shall be deemed effective upon receipt by Cadence. Company shall be obligated to honor such Entry or other Release even though such Entry or Release was not in fact authorized by Company. Each such Release shall be deemed a writing signed by Company. Company waives any defense or claim premised upon the ground that such Release is not in writing or is not signed by Company.

xxviii. **Inconsistency of Name and Account Number.** Company acknowledges and agrees that if an Entry describes the Receiver inconsistently by name and account number, processing of such Entry may be made by the RDFI (or by Cadence in the case of an On-Us Entry) on the basis of the account number designated in such Entry, notwithstanding that such account number is styled in the name of a person different from the named Receiver. In no event shall Cadence be obligated to discover, rectify, or give notice or advice of such inconsistency.

xxix. **Notification of Changes.** Cadence shall advise Company of all notifications of changes received by Cadence related to Pre-notifications and Entries Released by Company no later than two (2) Business Days after Cadence's receipt thereof. Company shall correct the cause of such changes within ten (10) days after its receipt of such notification or before its next Release to Cadence, whichever is later. In any case, Company shall not initiate any such Entry(s) following six (6) Business Days after its receipt of such notification unless Company has corrected the cause of such changes.

xxx. **Data Retention.** Company shall retain data on file adequate to permit remaking of Entries for five (5) Business Days following the date of Company's Release of such data to Cadence and shall provide such data to Cadence upon its request within two (2) Business Days.

xxxi. **No Entries after Termination.** Company shall not originate any Entries after it or Cadence sends notice of termination of the ACH Services or termination of this Agreement.

### c. **Automated Clearing House Block Services**

Upon Company's submission of a request for Automated Clearing House (ACH) Block Services and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

i. **Authorization of ACH Debit Items.** ACH Block Services allow Company to (a) authorize the payment of certain predefined ACH debit items ("ACH Debit Items") presented for payment against the Company's Accounts by an ODFI for credit to the

account of a third-party (the "Debit Originator"), or (b) restrict the payment of any and all ACH Debit Items presented for payment against the Company Accounts, or (c) restrict the payment of all ACH Debit Items initiated by one or more Debit Originators (together with the services described in Section 5.b.ii. below, collectively the "ACH Authorization Services"). If provided in the Service Instructions, Company may, (a) designate to Cadence those ACH Debit Items that Company authorizes Cadence to pay upon presentation for payment against the Company Accounts (the "Payable Items," or, singularly, a "Payable Item"), or (b) authorize and direct Cadence to return any and all ACH Debit Items presented for payment against the Company Accounts (the "Restricted Debit Accounts"), or (c) authorize and direct Cadence to return all ACH Debit Items initiated by one or more Debit Originators designated by Company on the Service Instructions (the "Restricted Debit Originators"). With respect to Payable Items, Restricted Debit Accounts, and Restricted Debit Originators, the Company shall provide the information required by Cadence for the Service Instructions. By designating any Payable Items on the Service Instructions, Company authorizes Cadence to pay all Payable Items presented for payment against the Company Accounts. By designating any Restricted Debit Accounts on the Service Instructions, Company authorizes Cadence to return unpaid all ACH Debit Items presented for payment against the Restricted Debit Accounts. By designating any Restricted Debit Originators on the Service Instructions, Company authorizes Cadence to return unpaid all ACH Debit Items presented for payment against the Company Accounts that are initiated by any Restricted Debit Originators. Company agrees that an item is a Payable Item if the information transmitted by an ODFI to Cadence in connection with the item is substantially consistent with the information provided by Company for the Service Instructions for ACH Authorization Services with respect to that item. Company agrees that a Company Account is a Restricted Debit Account if the information identifying the Restricted Debit Account transmitted by an ODFI to Cadence is substantially consistent with the information provided by Company for the Service Instructions for ACH Authorization Services with respect to the Restricted Debit Accounts. Company agrees that an ACH Debit Item is deemed to be initiated by a Restricted Debit Originator if the information identifying the Debit Originator of the item transmitted by an ODFI to Cadence in connection with the item is substantially consistent with the information provided by Company for the Service Instructions for ACH Authorization Services with respect to the Restricted Debit Originators. If Company designates to Cadence any Payable Items, Restricted Debit Accounts, or Restricted Debit Originators, Cadence will maintain in the Cadence ACH Authorization Services system a database (the "ACH Authorization Database") which will contain the information received from the Company regarding Payable Items, Restricted Debit Accounts and Restricted Debit Originators. In the event Company wishes to add Payable Items, Restricted Debit Accounts, or Restricted Debit Originators to the ACH Authorization Database from time to time,

Company will provide to Cadence complete and accurate input to the ACH Authorization Database by providing the information required by Cadence to accurately identify additional (a) Payable Items which are authorized by Company, (b) Restricted Debit Accounts, or (c) Restricted Debit Originators. Cadence shall be fully protected in acting in good faith without investigation on any request, direction or instruction purporting to be from an Authorized Administrator, Secondary Authorized Administrator (if applicable), Security Administrator or Designated Person of Company (including a request to add or remove Payable Items, Restricted Debit Accounts or Restricted Debit Originators). Upon the presentation of a Payable Item against the Company Accounts by an ODFI, Cadence will pay the Payable Item so long as collected funds sufficient to pay the Payable Item are maintained in the Company Account at the time that the Payable Item is presented for payment. Upon the presentation of an ACH Debit Item by an ODFI (a) against a Restricted Debit Account, or (b) that was initiated by a Restricted Debit Originator, Cadence will return that ACH Debit Item. **ACH Debit Items presented for payment against the Company Accounts which have not been designated by the Company as Payable Items, or which are Payable Items for which insufficient collected funds exist to pay the item, or which are presented against Restricted Debit Accounts or initiated by Restricted Debit Originators will be returned to the presenting ODFI. Company acknowledges and agrees that Payable Items that are paid, or ACH Debit Items that are returned, are paid or returned, as the case may be, automatically and systematically without review or intervention by any Cadence employee or agent. Company agrees that Cadence shall have no obligation to review or investigate the contents of any ACH Debit Item presented for payment against the Company Accounts, whether or not the item is a Payable Item.** Upon its receipt of (a) a form from the Company requesting that Company add information to the ACH Authorization Database with respect to an additional Payable Item, Restricted Debit Account, or Restricted Debit Originator, or (b) written notice from the Company of a request that Cadence delete from the ACH Authorization Database information regarding any Payable Item, Restricted Debit Account or Restricted Debit Originator, Cadence will use its best efforts to add or delete that information to or from the ACH Authorization Database, as the case may be, within a reasonable time of its receipt of the request. Company is solely responsible for the integrity and accuracy of the information provided to Cadence for input to the ACH Authorization Database, whether that information is provided at the inception of ACH Authorization Services or at a later date. **If Company provides inaccurate information regarding ACH Debit Items, Restricted Debit Accounts or the identity of Restricted Debit Originators, Company acknowledges that Payable Items may be returned, and unauthorized ACH Debit Items, ACH Debit Items presented to a Restricted Debit Account, or ACH Debit Items initiated by a Restricted Debit Originator may be paid, and the Company shall bear any and all**

**responsibility for any losses or other consequences that may occur in either event. Company waives any claim of wrongful dishonor arising from the return of any Payable Item which is returned due to (a) incorrect or incomplete information given by Company to Cadence regarding the Payable Item, (b) the fact that information for the Payable Item was received by Cadence before Cadence had an adequate time to add the information to the ACH Authorization Database, or (c) the lack of sufficient funds in the Company Account to pay the Payable Item. Further, Company waives any claim of erroneous payment arising from the payment of any otherwise unauthorized ACH Debit Item, any ACH Debit Item presented to a Restricted Debit Account, or any ACH Debit Item initiated by a Restricted Debit Originator which is paid due to (a) incorrect or incomplete information given by Company to Cadence regarding the item, the Restricted Debit Account or the Restricted Debit Originator, as the case may be, or (b) the fact that information for the ACH Debit Item, Restricted Debit Account, or Restricted Debit Originator, as the case may be, was received by Cadence before Cadence had an adequate time to add the information to the ACH Authorization Database.** Company hereby authorizes Cadence to initiate ACH Debit Items for payment against the Company Accounts (a) to pay fees payable to Cadence that are associated with the Company Accounts, and (b) in connection with transfers of funds associated with other services provided Company by Cadence, and Company agrees that all of these items are Payable Items.

ii. **Authorization of ACH Credit Items.** In addition to services provided in connection with ACH Debit Items, ACH Authorization Services allows Company to (a) authorize the receipt and posting of certain predefined ACH credit items ("ACH Credit Items") presented by an ODFI for credit to the Company Accounts from the account of a third party (the "Credit Originator"), or (b) restrict the receipt of any and all ACH Credit Items presented for credit to the Company Accounts, or (c) restrict the receipt of all ACH Credit Items initiated by one or more Credit Originators. In the Service Instructions for ACH Authorization Services, Company may, by providing the information required by Cadence, (a) designate to Cadence those ACH Credit Items that Company authorizes Cadence to accept for credit to the Company Accounts (the "Credit Posting Items," or, singularly, a "Credit Posting Item"), or (b) authorize and direct Cadence to return any and all ACH Credit Items presented in connection with the Company Accounts ("Restricted Credit Accounts"), or (c) authorize and direct Cadence to return all ACH Credit Items initiated by one or more Credit Originators designated by Company on the Service Instructions ("Restricted Credit Originators"). With respect to Credit Posting Items, Restricted Credit Accounts and Restricted Credit Originators, the Company shall provide the information required by Cadence on the Service Instructions. By designating any Credit Posting Items on the Service Instructions, Company authorizes Cadence to accept all Credit Posting Items presented for credit to the Company

Accounts. By designating any Restricted Credit Accounts on the Service Instructions, Company authorizes Cadence to return unaccepted all ACH Credit Items presented for credit to the Restricted Credit Accounts. By designating any Restricted Credit Originators on the Service Instructions, Company authorizes Cadence to return unaccepted all ACH Credit Items presented for credit to the Company Accounts that are initiated by any Restricted Credit Originators. Company agrees that an item is a Credit Posting Item if the information transmitted by an ODFI to Cadence in connection with the item is substantially consistent with the information provided by Company on the Service Instructions for ACH Authorization Services with respect to that item. Company agrees that an Account is a Restricted Credit Account if the information identifying the Restricted Credit Account transmitted by an ODFI to Cadence is substantially consistent with the information provided by Company on the Service Instructions for ACH Authorization Services with respect to the Restricted Credit Accounts. Company agrees that an ACH Credit Item is deemed to be initiated by a Restricted Credit Originator if the information identifying the Credit Originator of the item transmitted by an ODFI to Cadence in connection with the item is substantially consistent with the information provided by Company on the Service Instructions for ACH Authorization Services with respect to the Restricted Credit Originators. If Company designates to Cadence any Credit Posting Items, Restricted Credit Accounts, or Restricted Credit Originators, Cadence will maintain in the ACH Authorization Database the information received from the Company regarding Credit Posting Items, Restricted Credit Accounts, and Restricted Credit Originators. In the event Company wishes to add Credit Posting Items, Restricted Credit Accounts, or Restricted Credit Originators to the ACH Authorization Database from time to time, Company will provide to Cadence complete and accurate input to the ACH Authorization Database by providing the information required by Cadence to accurately identify additional (a) Credit Posting Items which are authorized by Company, (b) Restricted Credit Accounts, or (c) Restricted Credit Originators. Cadence shall be fully protected in acting in good faith without investigation on any request, direction or instruction purporting to be from an Authorized Administrator, Secondary Authorized Administrator (if applicable), Security Administrator or Designated Person of Company (including a request to add or remove Credit Posting Items, Restricted Credit Accounts or Restricted Credit Originators). Upon the presentation of a Credit Posting Item for credit to the Company Accounts by an ODFI, Cadence will accept the Credit Posting Item and post the amount of the item as a credit to the Company Accounts. Upon the presentation of an ACH Credit Item (a) for credit to a Restricted Credit Account, or (b) that was initiated by a Restricted Credit Originator, Cadence will return that ACH Credit Item. **ACH Credit Items presented for credit to the Company Accounts which have not been designated by the Company as Credit Posting Items, or which are presented for credit to a Restricted Credit Account, or which are initiated by Restricted Credit Originators will**

be returned to the presenting ODFI. Company acknowledges and agrees that Credit Posting Items that are accepted, or ACH Credit Items that are returned, are accepted or returned, as the case may be, automatically and systematically without review or intervention by any Cadence employee or agent. Company agrees that Cadence shall have no obligation to review or investigate the contents of any ACH Credit Item presented for payment against the Company Accounts, whether or not the item is a Credit Posting Item. Upon its receipt of (a) a form from the Company requesting that Company add information to the ACH Authorization Database with respect to an additional Credit Posting Item, Restricted Credit Account, or Restricted Credit Originator, or (b) written notice from the Company of a request that Cadence delete from the ACH Authorization Database information regarding any Credit Posting Item, Restricted Credit Account or Restricted Credit Originator, Cadence will use its best efforts to add or delete that information to or from the ACH Authorization Database, as the case may be, within a reasonable time of its receipt of the request. Company is solely responsible for the integrity and accuracy of the information provided to Cadence for input to the ACH Authorization Database, whether that information is provided at the inception of ACH Authorization Services or at a later date. **If Company provides inaccurate information regarding ACH Credit Items, Restricted Credit Accounts, or the identity of Restricted Credit Originators, Company acknowledges that Credit Posting Items may be returned, and unauthorized ACH Credit Items, or ACH Credit Items presented to a Restricted Credit Account, or ACH Credit Items initiated by a Restricted Credit Originator may be accepted, and the Company shall bear any and all responsibility for any losses or other consequences that may occur in either event. Company waives any claim of wrongful or erroneous return arising from the return of any Credit Posting Item which is returned due to (a) incorrect or incomplete information given by Company to Cadence regarding the Credit Posting Item, or (b) the fact that information for the Credit Posting Item was received by Cadence before Cadence had an adequate time to add the information to the ACH Authorization Database. Further, Company waives any claim of erroneous acceptance arising from the acceptance by Cadence of any otherwise unauthorized ACH Credit Item, or any ACH Credit Item presented to a Restricted Credit Account, or any ACH Credit Item initiated by a Restricted Credit Originator which is accepted and posted to the Company Account due to (a) incorrect or incomplete information given by Company to Cadence regarding the item, the Restricted Credit Account or the Restricted Credit Originator, as the case may be, or (b) the fact that information for the item, Restricted Credit Account, or Restricted Credit Originator, as the case may be, was received by Cadence before Cadence had an adequate time to add the information to the ACH Authorization Database. Company hereby authorizes Cadence to initiate ACH Credit Items for credit to the Company Accounts in connection with transfers of funds associated with**

other services provided Company by Cadence, and Company agrees that all of these items are Credit Posting Items.

**iii. Company's Representations and Warranties.**

Company represents and warrants that (a) each ACH Debit Item for which Company authorizes payment against the Company Accounts, and (b) each ACH Credit Item for which Company authorizes credit to the Company Accounts fully satisfies and complies with all Applicable Laws and NACHA Rules.

**iv. Termination.**

In addition to any other termination rights in this Agreement, if Cadence believes, in its discretion, (a) that a Payable Item or a Credit Posting Item, as the case may be, has been returned due to incorrect or incomplete information given by Company to Cadence regarding the Payable Item or Credit Posting Item, (b) an otherwise unauthorized ACH Debit Item has been paid or an otherwise unauthorized ACH Credit Item has been accepted due to incorrect or incomplete information given by Company to Cadence regarding the item, (c) Cadence is unable to pay a Payable Item due to the lack of sufficient funds in the Company Accounts to pay the Payable Item, or (d) there exists facts or circumstances that support the reasonable conclusion that (i) Cadence or Company is or may be subject to losses for fraud, other illegal activity, mistake, negligence, or the communication of erroneous information arising from the actions of Company or any third party, including Company's employees or agents, (ii) Company may be unable in any respect to comply with these provisions for ACH Authorization Services, Cadence may terminate the ACH Authorization Services with respect to Company immediately and without notice. In the event Cadence terminates the ACH Authorization Services with respect to Company immediately in accordance with the terms of this Section, Cadence shall use reasonable efforts to communicate notice of the termination to Company promptly. Cadence may require Company to execute additional documents or agreements to continue its use of the ACH Authorization Services.

**v. ACH Rules.**

Company acknowledges that with respect to the ACH Authorization Services, under the current NACHA Rules, Cadence is a RDFI. Company further acknowledges that the NACHA Rules apply to all ACH Debit Items and ACH Credit Items subject to these ACH Authorization Services provisions, including Payable Items and Credit Posting Items.

**vi. No Third Party Beneficiaries.**

Nothing contained herein, express or implied, is intended to or shall confer upon any person or entity, other than the parties hereto and their respective permitted successors and assigns, any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement. The Services described in this Section are not intended to and shall not affect the authorization of any ACH Debit Item or ACH Credit Item as between Company and any Debit Originator or Credit Originator.

**d. Controlled Disbursement Services**

Upon Company's submission of a request for Controlled Disbursement Services and the approval



of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

**i. Disbursement Services.** Company shall establish a demand deposit account in Company's name (the "Disbursement Account") in order to pay checks and items drawn on, and charges against, the Disbursement Account. Furthermore, Company shall establish and maintain a Designated Account (the "Master Account") from which to transfer collected funds to the Disbursement Account in order to pay checks and items drawn on, and charges against, the Disbursement Account. Company agrees to maintain in the Disbursement Account (which may be a Company Account) at all times in collected, immediately available funds, from whatever source, an amount equal to the sum of all charges to and checks or other items presented against the Disbursement Account. Company authorizes and directs Cadence, at any time and without prior notice to Company, to transfer funds to the Disbursement Account from the Master Account for all checks, items or charges presented against or payable from the Disbursement Account.

**ii. Checks Drawn on Disbursement Account.** All deposit slips and all checks drawn on the Disbursement Account shall be in a format approved by Cadence and shall contain routing transit numbers and other information required by Cadence. The magnetic encoding on each check will include a correct routing number, account number, and serial number. If Company is not ordering checks from Cadence, Company will provide, if requested, a sample of checks to Cadence from each check printing (as directed on the check printing specifications), including subsequent reorders, for the purpose of testing MICR quality. Cadence is not responsible for incorrect posting of items that do not meet these requirements.

**iii. Overdrafts.** If, at any time, the Master Account or any Disbursement Account, after deducting any amounts payable from or chargeable to the Master Account or the Disbursement Account, as appropriate, fails to contain collected, immediately available funds in the amount required to pay the total aggregate amount of checks, items, and charges payable against or chargeable to the Disbursement Account, Company shall be liable for Cadence's insufficient funds charges and any other applicable fees or charges in effect from time to time (including, without limitation, fees for use of uncollected funds), and Cadence may, in its sole discretion, do any one or more of the following, without the necessity of any prior written notice to Company:

- (A) Pay in any order any one or all of the checks, items, or charges and charge the amount of any payment to the Disbursement Account, thereby causing an overdraft to be created in the Disbursement Account subject to Cadence's overdraft policies and charges; or
- (B) Dishonor in any order any one or all of checks or items and return the checks or items to the presenter, in which case Cadence's demand deposit checking account terms and conditions

shall apply, including, but not limited to, Cadence's insufficient funds and returns policies or charges.

**iv. Presentment Procedures.**

- (A) Daily notification of the checks presented against the Disbursement Account will occur no later than such time designed by Cadence from time to time. Cadence shall make available this information to Company daily by electronic reporting, or other means acceptable to Cadence and Company. The Company recognizes and agrees that Cadence reserves the right at all times to return, unpaid, by the applicable midnight deadline, any checks presented against the Disbursement Account which have not been paid and to close the Disbursement Account should Cadence deem advisable. The term "midnight deadline" means the time by which Cadence must return an item in order to dishonor it under applicable provisions of the UCC, or, if applicable, local clearinghouse or other rules. Company agrees that Cadence and each of its affiliates where the Disbursement Account is located have a right to set-off any sums owing respectively to Cadence or any affiliate of Cadence's by Company in the event of a breach of this Agreement by Company. Nothing in this Agreement shall affect or modify Cadence's or any of Cadence's affiliate's rights of set-off as allowed under applicable law.
- (B) If on any day checks are presented and Company is closed for business, Company must make prior arrangements regarding estimated funds to be deposited in the Master Account for that day's checks.

**v. Setoff; Security Interest.** Company agrees that Cadence and each of its affiliates where the Disbursement Account or the Master Account is located have a right to set-off any sums owing respectively to Cadence or any affiliate of Cadence's by Company in the event of a breach of this Agreement by Company. Nothing in this Agreement shall affect or modify Cadence's or any of Cadence's affiliate's rights of set-off as allowed under applicable law. Company pledges and grants a security interest in all deposits on deposit at Cadence and each of its affiliates as security for any credit, including payment of items without sufficient funds or use of uncollected funds, extended by Cadence or any of its affiliates to Company.

**e. Invoice to Pay.**

Upon Company's submission of a request for Invoice to Pay Services and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

**i. Description of Service.** The Service allows Company vendors to send Company invoices to an email address designated by Cadence. Invoice information will be uploaded to the Invoice to Pay portal for processing by you. The Service integrates with Company's accounting systems to facilitate approval workflow and payment authorization, both manually and through established criteria.

**ii. Service Instructions and Condition Precedents.**

These terms and conditions for the Service are supplemented by the Service Instructions for the Service, a copy of which by using or accessing the Service Customer acknowledges has been delivered by Cadence and received by Customer. As a condition precedent for use of this Service, Company accepts and agrees to the terms and conditions of the File Transfer Service and/or Secure File Transfer Service as set forth herein. Failure to meet the condition precedents and comply with the terms and conditions of File Transfer Service and/or Secure File Transfer Service may lead to immediate termination of this Service.

**iii. Accounts Payable Invoice Processing.**

- (A) Authorization by Company. Cadence is authorized and instructed by Company to receive, consolidate and extract certain information from invoices and other correspondence delivered to the Cadence-designated email address, and to deliver such invoices, other correspondence or extracted information to Company via electronic interface with Company's accounting systems. Company acknowledges and agrees that Cadence is not responsible for reading, reviewing or verifying any invoice, other correspondence or information extracted from any invoice or other correspondence in connection with the Service, including, without limitation, the content or form of such invoice or other correspondence.
- (B) Direction to Vendors. Company agrees to instruct its vendors to direct invoices to an email address designated by Cadence for use with the Service. Company acknowledges that it is solely responsible for directing its vendors to use this Service.

**iv. Payment.**

- (A) Company agrees, upon initially accessing the Service, to elect to pay invoices through the Invoice to Pay Service via ACH, Check or Virtual Card or manually through Company's internal procedures. This election will remain in effect until changed by Company as provided in the Service Instructions for the Service.
- (B) Company agrees that it is solely responsible for the authenticity and correctness of all information provided to Cadence by Company in connection with the Service, whether consisting of manual payment decisions and information or payment parameters and vendor information delivered in connection with the Invoice to Pay Service, and that Cadence may unconditionally rely on such information.
- (C) Company acknowledges and agrees that the Service does use and require multifactor authentication. Company further acknowledges and agrees that any payments made with respect to invoices and other correspondence processed through the Service shall be subject to the terms and conditions governing the

specific method of payment, whether set forth herein or otherwise.

- v. **Timing.** Company acknowledges that the Service is subject to certain processing deadlines and cutoff times, and invoices and other communications received after applicable deadlines and cutoff times will not be processed until the following Business Day. Cadence is not responsible for any delays in processing invoices or other information due to missed processing deadlines or cutoff times.

**f. Bill Payment Service**

Upon Company's submission of a request for Bill Payment Service ("Bill Payment") and the approval of the Service Instructions for this Service Instructions Service, or upon its use of the Service, whichever occurs first, and in addition to Company agreeing to the terms and conditions set forth elsewhere herein or by separate agreement for using certain payment channels as applicable to and required for the Service, Company agrees:

- i. **Description of Service.** This section governs payment of funds to third-party Payees through Digital Banking by means of electronic payment or issuance of paper checks other than debit and credit transfers by means of automated clearing house transfers, funds (wire) transfers, or transactions governed by the Electronic Funds Transfer Act. Bill Payment payments are made by transfer to bank accounts specified by Company or by paper checks made payable to persons specified by Company and mailed to addresses specified by Company. As used in this section, "Payee" means (a) any owner of any bank account specified by Company as the account to which a Bill Payment payment is to be made or (b) any person specified as the payee of a paper check issued through Digital Banking.
- ii. **Payment Processing Methods.** Cadence or anyone acting for Cadence, including any third-party vendor to Cadence, may choose whatever method for processing Bill Payment transactions which Cadence, in its sole discretion, deems best, whether by electronic payment or by issuance of paper checks. Company authorizes Cadence to utilize one or more Providers as Company's agent to perform all actions necessary to enroll Company in Bill Payment and for Company to use Bill Payment to make payments to its Payees. Where paper checks are utilized, Company acknowledges that character limitations may be insufficient to print complete names of Payees, and particularly multiple Payees, on checks. Cadence will not be responsible for any failure to print on any check the complete name of any Payee or all of the names of multiple Payees. Cadence may refuse to accept Company's designation of any Payee or Payee's account for any reason. The address specified as the address to which a check is to be mailed must be within the United States (including United States territories and APO and AE addresses).
- iii. **Payment Dates; Deadlines.** For each payment transaction Company initiates through Bill Payment, Company agrees to designate the payment date on which Company desires funds to be sent to the

Payee. The payment date must be a Business Day. If Company designates a payment date which is not a Business Day, then the payment date will be deemed to be the next Business Day. Company further acknowledges that, since the time for processing Bill Payment transactions varies according to Payee, Company assumes the responsibility to designate each payment date sufficiently in advance of the date, if any, on which Payee requires payment. Cadence will have no liability to Company for any losses caused by Company's improper or mistaken designation of a payment date or by Company's failure to allow a sufficient number of Business Days between the date Company initiates the Bill Payment transaction and the payment date. ESTIMATED PAYMENT ARRIVAL DATES, IF ANY, GENERATED BY THE BILL PAYMENT MODULE ARE ESTIMATES ONLY AND ARE NOT GUARANTEED. Every Bill Pay order must be received by Cadence on a Business Day by the Bill Pay Deadline specified in Digital Banking's resource center or otherwise specified in any notice given by Cadence to Company. If the Bill Payment order is not received on a Business Day or is received after any such deadline, Cadence will not process it until the next Business Day.

iv. **One-Time Payments.** Provided that Company complies with Section 5.f.iii. above, each one-time payment will be processed on the payment date unless the payment date is not a Business Day, in which event the payment will be processed on the next Business Day.

v. **Recurring Payments.** Provided that Company complies with Section 5.f.iii. above, each recurring payment will be processed on the same payment date of each period specified by Company (monthly, etc.). If any such recurring payment date falls on a date that is not a Business Day, then such payment shall be processed on either the first Business Day before such date or the first Business Day after such date, depending upon Company's specification. If Company specifies the "Pay Before" option for recurring payments, then the payment shall be processed on the first Business Day before such recurring payment date. If Company specifies the "Pay After" option for recurring payments, then the payment shall be processed on the first Business Day after such recurring payment date. If Company specifies a recurring payment date that is the 29th, 30th, or 31st day of a month and any month does not have such date, then the payment date shall be deemed to be the last Business Day of such month.

vi. **Cancellation or Amendment of Payments.** Company may use Bill Payment to cancel or amend any payment transaction sent to Cadence through Bill Payment at any time prior to the Bill Payment Deadline specified in Digital Banking's resource center or otherwise specified in any notice given by Cadence to Company. The Stop Payment Requests provisions of the Digital Banking Section of this Agreement do not apply to Bill Payment.

vii. **Funds Sufficient for Payment.** Company shall maintain in the Designated Accounts balances sufficient to cover all payment transactions. Cadence shall have no obligation to process any

payment against an insufficient balance. Cadence may place holds upon the balance of the Company in the amount of any pending payment. Cadence may cancel or reverse a payment in the event that the balance of the Designated Account(s) is insufficient while such payment is in process. In the event sufficient funds are not available in the Designated Account(s) to cover any payment, Company agrees that Cadence may, without prior notice to Company, debit any account maintained by Company with Cadence or with any affiliate of Cadence in order to obtain such payment. Alternatively in such event, Cadence, at its option, may set off the amount of such insufficiency against any amount Cadence owes to Company in order to obtain such payment.

viii. **Additional Indemnity.** In addition to all other provisions of this Agreement, Company shall indemnify, protect and hold Cadence and each Provider and their respective officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person") harmless from and against any and all Damages incurred by Cadence or a Provider that arise from or relate to: (a) Company's authorization of a Provider to perform all actions necessary to enroll Company in Bill Payment and for Company to use Bill Payment to make payments to its Payees; (b) the method chosen by Cadence or a Provider for processing Bill Payment transactions; (c) the failure of Cadence or a Provider to process a Bill Payment transaction due to (i) Company's use of an incorrect or incomplete Payee name, address or other information necessary to complete payment to a Payee, (ii) Company's designation of an incorrect payment date on which Company desires funds to be sent to a Payee, or Company's failure to designate such a payment date, (iii) Company's designation of an incorrect Designated Account to cover a Bill Payment transaction, or Company's failure to designate a Designated Account to cover a Bill Payment transaction, or (iv) Company's failure to maintain sufficient funds in a Designated Account to cover a Bill Payment transaction; (d) Company's failure to timely cancel or amend any Bill Payment transaction; and (e) any dispute of any nature whatsoever between or among Company and a Payee. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages.

#### g. **Integrated Payables Service**

i. **Defined Terms.** With respect to the Integrated Payables Service, the following terms have the following meanings:

"Agreed Format" means the format of the file that Company sends to Cadence or a third-party vendor which has been setup and tested by Cadence or third-party vendor before the first file is sent for payment processing.

"Payee" or "Vendor" refers to the recipient of each payment in the payment file.

"Transmission Method" refers to the secure file transmission protocol, such as FTPS/SSL or SFTP/SSH, that may include the use of file encryption, public/private keys, passwords and/or digital authentication certificates, used by Company to send Payment Files to Cadence. The specific transmission protocol and communication is established between Company and Cadence during service implementation and must be set up before the first Payment File is transmitted to Cadence.

## ii. Payment Processing.

- (A) Company agrees to provide a Payment File to Cadence in the Agreed Format using the Payables website or Transmission Method. Company is responsible for ensuring that any information or data which it introduces into the Payables system is accurate, complete and fully authorized by Company. Cadence will submit payments to vendors using data stored within the Vendor Database, which may include information provided either by Company or via the Vendor Portal. Company is responsible for ensuring that any Vendor data introduced into the Vendor Database is accurate, complete, and fully authorized by Company before submitting a Payment File. Cadence will send an automated email notification to Company upon receipt of the Payment File. Cadence is authorized and directed by Company to analyze the Payment File to identify transactions designated to be paid with Company's Cadence commercial card account and/or transactions designated to be paid by Funds Transfers from a Cadence designated account, and/or any and all of the remaining Payees that have enrolled with Payables to receive Electronic Payments. For any of these identified transactions or Payees, each payment will be executed either as a card transaction, a Funds Transfer or as an Electronic Payment, as specified in the Service Instructions.
- (B) The Service will create a file containing the NACHA-compliant records for Electronic Payments. The Service will transmit the NACHA-formatted ACH file directly to Cadence. Payment Records received by the applicable cut-off time on a Business Day settled via ACH will have an effective date of the next Business Day following the submission of the Payment File to the Service.
- (C) Payment Files received after the applicable cut-off time or on a non-Business Day will have an effective Settlement date of the two (2) Business Days following the submission of the Payment File to the Service. If an ACH entry did not post to a Payee's account ("ACH Return"), Cadence or its Providers will notify Company so that Company can resubmit the payment, which will be processed as a check until Cadence or its Providers resolved the reason for the ACH Return.
- (D) The Service will create a file containing Funds Transfers in the format necessary for Cadence to process such Funds Transfers. The Service will transmit the Domestic Wire Transfer and/or International Wire Transfer payments file to

Cadence. Payment Records containing Domestic Wire Transfer and/or International Wire Transfer orders received by the applicable cut-off time on a Business Day will be processed the same Business Day. Cadence may offer Company automated confirmations of all Company initiated wire transfer transactions and payment orders. If offered, these confirmations will be made available to Company the same Business Day as the execution of the transaction or payment order. Cadence shall have no obligation or duty to cancel or amend Funds Transfers received from Company after Cadence accepts the Payment File.

- (E) The Service will provide a print option for Payees that require paper checks. The layout of the check and all remittance documents are determined during service implementation. If Company subscribes to Cadence's Positive Pay Services, the Service will create Positive Pay check issue files and send the files directly to the Positive Pay system for processing on Company's behalf.
  - (F) Digital images of authorized signatures will be placed on all checks printed by the Service.
  - (G) All printed checks will be processed for postal cleansing and discounts, with postage billed at the lowest possible rate, first-class rate, unless otherwise specified by Company. Checks are distributed by the United States Postal Service (USPS), unless otherwise specified, the next Business Day for all Payment Files delivered to the Service by the applicable cut-off time. Once a check is printed, Company must complete an online check-pull request to request a check not be mailed, mailed to another address or expedited. Cadence will use commercially reasonable efforts to fulfill the request, but will not be liable to Company if it is unable to do so.
- iii. **ACH Services.** Company acknowledges that all Electronic Payments fulfilled through the Service require Company's enrollment in and are subject to the terms and conditions of the Automated Clearing House Service.
- iv. **Commercial Card Services.** Company acknowledges that all card transactions fulfilled through the Service are subject to the terms and conditions of the agreement governing the provision of commercial card services to Company by Cadence, separately executed by Company.
- v. **Funds Transfer Services.** Company acknowledges that all Domestic Wire Transfer and International Wire Transfer orders fulfilled through the Service require Company's enrollment in and are subject to the terms and conditions of the Online Funds Transfer Service.
- vi. **Payment Record Retention.** Company will have access to all inbound payment data, including Payment Numbers, via the secure archive feature of the Service, regardless of the payment type, for a period of seven (7) years. The most recent thirteen (13) months of payment history will be available via Digital Banking.

vii. **Payment File Specifications.** Payment File format will be mutually agreed to by Company and Cadence. Regardless of file format, the required data elements for each Payment Record are: Payee Number, Payment Number, date of payment, payment amount, Payee name and payee address. Company may optionally include remittance information, such as invoice numbers, invoice dates and descriptions, invoice amounts, etc. associated with each Payment Record.

Payment Records for Funds Transfers must also include the following information prior to initiating the Funds Transfers: the designated account from which the funds are to be drawn, amount to be transferred, bank to which funds are to be transferred, and name of the receiving party and account number to which the funds are to be transferred.

viii. **Security.**

(A) Prior to the Self-Service Start Date, the Authorized Administrator shall identify to Cadence the Designated Persons authorized to access the Service and use the online tool, which shall include the scope of authority for each Designated Person, and identify those Company Accounts for which each Designated Person shall have access and responsibility. After Company has identified such persons to Cadence assign Security Codes for such persons and provide the Authorized Administrator with the website address of Service through which the online services shall be accessible. The Authorized Administrator shall have the responsibility for notifying each Designated Person of their access and Security Codes.

(B) After the Self-Service Start Date, Company shall designate a Security Administrator to serve as its system and security administrator for the Service. The Security Administrator shall be responsible for granting and revoking authority and assigning Security Codes to Designated Persons to access the Service and use the online tool, defining the scope of authority for each Designated Person, and defining those Company Accounts for which each Designated Person shall have access and responsibility. After Company has designated to Cadence the identity of the Security Administrator, Cadence shall provide the Security Administrator with the website address of Service through which the online services shall be accessible. The Security Administrator shall set-up each Designated Person in the Service.

(C) Each Designated Person will be required to use Security Codes, consisting of their assigned Access Device and soft Authentication Token, to access the Service. The Security Codes must be used to gain access to the Service, and Cadence will not allow access to Company Accounts through the Service without a Security Code.

ix. **Limitation of Liability; Indemnity.**

Notwithstanding any other provision of this Agreement or any other agreement between Cadence and Company, neither Cadence nor any

Provider shall have any liability for any liabilities, losses, damages, claims, judgments, costs or expenses (collectively, "Damages") that Company asserts or sustains as a result of Company's use of Payables Services.

x. **Company's Additional Representations, Warranties and Covenants.** Company represents and warrants that each electronic communication submitted to Cadence by Company by use of the Service fully satisfies and complies with all requirements of all applicable laws and regulations.

xi. **Termination.** Notwithstanding any other provision regarding termination set forth herein or in any other agreement between Cadence and Company, Cadence may terminate Company's access to and its ability to transact online services through the Service at any time, effective immediately. Cadence shall use reasonable efforts to communicate notice of the termination to Company promptly, and will thereafter provide written confirmation of the Termination if the initial notice of termination was not communicated in writing. Cadence may require Company to execute additional documents or agreements to continue to conduct or transact services through or by use of the Service at any time.

h. **Digital Banking Funds Transfer Service**

Upon Company's submission of a request for the Funds Transfer Service and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

i. **Description of the Service.** With this Service, Company may initiate funds transfers under Article 4A of the UCC, which are commonly referred to as "wire transfers." Company's use of the Funds Transfer Service is subject to the General Provisions of this Agreement, the following terms and conditions for this Service, the applicable Service Instructions, and all Applicable Laws.

ii. **Company Designations.** In the Service Instructions for this Service, as it may be modified from time to time, Company shall designate, among other items:

(A) the Authorized Administrator; and

(B) each Company Account from which payment orders may be made (a "Wire Transfer Account").

iii. **Authorization for Funds Transfers.** Cadence is authorized and directed to act upon Company's instructions to transfer funds of Company in accordance with the terms and conditions for this Service. Company authorizes Cadence (a) to provide an Authorized Wire User any information related to this Service; (b) to execute payment orders upon the request of any Authorized Wire User, and (c) to take any other actions requested by an Authorized Wire User with regard to this Service. Cadence is authorized and directed to act on any oral or written directions from a person representing themselves as an Authorized Wire User which Cadence believes to have been signed, sent or made by an Authorized Wire User. Cadence may, but is not required to,

record any voiced instructions transmitted to Cadence.

#### iv. Transfer Requests.

(A) Initiating Transfers. Except as otherwise provided in this Agreement, Company may use this Service to transfer funds from a Wire Transfer Account to any other account with Cadence or an affiliate of Cadence, or to an account at another bank or financial institution. Funds transfer requests will be accepted on a Business Day during processing hours published from time to time in Digital Banking's resource center which is subject to change from time to time. Company agrees that, except as otherwise provided for herein, all funds transfers originated by or on behalf of Company shall comply with this Agreement, and Applicable Law, including Article 4A of the UCC.

- (1) Domestic Wire Transfers and Drawdown Requests: Domestic wire transfers and Drawdown Wire Transfer Requests initiated by Company and received by Cadence during processing hours (as published from time to time on Digital Banking's resource center which is subject to change) on a Business Day that both Cadence and the Federal Reserve are open for business will be processed the same day; however, if the Federal Reserve is closed on a Business Day Cadence is open for business, the wire transfer will be processed by the Federal Reserve on the next Business Day the Federal Reserve is open for business. Domestic wire transfers and Drawdown Wire Transfer Requests received by Cadence after processing hours on a Cadence Business Day or at any time on a Cadence non-Business Day will be processed on the next Business Day Cadence and the Federal Reserve are open for business.
- (2) Drawdown Wire Transfer Requests: Cadence assumes no responsibility for the failure by any financial institution receiving a Drawdown Wire Transfer Request to approve the Request, and has no duty to notify Company if the Request is not approved.
- (3) Incoming Drawdown Wire Transfer Requests: Cadence assumes no responsibility for wire transfer requests initiated by Company-authorized third parties. Company must authorize such requests in accordance with the procedures and policies set out by Cadence from time to time.
- (4) International Wire Transfers: International wire transfers initiated by Company and received by Cadence during its processing hours (as published from time to time on Digital Banking's resource center which is subject to change) on a Cadence Business Day will be processed the same day. International wire transfers received by Cadence after its processing hours on a

Cadence Business Day or at any time on a Cadence non-Business Day will be processed on the next day Cadence Business Day. International Wire Transfers involving banks located outside of the United States are at Company's risk. Cadence will not be liable to Company in any way in connection with an International Wire Transfer, whether for failure of delivery, delayed delivery, fluctuations in exchange rates or for any other reason.

(B) Fees and Charges. Unless Company instructs otherwise, Correspondent Charges may be deducted from any payment made to the beneficiary. Beneficiary Bank fees may also apply, and may be deducted from the payment made to the beneficiary.

v. **USD Auto Conversion.** The following section is applicable to Non-Consumer transactions only. If Company requests that United States Dollars (USD) be sent to a foreign country by initiating an international wire transfer in USD through Cadence, Cadence may (but is under no obligation to do so) automatically convert, or arrange with any of its designated correspondent banks to automatically convert, the Company's USD wire transfer to the foreign currency of the beneficiary's account ("AutoConvert").

In the alternative, the beneficiary's bank (or its correspondent) may upon receipt convert the payment into the relevant foreign currency. Neither alternative requires any action or processing change on the Company's part.

In the event that the Company's wire is automatically converted by Cadence or its designated correspondent bank under AutoConvert, and the foreign beneficiary requires the payment to be received in USD, the wire will be re-converted by our designated correspondent bank and settled in USD.

If the Company's transfer is returned for any reason, the Company agrees to accept the refund in USD. The refund will be calculated based on the buying rate of exchange of the foreign currency on the date of the refund. The exchange rate will include a commission to Cadence for making the exchange. The Company agrees to accept this amount as a full refund, even if it is less than the original amount Cadence transferred. The Company also agrees to pay Cadence all other charges and expenses Cadence incurs either as a result of a USD or foreign currency funds transfer.

Transactions processed in foreign currency denominations are subject to daily (or more frequent) changes in exchange rates. When Cadence or our specified correspondent bank converts a transaction under AutoConvert, Cadence may determine at its discretion the currency exchange rate and then assign that currency exchange rate to the Company's transaction. The Company agrees to this procedure and agrees to accept the resulting determination of the currency exchange rate. Cadence and its designated correspondent banks may consider many factors in setting currency exchange rates for these purposes. These factors include exchange rates set by others, its desired

rates of return, market risk, and credit risk. Neither Cadence nor any of its correspondent banks shall be responsible for any liability the Company may incur if its currency exchange rates are different from rates (1) offered or reported by third parties; (2) offered by Cadence (or our correspondent) at a different time, at a different location or for a different transaction amount; or (3) that involve different payment media (such as bank notes, checks and wire transfers). The Company further acknowledges that: (a) its currency exchange rates for retail and commercial transactions, and for transactions affected after its regular business hours or on weekends, are different (and usually less favorable to the Company) than the exchange rates for large interbank transactions affected during a business day, and (b) revenue resulting from fees and rates assessed or applied by our designated correspondent banks in connection with currency conversions under AutoConvert may be shared between Cadence and its correspondent.

Alternatively, when a beneficiary's bank (or its correspondent bank) converts a USD transaction into a foreign currency, such conversion will be subject to rates and fees assessed by such banks, and may be further subject to various local laws and practices. Cadence has no control over those rates, fees or conditions, and the Company authorizes Cadence to process any resulting charges or credits to the Company's account.

- vi. **Foreign Exchange Rates.** For International Wire Transfers, a daily exchange rate for each supported currency will be set and published each business day. Those rates will be applied to all transactions initiated on the same day unless Company contacts us to request a custom rate quote. Any exchange rates quoted are subject to change without notice until accepted by the Company. Cadence is not liable for exchange rate changes that may adversely affect Company prior to acceptance of any quote. Cadence reserves the right to correct any misquoted or mistaken rates, including, but not limited to, the right to substitute the correct exchange rate or decline to process the wire transfer.

Acceptance of the exchange rate by Company is an irrevocable agreement to complete the referenced transaction(s). Company will be liable for any and all losses, costs, commissions, fees and/or damages suffered and/or paid by Cadence if the transaction(s) is not completed, if the foreign exchange transaction is reversed and/or if the transaction(s) is canceled.

- vii. **Honoring Transfers.** Cadence is obligated to honor a request for a funds transfer from an Authorized Wire User only if the request is made in accordance with the terms and conditions of this Agreement. Cadence is under no obligation to honor, either in whole or in part, any funds transfer request or amendment thereto that (i) exceeds the aggregate collected balance in the Wire Transfer Account designated for that transfer; (ii) is not in accordance with each term and condition provided for in this Agreement (iii) is not, or Cadence believes may not be, authorized or correct; or (iv) is impracticable or not feasible to accept. In addition, Cadence shall be excused from failure to transmit or delay acceptance

of a payment order if such acceptance would result in Cadence exceeding any regulatory limitation upon its intra-day net funds position or in Cadence's sole discretion otherwise would violate any provision of any Applicable Laws. If the designated Wire Transfer Account does not contain sufficient funds to accomplish a transfer, Cadence, at its sole discretion, may but shall have no obligation to accept the payment order and debit the Wire Transfer Account into overdraft, and Cadence shall not be liable for damages to Company as a result thereof. If Cadence creates an overdraft to complete a funds transfer, Company agrees to pay to Cadence the amount of the overdraft upon demand. Company authorizes Cadence to charge any Company Account (even if not a Wire Transfer Account) at any time for the amount of the overdraft.

Notwithstanding anything herein to the contrary, Cadence agrees to use reasonable efforts to execute each properly authorized funds transfer request on the same day it is received, unless a future payment date is specified, provided (x) the request is received by Cadence before the applicable cut-off time; and (y) that day is a Business Day for Cadence, the communication facility selected by Cadence, and the receiving bank. In executing any funds transfer requests, Cadence may utilize such means of transmission as Cadence reasonably selects. If Company initiates multiple payment orders for execution on the same Business Day, Cadence may execute the payment orders in any order convenient to Cadence. If Company directs Cadence to use a specific intermediary bank or specific means of execution, Company assumes all risks of failure or of non-payment by the intermediary bank and all risks of loss by the means directed. Until Cadence receives final settlement in collected funds, Cadence has no obligation to accept or pay Company the amount of a payment order showing Company as beneficiary. If Cadence does not receive such final settlement, Company agrees to refund all amounts Cadence paid to Company relating to the payment order and the originator of the payment order shall be deemed not to have paid Company.

- viii. **Canceling and Amending Payment Orders.** If Company wishes to cancel or amend a payment order previously transmitted to Cadence, Company must transmit notice of the requested cancellation or amendment and must include the amount and recipient of the payment order in the notice. Cadence will make a reasonable effort to comply with any request by Company to cancel or amend a payment order that is made before Cadence's acceptance of that payment order, but only if Cadence's Wire Transfer Department has been given sufficient notice and a reasonable opportunity to act on it. Cadence shall have no obligation or duty to cancel or amend a payment order received from Company after Cadence accepts the payment order. If Cadence consents to cancel or amend an accepted payment order, Company shall indemnify and hold Cadence harmless for all loss and expense, including attorney's fees, relating to the cancellation and amendment or attempted cancellation and amendment. Federal regulations require that Cadence include certain information about Company in any funds transmittal order by Company, including

Company's true name and street address. Cadence's system will include Company's street address contained in its account records unless no such address is on record, in which case Cadence will include the street address provided by Company in the Service Instructions for this Service. Company agrees to promptly notify Cadence of any changes or corrections to Company's information maintained by Cadence, including Company's street address. Company agrees that, upon and by requesting any transfers of funds through this Service, Company has verified that the information about Company that is maintained by Cadence is both accurate and complete. NOTHING CONTAINED IN THIS AGREEMENT SHALL OBLIGATE CADENCE TO ACCEPT, PROCESS OR EXECUTE ANY PAYMENT ORDER OR ANY AMENDMENT OR CANCELLATION THEREOF. CADENCE SHALL ONLY BE DEEMED TO HAVE ACCEPTED A PAYMENT ORDER OR ITS AMENDMENT OR CANCELLATION UPON ITS EXECUTION THEREOF.

ix. **FreeForm Wire Transfers.** A freeform wire transfer is a funds transfer request for which the requesting Authorized Wire User does not provide Cadence with a Template Number. To initiate a freeform wire transfer request, the requesting Authorized Wire User must provide Cadence with the following information prior to initiating the funds transfer:

- A. Wire Transfer Account Number for the Designated Account from which funds are to be drawn;
- B. Amount to be transferred;
- C. Bank to which funds are to be transferred; and
- D. Name and address of the beneficiary to receive the funds and account number to which funds are to be transferred.

x. **NOTICE.** IF A FUNDS TRANSFER ORDER ISSUED BY COMPANY IDENTIFIES THE BENEFICIARY OF THE FUNDS TRANSFER INCONSISTENTLY BY NAME WITH THE BANK ACCOUNT OR THE BANK ACCOUNT NUMBER PROVIDED IN CONNECTION WITH THE FUNDS TRANSFER, PAYMENT OF SUCH FUNDS TRANSFER ORDER SHALL BE MADE ON THE BASIS OF THE BANK ACCOUNT NUMBER OR IDENTIFYING NUMBER EVEN IF SUCH NUMBER IDENTIFIES A PERSON OR ENTITY DIFFERENT FROM THE NAMED BENEFICIARY; AND CADENCE NEED NOT DETERMINE WHETHER THE NAME AND NUMBER REFER TO THE SAME PERSON OR ENTITY. IF A FUNDS TRANSFER ORDER ISSUED BY COMPANY IDENTIFIES AN INTERMEDIARY BANK OR BENEFICIARY'S BANK ONLY BY AN IDENTIFYING NUMBER OR BY BOTH NAME AND IDENTIFYING NUMBER, THE RECEIVING BANK MAY RELY ON THE IDENTIFYING NUMBER AS THE PROPER IDENTIFICATION OF THE INTERMEDIARY BANK OR BENEFICIARY'S BANK, EVEN IF SUCH NUMBER IDENTIFIES A BANK OR INSTITUTION DIFFERENT FROM THE BANK IDENTIFIED BY NAME; AND THE RECEIVING BANK NEED NOT DETERMINE WHETHER THE NAME AND NUMBER REFER TO THE SAME INSTITUTION OR WHETHER THE NUMBER REFERS TO THE BANK. THE FOREGOING IS INTENDED TO BE CONSISTENT WITH AND SUBJECT TO THE TERMS

AND PROVISIONS OF SECTIONS 4A-207 AND 4A-208 OF THE UCC, EXCEPT THAT KNOWLEDGE (WHETHER ACTUAL OR CONSTRUCTIVE) BY CADENCE OF ANY DISCREPANCY OR INCONSISTENCY IN THE INFORMATION PROVIDED IN CONNECTION WITH ANY FUNDS TRANSFER SHALL NOT CHANGE OR IMPAIR THE RIGHT OF CADENCE TO EXECUTE A FUNDS TRANSFER REQUEST. AS PROVIDED IN THIS SECTION, CADENCE SHALL NOT BE LIABLE FOR EXECUTING ANY FUNDS TRANSFER REQUEST EVEN WHEN IT HAS KNOWLEDGE OF THE DISCREPANCY OR INCONSISTENCY.

xi. **Automatic Standing Funds Transfers.** An automatic standing funds transfer ("AST") is a standing order of Company instructing Cadence to make multiple transfers from a Designated Account automatically on a predetermined frequency and without further actions by Company (an "AST Order"), with each individual AST being in an amount established according to criteria defined by Company to a recipient and at intervals specified by Company. To initiate an AST Order, Company must provide the following information to Cadence:

- A. The account number for the Designated Account from which funds are to be drawn;
- B. Criteria to determine the amount to be transferred;
- C. Routing number of the financial institution to which funds are to be transferred;
- D. Name of the recipient and account number to which funds are to be transferred; and
- E. Dates or intervals on which the transfers are to be automatically made, including any date by which the transfers shall cease.

Cadence will make each AST according to Company's AST Order instructions, unless notified by Company in writing to cancel that AST Order. With respect to each AST and AST Order, Cadence has: (i) no duty to make any inquiries regarding the performance of any contract or the completion of any transaction between Company and any recipient of an AST; (ii) no obligation to Company other than to make each AST according to Company's instructions; and (iii) no liability if Cadence fails to make any AST if there are insufficient funds in the designated Company Account to make that AST. In order to cancel an AST, Company must notify Cadence in writing within at least two (2) Business Days prior to the next date on which an AST will be made to cancel the AST.

xii. **Identifying Information.** Company understands and agrees that all wire transfers shall be executed on the basis of the following information provided by Company in its payment order (which is referred to collectively as "Identifying Numbers"): (a) account number or other identifying number for the beneficiary or, for Drawdown Wire Transfer Requests, receiver of the wire transfer; and (b) the identifying number for any bank to, from or through which the funds are to be sent (a "Receiving Bank"). Cadence and any other bank processing the payment order for wire transfer (a "Processing Bank") may rely solely on the Identifying Numbers that Company provides in its order, regardless of whether



Company's order also identifies the beneficiary, receiver or Receiving Bank by name, and neither Cadence nor any Processing Bank has any obligation to confirm that any Identifying Number applies to any named beneficiary, receiver or Receiving Bank or to identify any discrepancy between any Identifying Number and the name provided by Company for any beneficiary, receiver or Receiving Bank. The foregoing is intended to be consistent with and subject to the terms and provisions of Sections 4A-207 and 4A-208 of the UCC, except that knowledge (whether actual or constructive) by Cadence of any discrepancy or inconsistency in the information provided in connection with any payment order for a wire transfer shall not change or impair the right of Cadence to execute a payment order for a wire transfer as provided in this Section. Neither Cadence nor any Processing Bank shall have any liability for executing any payment order, even if it has knowledge of the discrepancy or inconsistency.

xiii. **Confirmations.** If offered by Cadence in its discretion, Company may elect to receive from Cadence an automated confirmation message that Cadence has received and executed a payment order for a wire transfer from any of the Designated Accounts ("Automated Confirmation"). If Company elects to receive Automated Confirmations, it shall provide Cadence with a list of the Designated Accounts for which the Company elects to receive Automated Confirmation via available digital channels and e-mail address or phone number to which Cadence will send the Automated Confirmations. Company shall diligently monitor the Automated Confirmations received from Cadence, and will act upon the information in a responsive manner. Company agrees that, even though e-mail and SMS notices are commonly used for many business communications, Cadence cannot guarantee the security or delivery of such notice, and Cadence will have no liability: (a) for any delays or failure in providing email notice to Company, (b) if the email or SMS notice is intercepted and altered and/or forwarded to any party other than Company, or (c) if the email or SMS notice is infected with intrusive or destructive programs during the delivery process. Company agrees that it, not Cadence, has final responsibility to confirm the receipt or transmission of any wire transfer to or from a Company Account.

xiv. **Termination.** Notwithstanding any provision of this Agreement to the contrary, Cadence may terminate Company's use of this Service at any time and without any prior notice to Company.

xv. **Additional Security Procedures for Wire Transfers.** Company shall require Authorized Wire Users to use one of the following security procedures to initiate a wire transfer through Digital Banking:

Two (2) correct User IDs and passwords;

And either:

Submission of the wire transfer request via Secured Browser; or

An Authentication Token. Authorized Wire Users may receive an Authentication Token (as

defined in the Digital Banking section of this Agreement) to initiate wire transfers. During the Authentication Token registration process, Cadence will assign the Authorized Wire User a unique activation code. If any Authorized Wire User does not register the Authentication Token within ninety (90) days after receipt of the Authentication Token, Cadence may disable the token. Company agrees to instruct each Authorized Wire User utilizing an Authentication Token (i) to maintain the confidentiality and security of the user credentials, the Authentication Token and the activation code, (ii) safeguard the security of the token; and (iii) immediately to notify Cadence if the token is lost and/or stolen.

If Company subscribes to batch wire input via the Secure File Transfer protocol, Company agrees to follow the security procedures set forth in the Agreement and the User Guides for such Service.

**Company agrees to be bound by any wire transfer initiated in compliance with the additional security procedures and devices described above, which are part of the "Security Codes" described in the Digital Banking section. Company agrees to hold harmless Cadence from and against any loss caused by the failure by any Authorized Wire User to maintain the confidentiality of the Security Codes. Company expressly assumes the risk of loss with respect to any wire transfer initiated using any Security Code has not been maintained and/or protected according to the terms of this Agreement.**

## 6. RECEIVABLES MANAGEMENT

### a. Lockbox Service

#### i. General.

(A) All envelopes containing checks to be processed under this Agreement shall be mailed to the address provided by Cadence, which shall be the lockbox address (which Cadence may change from time to time by notice to Company).

(B) In the event a check to be processed under this Agreement is to be delivered by hand delivery, the delivery should be made to the address provided by Cadence (hand delivery shall constitute deposit into the lockbox).

ii. **Record Maintenance.** Cadence will create an image of all checks, drafts and other instruments processed in connection with the Services. Cadence will retain the image for seven (7) years or for such other period, whether longer or shorter, if any, required by law. Cadence will provide photocopies to Company upon request, at Company's expense. Company shall provide the date, the total amount of the deposit and the amount of the item in question as indexing information for photocopies requested. Also upon request, Cadence will capture images of checks and/or related documents and provide them via Digital Banking or Secure FTP, as described in more detail within the Service Instructions.

iii. **Holidays.** No processing activity will be conducted and no deposits will be made by Cadence on holidays officially recognized by Cadence. Lockbox activity will be resumed the following Business Day.

iv. **Handling of checks:**

- (A) **Acceptable Payee:** The payee of each check must be one of those set forth on the Service Instructions, or a reasonable variation thereof or as otherwise described and allowed by law. If the payee on the check differs from that authorized above, the check will not be deposited, but will be processed in the manner set forth in Section 6.a.viii. herein.
- (B) **Missing Date:** Company hereby authorizes Cadence to date all undated checks as of the processing date and process them as hereinafter provided.
- (C) **Post-Dated Checks:** Checks which are discovered to be post-dated will not be deposited, but will be processed in the manner set forth in Section 6.a.viii. Herein.
- (D) **Stale Dated Checks:** Checks which are discovered to be stale-dated will not be deposited, but will be processed in the manner set forth in Section 6.a.viii. Herein
- (E) **Differing Amounts:** If a check's written and numeric amounts differ, Cadence will process said check according to the legal tender "written" amount, unless otherwise noted in the Service Instructions. Any un-deposited item will be processed in the manner set forth in Section 6.a.viii. hereof.
- (F) **Missing Signature:** Checks which do not have the drawer's signature or do not indicate the drawer's identity will not be deposited, but will be processed in the manner set forth in Section 6.a.viii. Hereof.
- (G) **Restrictions and Conditional Notations:** Cadence will attempt to identify and segregate any checks bearing restrictive notations such as "Payment in Full", "Accord and Satisfaction", "Balance on Account", or "Account to Date". All checks so identified will be processed in accordance with the Services Instructions. Any item not deposited will be processed in the manner set forth in Section 6.a.viii. hereof. However, Cadence shall have no liability to Company should it process and deposit a check or checks bearing any such restrictive notation.
- (H) **Foreign Banks and Currency:** Checks drawn on foreign banks including Canadian banks and payable in a foreign or U.S. currency will not be deposited, but will be processed as set forth in Section 6.a.viii. hereof.
- (I) **Unacceptable Check Processing:** Any check which is deemed to be unacceptable for deposit under this Section 6.a.viii. will not be deposited in the account of Company, but will be processed in the manner set forth in Section 6.a.viii. hereof.

v. **Processing Procedure for Acceptable Items.** Each check which is found to be acceptable for deposit

after inspection in accordance with Section 6.a.iv. above will be processed in the following manner:

(A) **Endorsement:** The following endorsement will be applied by Cadence for the benefit of Company to each check prior to deposit:

**Credit to the account of the within named payee**

- (B) **Deposits:** Cadence will make deposit(s) on each Business Day, of all acceptable checks received into the account and account number indicated in the Service Instructions.
- (C) **Assembly:** Checks received from the Post Office will be copied and forwarded in accordance with Company instructions contained in Section 6.a.iv. hereof. Additional sort and deposit preparation services noted in the Service Instructions may incur additional fees.
- (D) **Cash Deposits:** Cash received in the Post Office Box will be deposited with a bank teller as acceptable with Cadence policy.

vi. **Processing Procedure for Unacceptable Items and Other Material.** The following items will be forwarded on each Business Day to Company in the manner described in Section 6.a.vii. hereof:

- (A) Checks which are not deposited as noted in Section 6.a.iv. hereof, along with any accompanying papers and envelopes.
- (B) Envelopes which contain only customer correspondence.
- (C) Any supporting documents accompanying acceptable checks which are deposited in accordance with Section 6.a.v. hereof.

vii. **Forwarding / Delivery Instructions.**

Correspondence, copies of all checks accepted for deposit and originals of all other items received from the Post Office will be forwarded each Business Day to Company in accordance with the Service Instructions.

viii. **Deposit and Balance Notification.** The following notification arrangements will apply to the Designated Account designated by Company in the Service Instructions.

- (A) **Information Provided:** Copies of deposit slips, balance information as requested.
- (B) **Method of Notification:** As indicated in the Service Instructions.

ix. **Contact information.** Cadence will contact Company in accordance with the Company Contact Information section of the Service Instructions.

x. **Returned checks.** Checks which are accepted for deposit, but which are subsequently returned to Cadence or Company unpaid for any reason shall be handled according to Cadence's policy for returned checks, or the Service Instructions. The charge for returned checks will be as specified in Cadence's schedule of commercial account activity charges. Fees for special handling may also apply.

**xi. Miscellaneous.**

- (A) **Remittances Received at Company's Office:** If Lockbox Services are required under the terms of any loan agreement between Company and Cadence, Remittances which are sent directly to Company's office are deemed held in trust by Company for Cadence and will not be handled by Company and will be forwarded to the Post Office as part of Company's lockbox mail collection and service.
- (B) **Inquiry Information:** Any and all notices required hereunder, along with Company's inquiries regarding lockbox processing procedures, should be sent to the person or persons noted in the Service Instructions.
- (C) **Compensation and Expenses:** Any and all expenses incurred by Cadence in connection herewith (including postage due charges) will be paid by Company. Cadence will obtain reimbursement from Company by charging the billing account specified in the Service Instructions or any and all other accounts maintained by Company with Cadence. If no funds are available from any such accounts, Company will provide reimbursement from other sources. Cadence will provide Company with notice of such charges.

**a. Remote Lockbox**

**i. Service Description; Acceptance.**

- (A) Company may use the Service to process original paper checks by capturing the images, front and back along with the MICR line, of the original check and remittance documents for transmission to Cadence using the transmitted image file. Cadence will process the digital image or print a substitute check (as defined in Regulation CC) (each substitute check, an "image replacement document" or "IRD") and process the IRD as if it were an original paper check. IRDs and digital images of checks are processed for collection through the local Federal Reserve or other clearinghouses, or directly to the paying institution. To the extent Company transmits any remittance documents associated with checks through the Service, Cadence will process such remittance documents through commercially reasonable channels for exchange of such documents, as Cadence may select from time to time in its discretion. Each digital image or IRD and any associated remittance documents processed through the Service is referred to as a "Transaction," and such images or documents collectively are "Transactions."
- (B) Upon Company's submission of a request for Remote Lockbox and approval of the Service Instructions for Remote Lockbox, Cadence will provide Remote Lockbox in connection with the Designated Accounts on the following terms and conditions.

**ii. Authorized Transactions.** Under any of the following circumstances, Cadence shall be conclusively entitled to deem the Transactions to be

authorized by, and binding upon, Company: if the Transactions and the electronic transmission of a file are made by Company or its actual or apparent agent, or if Cadence reasonably believes the Transactions and the electronic transmission of a file were sent by an authorized representative of Company, or in the event Company utilizes the services of a third party for lockbox or other similar services to facilitate the processing of Transactions, provided that the Transactions and the electronic transmission of a file are in the name of Company and Cadence reasonably believes that the Transactions and transmission of a file by such third party are sent on behalf of Company.

**iii. Representations and Warranties of Company.** As to the Transactions transmitted to Cadence, Company represents and warrants to Cadence that: the Transactions and authorization, preparation and presentment of the Transactions comply with the terms and conditions set forth in this Agreement; the digital image of the check and associated remittance documents transmitted to Cadence are true and correct images of the original paper check and remittance documents and have not been altered in any manner by Company or any third party acting on behalf of Company; Company, or a third party acting on behalf of Company, has reviewed and confirmed that the images captured are identical in all respects to the original paper check and remittance documents and that the amount of the check captured is accurate; the original paper check has not previously been deposited for collection with Cadence or any other financial institution; Company represents that it will retain the original check and remittance documents, or in the event Company utilizes the lockbox services of a third party or other similar services that the third party will retain the original check for at least thirty (30) days and for such additional period as may be required in the event of a disputed electronic image or IRD, and that Company or such third party will take all necessary efforts to safeguard any checks until they are destroyed; in the event that a maker of a check asserts that the Transaction is unauthorized, the processing of the original item may be subject to additional terms of dishonor; Company has no knowledge or notice of information to indicate that the Transaction is fraudulent or not authorized by the maker of the check, Company or its actual or apparent agent or any third party acting on Company's behalf will not cause or allow the original of any truncated check to be deposited with Cadence or any other financial institution, or otherwise presented for payment; Company will give Cadence full and prompt cooperation and assistance in the investigation and/or the defense of any claim, complaint, issue and/or liability arising out of the services provided under this Agreement; and only checks made payable to Company will be presented via the Service.

**iv. Provisional Settlement; Returns.** Company acknowledges that Transactions may be returned by the receiving institution for insufficient funds or other reasons. In addition, the UCC and other applicable law may permit the Transactions to be returned for reasons of alleged lack of authorization.

Any credit or consideration given by Cadence to Company with respect to any Transactions shall be deemed provisional, and Cadence shall be entitled to revoke same without prior notice in the event one or more Transactions are rejected or returned to Cadence. In the event one or more Transactions are returned for reason of alleged lack of authorization, Company may promptly submit to Cadence such proof of authorization and request that Cadence forward such proof to the receiving institution for its consideration, or present the original paper check for collection in lieu of the electronic image or the IRD.

Company acknowledges and agrees that Cadence may make adjustments to any credit or consideration given for a Transaction or Transactions to remedy any transmission and/or encoding errors.

- v. **Equipment.** To utilize the Services, Company must use the equipment designated by Cadence (the "Equipment") from time to time. Company may purchase the Equipment from Cadence or from a third-party vendor approved by Cadence in writing.
- vi. **Software.** Cadence may select software and related user materials ("Software") for utilization of the Service and the processing of Transactions. Company acknowledges that any Software supplied by Cadence for use in connection with the Service, including, but not limited to, any Software created or modified by Cadence to be specific to Company's environment, is the property of Cadence and that Cadence claims and reserves all rights and benefits therein afforded under copyright and other laws. Company's license of and permission to use Software is non-exclusive and non-transferable, and it extends only to Company's own use of such Software for the purpose of processing Transactions as set forth in this Agreement. Software may not be used to process transactions with or through any other party without the express written consent of Cadence and only Software may be used for the Services described herein. Company further acknowledges that Software contains confidential information and trade secrets, which Cadence has entrusted to Company in confidence. Company shall protect Cadence's property and its interest in the trade secrets contained in Software by controlling access to Software, permitting none of its employees nor any other person not an employee or agent of Cadence to examine, alter, attach, add to, modify, decode, reverse engineer, transcribe, extract or reproduce, in whole or in part, Software in any way. Without limiting the generality of the foregoing, Company specifically agrees that it will not delete, mask or obscure any proprietary notices, which Cadence places on any Software. Company further agrees to install all new versions, upgrades, patches, protocols and/or any other changes, amendments or alterations (collectively referred to herein as "Upgrades") to Software promptly and in any event within ten (10) days of receipt of the same or receipt of notice from the Cadence of where and/or how to retrieve the Upgrades.
- vii. **Company Indemnification.** Company agrees to indemnify and hold Cadence, its affiliates, directors, officers, employees, and agents harmless from and

against all losses, liabilities, cost, damages and expenses (including reasonable attorneys' fees and cost of litigation) to which Cadence may be subjected or which it may incur in connection with any claims which might arise from or out of Company's use of the Service or the processing of any check images, IRD's, or remittance documents transmitted to Cadence by Company or Company's actual or apparent agent. Company shall also hold Cadence, its affiliates, directors, officers, employees, and agents harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys' fees and cost of litigation) to which Company may be subjected or which it may incur in connection with any claims which might arise from or out of Company's use of or the failure of any Software or Equipment provided, required or suggested by Cadence. Company's indemnity obligations under this section shall survive termination of this Agreement.

- viii. **Cadence's Right of Refusal.** Cadence may, in its sole discretion, refuse to process any electronic image, IRD, or remittance document at any time without prior notification to Company.
- ix. **Limitation of Remedies.** In addition to the limitation of liability contained in the General Terms section of this Agreement, Cadence will use due care in its performance of the Service and will, at its own expense, correct any data in which (and to the extent that) errors have been made by Cadence's personnel or by malfunction of Software. However, the expense to Cadence of correcting such data shall constitute Cadence's only responsibility in connection with such errors or in connection with any other performance or nonperformance by Cadence in connection with the Service. In the event that Cadence undertakes to correct any error caused by the Equipment or a third-party vendor, or any other third party acting on behalf of Company, Cadence shall not have any liability with respect thereto.

It is Company's responsibility to verify that all Transactions were delivered to Cadence and that the Transactions received by Cadence were complete and accurate. A CONFIRMATION OF DELIVERY BY CADENCE DOES NOT RELIEVE COMPANY OF THIS RESPONSIBILITY.

- x. **Audit Rights.** Upon reasonable notice, Cadence may audit, at its own expense, Company's hardware, Software, procedures, processes and any and all relevant business records directly relating to the Service. If any errors or discrepancies for the audited period are found, Cadence may, in its sole discretion and option, immediately terminate the Service.
- c. **Stop File Feature of Lockbox Service**
- Upon Company's submission of a request for the Stop File feature of Lockbox Services and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:
- i. Matching data in accordance with the requirements of this Section and the Service Instructions may

result in the failure to stop items, and agrees that Cadence shall have no liability for such failure.

- ii. Cadence will confirm receipt of the Stop File in accordance with the Service Instructions.
- iii. Items meeting the matching data will be rejected, and handled in accordance with the Service Instructions.
- iv. Company agrees to indemnify and hold Cadence harmless from any transaction stopped in error or any transaction processed in error.
- v. Company acknowledges that utilization of the Lockbox Stop File features of the Service may require additional computer programming on the part of Company and Cadence, and agrees to bear the cost of such programming. Company shall promptly pay to Cadence upon request such cost incurred by Cadence.

**d. Match File Feature of Lockbox Service**

Upon Company's submission of a request for the Match File feature of Lockbox Services and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

- i. Where Company requests this feature of the Lockbox Service, certain payments will be made only in accordance with the Match File Instructions made available by Cadence from time to time, subject to the following terms and conditions:
- ii. Company must identify and communicate the information for making payment or payments, which shall include, at a minimum, a listing of valid invoice and/or coupon numbers and other data specified by Cadence from time to time necessary for identifying items to be paid (collectively, "matching data").
- iii. Company must communicate matching data to Cadence daily, weekly, or monthly (as agreed by Cadence and Company in the Service Instructions); by way of a .csv file ("Match File"), delivered through the means specified by Cadence from time to time; and no later than the established cutoff time on the processing date. Company acknowledges and agrees that any Match File received after the cutoff time on any processing date shall be deemed received by Cadence on the next Business Day.
- iv. Company acknowledges that the matching data will be matched against data captured from invoices processed in the lockbox, and that errors in the matching data, or failure by Company to timely submit matching data in accordance with the requirements of this Section and the Service Instructions may result in the failure to pay items, and agrees that Cadence shall have no liability for such failure.
- v. Cadence will confirm receipt of the Stop File in accordance with the Service Instructions.
- vi. Items meeting the matching data will be paid. All other items will be rejected and handled in accordance with the Service Instructions.
- vii. Company agrees to indemnify and hold Cadence

harmless from any transaction rejected in error or any transaction paid in error.

- viii. Company acknowledges that utilization of the Match File feature of the Lockbox Service may require additional computer programming on the part of Company and Cadence, and agrees to bear the cost of such programming. Company shall promptly pay to Cadence upon request such cost incurred by Cadence.

**e. Corrective Workstation; Online Decisioning Feature of Lockbox Service**

Upon Company's submission of a request for the Corrective Workstation; Online Decisioning feature of Lockbox Services and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

- i. Upon Company's submission of a request for Online Decisioning and approval of the Service Instructions for Online Decisioning, Cadence will provide Online Decisioning for the Designated Accounts. For an additional fee, Cadence will notify Company via email (a valid and monitored email account is required for email notification) when transactions are available for review.
- ii. Company shall review transactions via secure online connection and notify Cadence of any items or transactions to be returned. Company shall notify Cadence of items or transactions to be accepted or processed no later than the Disposition Deadline). Cadence shall finally deposit and credit to the applicable Designated Account all transactions or items for which Cadence has received instructions from Company to accept or process. Any item or items presented that Company instructs Cadence to withhold from processing will be forwarded by Cadence to Company and it will be Company's sole responsibility to comply with any applicable deadlines for further processing, negotiation or returning such items.
- iii. If Company fails to instruct Cadence to accept and process or withhold from processing any item by the Disposition Deadline, such item will be held by Cadence for decisioning the following business day. Any items that have not been decisioned within ten (10) days of Cadence first notifying Company of such item shall be deemed rejected by Company and returned to the presenter.
- iv. If Company sends in payment instructions after the Disposition Deadline, Cadence will attempt to honor the request but Company must reimburse and hold Cadence harmless from any cost, suits, expenses, liabilities, damages and attorney's fees related to the request.
- v. Company agrees to indemnify and hold Cadence harmless from any and all liabilities, claims and expenses of any kind or nature whatsoever for any encoding errors in the report provided to Company listing presented items and/or transactions, any missed deadlines for returning checks or otherwise arising out of its use of the Online Decisioning service (including the reasonable fees and disbursements of counsel in connection with any investigative, administrative, or judicial proceeding,

whether or not any indemnified person shall be designated a party thereto); provided that Company shall have no obligation to any indemnified person hereunder with respect to any such liabilities, claims or expenses arising from the gross negligence or willful misconduct of such indemnified person.

vi. From time to time, Cadence shall establish or modify procedures relating to Online Decisioning, which procedures may include security procedures and a format for reports and data. Company agrees to follow and be bound by those procedures. Cadence shall have the right in its discretion to change all or any of the procedures at any time upon prior notice to Company (or without prior notice if Cadence has reason to believe that those changes are necessary to protect the safety or integrity of any account held at Cadence). Notwithstanding the foregoing, Cadence will use reasonable efforts to notify Company of any change in the procedures at least ten (10) days prior to any change.

vii. Company hereby assumes all risk and responsibility for the compilation, accuracy, transmission and delivery of any and all information or data, including, without limitation, any payment instructions delivered by Company to Cadence. Cadence shall have no obligation to ensure the receipt or accuracy of any information or data furnished by Company in connection with the Online Decisioning feature of the Service, and shall have no obligation to make any inquiry or initiate any follow-up investigation regarding the receipt or accuracy of any such information or data. Company hereby authorizes Cadence, without investigation or inquiry, to rely and act upon the contents of any information or data received from Company which Cadence reasonably believes is authorized by Company. Company is solely responsible for assuring that the payment instructions are in the format required by, and otherwise complies with, the procedures for Online Decisioning.

viii. Security.

(A) Prior to Company's first use of the Online Decisioning Service, the Authorized Administrator shall identify to Cadence the Designated Persons authorized to access the Service and use the online tool, which shall include the scope of authority for each Designated Person, and identify those Company Accounts for which each Designated Person shall have access and responsibility. After Company has identified such persons, Cadence assigns Security Codes for such persons and provides the Authorized Administrator with the website address of Service through which the online services shall be accessible. The Authorized Administrator shall have the responsibility for notifying each Designated Person of their access and Security Codes.

(B) After Company's first use of the Online Decisioning Service, Company shall designate a Security Administrator to serve as its system and security administrator for the Service. The Security Administrator shall be responsible for granting and revoking authority and assigning Security Codes to Designated Persons to access

the Service and use the online tool, defining the scope of authority for each Designated Person, and defining those Company Accounts for which each Designated Person shall have access and responsibility. After Company has designated to Cadence the identity of the Corporate Administrator, Cadence shall provide the Security Administrator with the website address of Service through which the online services shall be accessible. The Security Administrator shall set-up each Designated Person in the Service.

ix. Company acknowledges that while Cadence will attempt to ensure that Access Devices (or, where assigned, Security Codes) and all electronic communications between Company and Cadence are encrypted, scrambled or otherwise protected against interception by a person whose access to Online Decisioning is unauthorized, Company nonetheless accepts and assumes all risk of loss or dissemination of information attributable to the electronic communications between Company and Cadence through Online Decisioning. Each Designated Person shall be responsible for safekeeping the Access Devices (and, where assigned, Security Codes). Company and each Designated Person shall not, at any time, permit access to Online Decisioning by any person who does not need to obtain access to Online Decisioning consistent with Company's rights hereunder.

x. Company acknowledges that use of Access Devices (and, where assigned, Security Codes) as anticipated hereby and in accordance with the General Provisions of this Agreement constitute commercially reasonable security procedures for the Service.

xi. If Company is unable to access Online Decisioning or transact or conduct any Online Decisioning, Company shall immediately notify Cadence of such inability.

xii. Cadence may rely upon any Online Decisioning instruction communicated or conducted through or by use of Online Decisioning as properly authorized by Company (including, without limitation, any instructions or information related thereto it receives from Company through Online Decisioning). Each Designated User to whom Cadence has provided access to Access Devices (or, where assigned, Security Codes), or who has otherwise obtained access to Access Devices (or, where assigned, Security Codes), is deemed an authorized representative of Company for purposes of all Online Decisioning transacted or conducted through or by use of Online Decisioning, whether or not such person is authorized by this Agreement or any other agreement between Cadence and Company.

xiii. Notwithstanding the terms of this Agreement or any other agreement between Company and Cadence, once Company accesses Online Decisioning, Cadence will not verify that any transaction is authorized and Company is solely responsible for the accuracy and completeness of any data or information received by Cadence. Cadence is authorized by Company to process

transactions in accordance with information Cadence receives electronically or otherwise from Company. Company shall be solely responsible for the information contained in the instructions and Cadence shall have no responsibility for erroneous data provided by Company.

- xiv. Cadence shall have no liability for losses resulting from or related to Company's failure to limit access to Online Decisioning or maintain the confidentiality of the Access Devices (or, where assigned, Security Codes). At the sole discretion of Cadence, Cadence may also require the use of other identifying information or other security procedures for certain Online Decisioning and Cadence may add to, change or delete any security procedure.
- xv. Company's Additional Representations, Warranties and Covenants. Company represents and warrants that each electronic communication submitted to Cadence by Company by use of the Online Decisioning feature of the Service fully satisfies and complies with all requirements of all applicable laws and regulations.
- xvi. Termination. Notwithstanding any other provision regarding termination set forth herein or in any other agreement between Cadence and Company, Cadence may terminate Company's access to and its ability to the Service at any time, effective immediately. Cadence shall use reasonable efforts to communicate notice of the termination to Company promptly, and will thereafter provide written confirmation of the termination if the initial notice of termination was not communicated in writing. Cadence may require Company to execute additional documents or agreements to continue using the Service at any time.
- xvii. UCC Article 4 and Regulation CC. In accordance with Section 4-103 of the UCC, this Agreement shall vary the effect of any provisions of Article 4 of the UCC and of Regulation CC of the Board of Governors of the United States Federal Reserve Board which are inconsistent with this Agreement.

**f. Invoice Presentment and Payment Service**

Upon Company's submission of a request for EIPP Services and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

- i. **Description of Service.** The Service allows Company and its payers ("Payers") to utilize one or more integrated payment channels consisting of electronic bill presentment and payment modules accessible by, among other things, the Internet, interactive voice response ("IVR") phone system, customer service representative ("CSR") or real-time payment application programming interface and a web-based payment entry module. Payments may be made by a Payer using the ACH to debit the Payer's bank account, or credit/debit card. All of the payments are routed through a common payment system which provides, among other things, the core payment processing capabilities including debiting, settlement, remittance, data warehousing, and transaction ID generation. The Service also allows Company to display electronic bills and invoices securely to Company's Payers.

**ii. Internet Payments.**

- (A) Company Payment Site. Cadence will configure, implement, host and support the Company Payment Site and transmit all Payment Data to Cadence via secured data transmission services. Company agrees to indemnify and hold Cadence harmless for any content that violates Applicable Law or payment network rules and for any content provided directly by Company for the Company Payment Site.
- (B) Company License. Cadence shall have the right and license to use Company's name, trademarks, service marks, copyrights and logos and other textual information in connection with the Company Payment Site solely for the purposes contemplated herein.
- (C) Administrative Portal. Cadence will configure, implement, host and support the Administrative Portal. Company shall be solely responsible for authorizing the set-up of Authorized Administrators accessing the Administrative Portal, access entitlements and internal controls with the Administrative Portal.
- (D) Links. Company may maintain a secure link on its website to the Company Payment Site. Company shall be responsible for providing the agreed-upon data concerning each Payer in a manner that meets Cadence's encryption or security methods during the exchange. Company and Cadence agree to use customary security procedures and technology to ensure the security of Company's website, including the Company Payment Site, and to prevent data theft or unauthorized access. Company agrees that Cadence will not be liable for any claims, losses, damages, costs, expenses, fines and other liabilities arising out of or related to the unlawful use or breach of, or Company's failure to maintain the security and confidentiality of, Company's website or associated link to the Company Payment Site.
- (E) Payer Verification. Depending on the applicable payment processing channel, Company shall be responsible for verifying the identity of each Payer, whether making one-time payments or recurring payments, prior to the time Payer is linked to the Company Payment Site. Company agrees that Payers shall not be granted access to the Company Payment Site link until Company has verified the identity of each Payer using commercially reasonable identity authentication and Company did not engage in any fraudulent or deceptive business practice in connection with the transaction for which the authorization was obtained. For every Payer that accesses the Company Payment Site, Cadence may rely on Company to have completed such verification. Company agrees to indemnify Cadence from and against any fine, action, claim, demand, loss, liability or expense, including attorneys' fees and costs, resulting directly or indirectly from Company's failure to verify Payer.
- (F) Company Payment Site Terms. Before a Payer may submit a payment through the Company Payment Site, that Payer must accept, while

online, terms regarding use of the Company Payment Site that, among other things, authorizes Company to initiate one or more payments against that Payer's deposit account or credit or debit card, as applicable, and permit Company and Cadence to use Payment Data to process those payments. These terms of use must also comply with the requirements of the General Provisions as applicable, including but not limited to, the NACHA Rules and guidelines as they are in effect at the relevant time and in the case of a credit or debit card charge, the operating regulations and other requirements of the entity or association that issues or sponsors the applicable credit or debit card as they are in effect at the relevant time.

iii. **Integrated Voice Response.** To make an automated payment via a phone, Payers may access the IVR system by calling a toll-free or other number provided by Cadence or Company. Company shall have previously forwarded a one-time file of existing Payers ("pre-registration file") to Cadence. In order to make a payment via the IVR system, Payers are required to input information that matches their user information in the pre-registration file.

iv. **Customer Service Representative.** Payers may make a payment by phone by calling a call center hosted by Company or its agent(s). Payer's identity will be authenticated in the manner specified by Company's operating procedures. Company acknowledges and agrees that the authentication of Payer's identity in such manner shall constitute a commercially reasonable security procedure and fraud transaction detection system and that Cadence shall have no liability for all payments so authenticated.

v. **Payment Authorization.** If payment is made via the Internet, Payer will be prompted to authorize the payment and will be provided a confirmation that Payer may retain. Once Payer has reviewed the Payment Data and input the information necessary to complete the payment, if payment is made via the IVR or customer service representative, the confirmation number will be read to Payer. Cadence is not responsible for the detection of errors made by Payer or Company and may rely on the information submitted or communicated by Payer or Company. Company shall maintain authorization proof and provide such proof of authorization of payment by customer as may be requested by Cadence or Payer's bank from time-to-time.

vi. **Payment Frequency Options.** The Service provides Company with the ability to offer Payers the option of making one-time payments or fixed or variable recurring payments.

(A) **One-Time Payments Without Enrollment.** The one-time payments without enrollment function of the Services permits Payers to enter one-time payments from a deposit account, credit card or debit card. Payers need not enroll and store personal or financial information. Deposit account, credit or debit card information is not retained for future use; Payers must enter it each time they make a payment. Payers provide

basic identification information each time they access the Services to make one-time payments. An account number or other unique identifier (such as a government ID number or tax ID) is required, and multiple additional key pieces of data are recommended in order to more securely authenticate each Payer. System-generated confirmation numbers are provided for each payment, and a confirmation is made available to the Payer, as further described above.

(B) **One-Time or Recurring Payments With Enrollment.** The Service permits Payers to enroll and create a user profile inclusive of payment preferences. Payer information is stored for future use. The Payer profile includes login information and preferences. Payers have the option of entering manual one-time payments or, if permitted by Company and in compliance with Applicable Laws, setting up an automatic payment method and date or schedule for each enrolled billing account/Payer. Payments may be made using any active and provisioned payment channel. Where permitted, Payers have the ability to initiate a periodic installment payment. Automatic recurring payment schedules allow Payer to specify date, amount, duration and payment method options.

vii. **Payment Processing.** In connection with the Service, payments will be processed in the manner mutually agreed to between Cadence and Company, which may include ACH debit Entries, debit cards, credit cards or other payment processing methods, including but not limited to, Internet, IVR, Call Centers, and over the counter as set forth in Company's Service Instructions. Company or its authorized agents shall at all times be considered the originator of Payer's payment. Depending on the applicable payment processing channel, payment processing may also be subject to the terms of any other agreement between Cadence and Company and between Company and the payment transaction processor supported by Cadence. Payments may be initiated through the Company Payment Site, IVR system or Administrative Portal. Cadence will notify Company of the payments that were initiated either through the Administrative Portal or by delivering a file in the manner set forth in the Service Instructions. Company acknowledges and agrees that all payments are subject to adjustment, return, reversal and/or chargeback in accordance with the rules governing the applicable payment processing channel and as required by Applicable Law or court order.

Company agrees to be liable to Cadence for any such adjustment, return, reversal or chargeback.

viii. **Convenience Fees.**

(A) If permitted by applicable regulations, a convenience or service fee option may be available that allows Company to define and collect a convenience fee to be charged to Payers in connection with the payment transaction. Payers are provided with the



opportunity to stop the payment process if they do not wish to pay the convenience fee.

(B) If Company desires to collect the convenience fee, Company shall be responsible for ensuring that convenience fee assessments comply with all Applicable Law and the rules of any applicable payment network or processing channel.

ix. **Transaction Controls.** Company agrees to notify Cadence of any material change or anticipated material change in daily dollar activity or type of transaction processing, and obtain Cadence's consent to such change. Cadence may, in its sole discretion, immediately upon written notice to Company, place a maximum dollar limit on the Services' transactions or require Company to provide reasonable security for Cadence's continued handling of such transactions. Company has the responsibility to report to Cadence immediately, without delay, upon any suspicion of fraud, intrusions, breaches or unauthorized transactions made through this Service.

x. **Electronic Bill Presentment.** Company may elect to present electronic bills and invoices ("Presentment Item") securely to Payers through the Company Payment Site. The Presentment Item can be presented as an image rendered from a data file only or an image provided in .pdf format with an index file by Company. All content associated with a Presentment Item, including but not limited to text, amounts, customer information, logos and associated disclosures, are the responsibility of Company, and Cadence has no responsibility to verify such content. Company will validate and approve the rendition of the Presentment Item prior to presentment. Company agrees to indemnify and hold Cadence harmless for any content that violates Applicable Law or payment network rules and for any content provided directly by Company for the Presentment Item.

xi. **Maintenance and Outages.** Company acknowledges that occasional maintenance windows or system upgrades involving a planned outage may occur. All planned outages for maintenance and material system updates will be communicated to Company in advance before the event. Cadence is not responsible for any late fees or damages that may arise due to any planned or unplanned outages.

xii. **Taxes.** Cadence is not responsible for determining whether taxes apply to any transaction, or for collecting, reporting or remitting any taxes arising from any transaction made through this Service.

xiii. **Termination.** Notwithstanding any other provision regarding termination set forth herein or in any other agreement between Cadence and Company, Cadence may terminate Company's access to the Services, effective immediately. Cadence shall use reasonable efforts to communicate notice of the termination to Company promptly, and will thereafter provide written confirmation of the termination if the initial notice of termination was not communicated in writing.

xiv. **Audit Rights.** Upon reasonable notice, Cadence may audit, at its own expense, Company's hardware, Software, procedures, processes and any and all relevant business records directly relating to this Agreement. If Cadence finds any errors or discrepancies for the audited period, Cadence may, in its sole discretion and option, immediately terminate this Agreement.

#### g. **eLockbox Service**

Upon Company's submission of a request for e-Lockbox Services and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

i. **Description of Service.** The Service allows Company to receive payments made by Customers where Customers have used one of several bill payment services or bill collection agents ("Originators") and Company is able to approve or reject Customer payments prior to receiving the data and funds into a Designated Account. The payments detail will be consolidated and Company will receive payment data electronically in a data file. Payment funds are transmitted via ACH to the Designated Account.

ii. **Network.** "Network" means the network of parties, retained from time to time by Cadence, in its sole discretion, including Agent (as defined below). Collectively, the Network concentrates or consolidates payments from all of the Originators supported by the Network for disbursement to billers such as Company.

iii. **Authority/Agent.** Company authorizes Cadence to utilize one or more third-party service processors and facilitators as Company's agent (each, an "Agent") to perform all actions necessary to enroll Company in the Services and to receive funds from such Customers and to otherwise process such funds on Company's behalf. Specifically, Company authorizes each Agent to facilitate the transmission of funds from Customers to the Designated Account, such that receipt of funds into a designated account by the Agent for the acceptance and disbursement of funds shall be considered to be the same as receipt of funds by Company itself, and Customers will be given credit by Company for having made payment at the same time Company is notified by an Agent of receipt of funds.

iv. **Reliance on Network.** Company acknowledges that Cadence's ability to process payments and remittances are dependent upon the continued use and support of the Network and third-party infrastructure comprising the Network and associated communications systems. In the event that access to the Network or its communications system is terminated or suspended for any reason, Cadence shall not be liable to Company for any disruptions or failure to provide any part of this Service. Cadence assumes no responsibility for the accuracy, timeliness or the completeness of data delivered from the Network to Cadence. Further, Company acknowledges that upon its election to use the Service and register their bill payment address(es) for electronic remittances, the discretion of the Network and the use by Originators to

originate electronic remittances rather than paper remittances is not within the control of Cadence.

**v. Company Duties.** Company shall have the following duties:

- (A) Company will maintain a Designated Account for the Service. Company shall maintain balances in the Designated Account sufficient to offset any returns submitted for payment.
- (B) Company will either approve or reject payments in the preprocessing queue on the same day, if possible, but in no event later than the published cut-off time one (1) Business Day after it receives notice of payments.
- (C) Company will post payments to Customer Accounts on the day it receives payment data, if possible, but in no event later than one (1) Business Day after it receives notice of payments.
- (D) Company will not charge Customer any late fee if such Customer's payment is late by reason of the fact that the payment was not timely posted in accordance with subsection c) above.
- (E) Company shall notify Cadence of any payment which has not posted within two (2) Business Days after it receives notice of payments.
- (F) Company will not return a payment unless such payment is incorrect, incomplete, and not identifiable or the Customer Account to which such payment corresponds was blocked or closed prior to the time that the payment was received.
- (G) Company is responsible for instructing all of its Customers about the requirements of the Services as applicable.

**vi. Optional Reversal Transactions.** Reversals are Network-initiated debit messages from Originators informing of the cancellation of a previous transaction. Company hereby authorizes Cadence to debit the Company Account for the amount of the Reversals.

**vii. Optional Substitution Value.** Company may make certain substitutions, corrections or adjustments to Customer payment information based on Company internal accounting requirements which may differ from the Customer data transmitted to Originators. Company agrees to indemnify and hold Cadence harmless for any substitutions, corrections or adjustments made that violates Applicable Law, payment network rules, or causes application errors.

**viii. Termination.** Notwithstanding any other provision regarding termination set forth herein or in any other agreement between Cadence and Company, Cadence may terminate Company's access to the Service, effective immediately, at any time, and without giving prior notice. The foregoing notwithstanding, Cadence shall use reasonable efforts to communicate notice of the termination to Company promptly, and will thereafter provide written confirmation of the Termination where any prior notice of termination was not communicated in writing.

**ix. Limitation of Liability; Indemnity.**

Notwithstanding any other provision of this Agreement or any other agreement between Cadence and Company, neither Cadence nor any Provider shall have any liability for any liabilities, losses, damages, claims, judgments, costs or expenses (collectively, "Damages") that Company asserts or sustains as a result of Company's use of Cadence eLockbox Service. The liability of Cadence or any other Provider for any Damages asserted by Company arising as a result of the acts or omissions of any Provider shall be limited to interest on the funds at issue at the "federal funds rate" paid by Cadence at the close of business on each day such act or omission remains uncorrected.

**h. Healthcare Receivables and Reconciliation Services.** Upon Company's submission of a request for Healthcare Receivables and Reconciliation Services (the "Healthcare Receivables Service") and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

**i. Service Instructions and Conditions Precedent.**

These terms and conditions for the Healthcare Receivables Service are supplemented by the Service Instructions for the Service. As a condition precedent for use of this Service, Company accepts and agrees to the terms and conditions in this Agreement for Lockbox Services and the File Transfer Service or the Secure File Transfer Service (as applicable, "Data Transmission Services"). Failure to meet the conditions precedent and comply with the terms and conditions of Lockbox Services, Data Transmission Services, and any inbound file requirements may lead to immediate termination of this Service.

**ii. Healthcare Receivables Service.** Cadence is authorized and instructed by Company to receive, consolidate and extract certain receivable information, and facilitate the reconciliation and matching of this receivable information with payments received from Company's payers to one or more Company Accounts; to compare medical billing with electronically received payments; and to convert paper payments to an electronic posting format.

**iii. Receipt of Payment Information and Receivable Information.**

On a daily basis, Company will provide to Cadence billing and payment-posting files in order for Cadence to reconcile electronic and paper receivables. To the extent the files contain PHI, ePHI, Individually Identifiable Health Information, or Medical Information, Company shall comply with the Business Associate Agreement for Covered Entities set forth in Section A.2.aa of this Agreement. Company will authorize and direct its payers to deliver payments, by check, ACH, wire transfer or credit card, to Cadence in the format and manner established by Cadence in the Service Instructions. Company assumes all risk and responsibility for the compilation, format, accuracy, transmission and delivery of any and all payment information or data sent to or received by Cadence. Company will deliver receivable information to Cadence in the format and manner established by Cadence in the Service

Instructions. Company assumes all risk and responsibility for the compilation, format, accuracy, transmission and delivery of any and all receivable information or data sent to or received by Cadence. Further, Cadence has no obligation to identify discrepancies or errors or to ensure or verify the compilation, format, accuracy, transmission and delivery of the receivable information or payment information received from Company or the payers. Company hereby authorizes Cadence, without investigation or inquiry, to rely and act upon the contents of any payment information, receivable information or data received from Company or payers. Cadence reserves the right to reject and may not process any receivable information that is not compliant with the formats, standards or other requirements as set forth in the Service Instructions. Company acknowledges and agrees that Company and/or Company's payors will not send Cadence any such information, that Company shall be solely responsible for reviewing any files transmitted by Company and/or Company's payors to Cadence and removing therefrom any and all such information, that Company assumes all risk of whatever type or manner for the transmission, and the receipt, possession or handling by Cadence of, any such information to Cadence, and that Company shall indemnify, defend, and hold Cadence and its affiliates, directors, officers, employees and agents harmless from **any action, claim, cost, demand, expense (including attorneys' fees, expert witness' fees, and court costs), fine, liability, or loss of any kind or nature whatsoever, whether brought by Company or any third party, which arise from or relate to Cadence's receipt, possession or handling of any such information.**

- iv. **Matching of Receivable Information.** Cadence is authorized and instructed by Company to extract data from the received receivables information from Company or the payers into the necessary formats for use within the Service. Cadence may also use a Service Provider for EOB conversion services and ERA reconciliation services. Cadence will use commercially reasonable efforts to match said extracted data with receivable information against the payments credited to a Designated Account. The reconciliation and matching of the receivable information and payment information will be performed according to the Service Instructions, or as otherwise established by Cadence from time to time. Cadence is not responsible for the completeness, accuracy or timeliness of any receivable information received or extracted from the receivable information or payment information. Company agrees to indemnify and hold Cadence harmless from any transaction matched or processed in error.
- v. **Timing.** Company acknowledges that the receivable information and payment information is subject to certain cut-off times and, therefore, Cadence is not responsible for any delays in payment from the Service due to a missed cut-off time by Company or any payer.
- vi. **Reporting.** Cadence will make available to Company electronic data reports and transmissions regarding Company's receivables and related invoice matching

payments. Company acknowledges that such reporting is not intended to be used as a substitute of bank statements of the Company Account(s) but is for informational or receivable posting purposes only.

- vii. **Digital Banking Portal.** Company shall designate a Security Administrator for the Service. The Security Administrator will be responsible for granting and revoking authority to Designated Persons to access the Service, and defining the scope of authority for each Designated Person. After Company has designated the Security Administrator, Cadence shall provide the Security Administrator with the Internet address of the Digital Banking portal through which the Service may be accessed. The Security Administrator shall set up each Designated Person on the Service.
- i. **Image Cash Letter Service**

Upon Company's submission of a request for Image Cash Letter Services and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

  - i. **Service Description.** The Service is a delivery mechanism for transmitting check transaction data, including check images, between organizations and systems for the purposes of clearing the check payments electronically. To create an "Image Cash Letter" (herein sometimes, "ICL"), Company captures the check transaction data including an image of the front (including the MICR line) and back of the original check for transmission to Cadence, in each case as set forth in the Cadence ICL File Specification document and in compliance with X9.37-100-187 Standards, as the same may be amended from time to time.
  - ii. **Authorized Transactions.** The Service collects check transaction data, including, but not limited to, check images, and transmits the data for the purposes of clearing the check payments electronically without the physical presentation of the check (the "Transactions"). Cadence shall be conclusively entitled to deem the Transactions to be authorized by, and binding upon, Company: if the Transactions and the electronic transmission of a file are made by Company or its actual or apparent agent, or if Cadence reasonably believes the Transactions and the electronic transmission of a file were sent by an authorized representative of Company, or in the event Company utilizes the services of a third party for lockbox or other similar services to facilitate the processing of Transactions, provided that the Transactions and the electronic transmission of a file are in the name of Company and Cadence reasonably believes that the Transactions and transmission of a file by such third party are sent on behalf of Company.
  - iii. **Additional Representations and Warranties of Company.** As to the Transactions transmitted to Cadence, Company represents and warrants to Cadence that: the Transactions and authorization, preparation and presentment of the Transactions comply with the terms and conditions set forth in this Agreement; the ICL of the checks transmitted to Cadence is a true and correct image of the original

paper check and has not been altered in any manner by Company or any third party acting on behalf of Company; Company, or a third party acting on behalf of Company, has reviewed and confirmed that the image captured is identical in all respects to the original paper check and that the amount and the routing transit number of the check captured are accurate; the original paper check has not previously been deposited for collection with Cadence or any other financial institution; Company will retain the original check or, in the event Company utilizes the lockbox services of a third party or other similar services, that the third party will retain the original check for not less than thirty (30) Business Days and for such additional period as may be required in the event of a disputed electronic image or substitute check; in the event that a maker of a check asserts that the Transaction is unauthorized, the processing of the original item may be subject to additional terms of dishonor; Company has no knowledge or notice of information to indicate that the Transaction is fraudulent or not authorized by the maker of the check; Company or its actual or apparent agent or any third party acting on Company's behalf will not cause or allow the original of any imaged or truncated check to be deposited with Cadence or any other financial institution, or otherwise presented for payment; Company will follow the procedures (hereinafter "Procedures") for transmitting Image Cash Letters set forth in the separately distributed Image Cash Letter User Guide as the same may be updated from time to time at the sole discretion of Cadence; Company will give Cadence full and prompt cooperation and assistance in the investigation and/or the defense of any claim, complaint, issue and/or liability arising out of the Services; only checks made payable to Company will be presented via the Service; Company will secure all checks deposited through the ICL Service in such a manner that they are accessible only to those employees, agents and authorized representatives that have a need to access the checks in the performance of their duties for Company until the same are destroyed, returned to the maker, delivered to Cadence or surrendered to law enforcement authorities (Company agrees that, at a minimum, the checks will be kept in a locked compartment, secure filing cabinet, safe-box, etc.); Company will restrict access to the Service Software and hardware only to those employees, agents and authorized representatives that have a need to access the same in the performance of their duties for Company; and the ability to access the Service will be treated as confidential information and protected at least to the extent that Company would protect its own trade secrets, secure processes, proprietary information, customer list or other confidential information; and Company will comply with the ECCHO Rules and Reg CC, as applicable.

iv. **Image and MICR Quality.** Each ICL transmitted by Company to Cadence shall contain images of the front and the back of the scanned checks to be electronically deposited by Company. Each image of each check shall be of such quality that the following information can clearly be read and understood by sight review by Cadence of such image:

- (A) the amount of the check;
- (B) the payee of the check;
- (C) the signature of the drawer of the check;
- (D) the date of the check;
- (E) the check number; and
- (F) all other information placed on the check prior to the time an image of the check is captured, such as any required identification written on the front of the check and any indorsements applied to the back of the check.

Each image shall also meet all standards for image quality established by the American National Standards Institute, the Board of Governors of the Federal Reserve or any other regulatory agency, clearing house or association.

Company shall also capture and transmit to Cadence the full-field MICR encoding on each check, including spaces and dashes.

v. **Receipt of File.** Company shall be solely responsible for transmitting, or delivering ICLs to Cadence by the times and on the dates specified by Cadence. Cadence may reject any ICL determined by Cadence, in its sole discretion, to have been submitted after or before the time required by any applicable schedule or deadline. Company agrees that Company shall be solely liable for, and Cadence shall not have any liability whatsoever to Company for, any ICL or other information contained therein that is not received by Cadence or for any ICL or other information contained therein that is intercepted or altered by an unauthorized third party. Company agrees that Cadence has no obligation to accept an ICL and may reject any ICL or other information contained therein submitted by Company. Cadence has no obligation to notify Company of the rejection of an ICL or other information contained therein. Cadence shall have no liability to Company for the rejection of an ICL or other information contained therein or for the failure to notify Company of such rejection. Upon receipt of an ICL submitted by Company, Cadence may examine such ICL and other information contained therein to ensure that Company has complied with this Agreement and followed the Procedures. If Cadence determines that Company has not complied with this Agreement or followed the Procedures or if errors exist in the ICL or other information contained therein, Cadence, in its sole discretion, may reject the ICL. Cadence also reserves the right to charge Company for rejected images at the rates disclosed in the fee schedules or otherwise communicated to Company from time to time as provided for in this Agreement. Cadence may, at its option, also perform a risk management analysis of one or more ICL submitted by Company to detect potentially fraudulent checks, and, in its sole discretion, Cadence may reject any such ICL or other information contained therein. If the ICL is balanced and the other information contained therein met the requirements of Section 6.i.iv. of these provisions, then Cadence may accept the ICL for deposit to a Designated Account. Upon acceptance of the ICL,

Cadence shall electronically notify Company of receipt and acceptance of the ICL for deposit via email address provided to Cadence. (hereinafter the "Acknowledgment Notification"). The Acknowledgment Notification confirms the ICL has been received and confirms information contained in the ICL such as check volumes and total deposit amount. Information and data reported in the Acknowledgment Email: may be received prior to final posting and confirmation and is subject to correction and is for informational purposes only and may not be relied upon. Company agrees that Cadence shall have no liability for the content of payment-related information.

Notwithstanding the fact that Cadence has accepted an ICL for deposit, any credit made to Company's Account shall be provisional, and Company shall remain liable to Cadence for any errors, inaccuracies, breach of warranties and any other loss sustained by, or claim made against, Cadence.

vi. **Deposit Processing.** All deposits submitted prior to the cutoff time will be processed by the end of the day, except when a deposit requirement described in Section 6.i.iv. above is unmet, or if Cadence experiences interruptions in its systems operations or there are "quality issues", or if Cadence declines one or more Transactions. If any such situation shall have occurred, Cadence will communicate such action to Company and provide information to remedy such situation if a remedy is, in the discretion of Cadence, practicable. Company shall provide Cadence with the names and contact details of Company personnel responsible for resolution of pre-encoded items rejections and other processing matters. Company will notify Cadence of any changes to such list. Company bears all responsibility and liability for any errors in encoding and for the overall quality of encoding of checks and other items. All items shall be indorsed as "Bank of First Deposit" in accordance with Regulation CC and any guidelines established by the Federal Reserve Bank. Information and funds available for withdrawal pertaining to the previous Business Day's deposit shall be available according to the funds availability schedule applicable to the Designated Account. An Acknowledgment Email will also provide information, including volumes and total deposit amount and will be available to Company.

Electronic images of items from any ICL-related deposit will be available to Company pursuant to the guidelines in the User Guide via Internet retrieval from Cadence images archive. Such electronic images may be obtained by such time designated by Cadence in the Digital Banking resource center for the previous evening's deposit. There will be a 24-hour turnaround time by Cadence to Company for: encoding/listing errors and Cadence items posted twice. There will be, commencing on the Business Day immediately following receipt of the ICL by Cadence, a two (2) Business Day turnaround time for: disputed items and interest adjustments.

vii. **Adjustments.** Company shall make all requests for adjustments of any kind to Cadence's Treasury Management group. The requests may be made via telephone, fax or email. Each such request must be

for an adjustment amount greater than Fifty Dollars (\$50.00). Company shall provide members of the Business Relationship Services Team with all necessary documentation requested by Cadence to enable it to research and complete the requested adjustments. All debit and credit advices, including the adjustment and accompanying information, will be delivered to Company via first-class mail. Requests for adjustment received by Cadence from Company shall be input by Cadence into its adjustments system no later than the following day. Cadence will undertake and exercise reasonable efforts for a period of one hundred twenty (120) days to follow up with other banking institutions concerning each deposit item for which restitution has been requested, Cadence will check the status of pending requests every fifteen (15) Business Days during this period. After such period, the item will either be charged off or be charged back to Company, as shall be warranted under the circumstances in Cadence's sole discretion. Notwithstanding the previous sentences of this paragraph, in those instances when such 120-day period shall have expired without resolution, Company may nonetheless request that Cadence undertake continued efforts (subject to the responsiveness of all other parties involved in the transaction in question) for a period not to exceed three hundred sixty-five (365) days from the date of deposit of the item for which restitution has been requested, and report its findings to Company.

viii. **Provisional Settlement; Returns.** Company acknowledges that Transactions may be returned by the paying institution for insufficient funds or other reasons. In addition, the UCC and other applicable law may permit the Transactions to be returned for alleged lack of authorization. Any credit or consideration given by Cadence to Company with respect to any Transactions shall be deemed provisional, and Cadence shall be entitled to revoke the same without prior notice in the event one or more Transactions are rejected or returned to Cadence. In the event one or more Transactions are returned for reason of alleged lack of authorization, Company may promptly submit to Cadence such proof of authorization and request that Cadence forward such proof to the paying institution for its consideration, or present the original paper check for collection in lieu of the electronic image. Company acknowledges and agrees that Cadence may make adjustments to any credit or consideration given for a Transaction or Transactions to remedy any transmission and/or encoding errors. Cadence has no obligation to credit Company for the amount of the disputed Transaction after proof of authorization is submitted if still deemed insufficient by the paying institution.

ix. **Cadence's Right of Refusal.** Cadence may, in its sole discretion, refuse to process any ICL or any electronic image contained in any ICL at any time without prior notification to Company.

x. **Limitation of Remedies.** In the event that Cadence, directly or through a third-party service provider, undertakes to correct any error caused by any equipment utilized in connection with the Service, Cadence shall not have any liability with respect

thereto. It is Company's responsibility to verify that all Transactions were delivered to Cadence and that the Transactions received by Cadence were complete and accurate. An Acknowledgement Notification from Cadence does not relieve Company of this responsibility. COMPANY'S SOLE REMEDY FOR AN ERROR IN CONNECTION WITH THE SERVICE WILL BE FOR CADENCE TO CORRECT THE ERROR.

xi. **Audit Rights.** Upon reasonable notice, Cadence may audit, at its own expense, Company's or Company's third party's hardware, Software, security, procedures, processes and any and all relevant business records directly relating to this Agreement. If any errors or discrepancies for the audited period are found, Cadence may, in its sole discretion and option, immediately terminate this Agreement.

xii. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE IMAGE CASH LETTER SERVICE, AND ANY EQUIPMENT, SOFTWARE AND DOCUMENTATION PROVIDED OR MADE AVAILABLE BY CADENCE TO COMPANY IN CONNECTION THEREWITH ARE PROVIDED OR MADE AVAILABLE FOR COMPANY'S USE DURING THE TERM HEREOF "AS IS" AND "WHERE IS", AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CADENCE AND THE OTHER PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES AND DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH REGARD TO THE IMAGE CASH LETTER SERVICE, ANY SUCH EQUIPMENT, SOFTWARE OR DOCUMENTATION, OR USE OF THE IMAGE CASH LETTER SERVICE BY COMPANY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY AND NON-INFRINGEMENT. CADENCE DOES NOT WARRANT THAT THE OPERATION OF THE IMAGE CASH LETTER SERVICE, ANY EQUIPMENT OR SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR FREE FROM ANY OTHER LIMITATIONS. CADENCE DOES NOT MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF THE IMAGE CASH LETTER SERVICE, ANY EQUIPMENT, SOFTWARE OR DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. COMPANY ACKNOWLEDGES THAT IT MUST PROVIDE ALL EQUIPMENT AND PROVIDE AND MAINTAIN SERVICE THROUGH AN INTERNET SERVICE PROVIDER ("ISP") SUITABLE TO ACCESS THE IMAGE CASH LETTER SERVICE AND IS SOLELY RESPONSIBLE FOR ALL FEES, COSTS AND CHARGES ASSOCIATED WITH AND MAINTENANCE OF SUCH EQUIPMENT OR SERVICE. COMPANY ACKNOWLEDGES THAT ITS ISP MAY HAVE UNINTENDED EFFECTS ON COMPANY'S USE OF THE IMAGE CASH LETTER SERVICE, AND THAT CADENCE SHALL HAVE NO RESPONSIBILITY FOR SUCH EFFECTS. COMPANY ACKNOWLEDGES THAT ANY EQUIPMENT AND THE SOFTWARE MUST INTERFACE WITH CADENCE'S COMPUTERS, AND ASSUMES THE RISK THAT CADENCE'S COMPUTERS MIGHT NOT BE OPERATIONAL OR COMPATIBLE AT ALL TIMES. COMPANY FURTHER ACKNOWLEDGES THAT CADENCE SHALL HAVE NO LIABILITY OR

RESPONSIBILITY FOR THE SATISFACTORY PERFORMANCE OF ANY EQUIPMENT AND SOFTWARE USED TO INITIATE OR RECEIVE COMMUNICATIONS OVER THE INTERNET. COMPANY ALSO ACKNOWLEDGES THAT ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE IMAGE CASH LETTER SERVICE IS AT COMPANY'S OWN DISCRETION AND RISK AND THAT COMPANY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO COMPANY'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR OBTAINING OF ANY SUCH MATERIAL.

xiii. **Company Acknowledgement.** Company acknowledges that the Image Cash Letter Service is provided by way of the Internet; that use of the Internet requires that Company receive and transmit information via connection to remote computers over telephone lines or other Internet connections; and that data, including e-mail, electronic communications, and confidential financial data transmitted over the Internet may be accessed by unauthorized third parties. Company agrees to use software produced by third parties, including, but not limited to, "browser" software that supports a data security protocol compatible with the protocol used by Cadence. Until notified otherwise by Cadence, Company agrees to use software that supports the Secure Sockets Layer (SSL) protocol or other protocols accepted by Cadence and to follow Cadence's Access Devices and procedures that support such protocols. Company acknowledges that Cadence is not responsible for notifying Company of any upgrades, fixes or enhancements to any such software; or any compromise of data transmitted across computer networks or telecommunications facilities, including, but not limited to, the Internet. With the exception of applications commonly known as web browser software, or other applications or access devices formally approved by Cadence in writing, Company agrees not to use any software, program, application or any other device to access or log on to Cadence's computer systems, web site or proprietary software; or automate the process of obtaining, downloading, re-engineering, transferring or transmitting any information to or from Cadence's computer systems, web site or proprietary software. In the event of any system failure, Cadence may reserve the right to require additional documentation, including authorizations, from Company before accepting any order or re-instituting Company's access to the Image Cash Letter Service.

Company agrees to use only software provided or required by Cadence for use with the Service and to install timely all updates, patches and/or any other amendments or modifications to the same when directed by Cadence to do so.

Company will restrict access to the hardware and software involved in providing the Service to only those employees that have a need to access the same in the performance of their duties for the companies and employ reasonable security measures to protect Access Devices and, if applicable, Security Codes, and otherwise prohibit unauthorized access to the Service.

Company will restrict access to the non-public information contained on the checks transmitted using the Service to only those employees that have a need to access the same in the performance of their duties for the companies and employ reasonable security measures to prohibit unauthorized access.

- xiv. **Employee Compliance.** Company shall at all times require employees accessing the ICL service to abide by Company's policies and procedures relating to the creation and management of Image Cash Letters.
- xv. **Third Party Services.** Company acknowledges and agrees that use of the ICL service requires Company to engage a Third-Party Service Provider of lockbox or similar check and other item collection and processing services, and agrees that Cadence may accept Transactions from any actual or apparent Service Provider of Company. Any such Transactions shall be governed by the terms and conditions set forth herein or incorporated herein by reference.

**j. Integrated Receivables Service**

In addition to Company's agreement set forth herein with respect to the terms and conditions to Secure File Transfer Service as applicable to Company ("Secure File Transfer Service"), Company acknowledges and agrees as follows:

**i. Service Instructions and Condition Precedents.**

These terms and conditions for the Service are supplemented by Cadence's Receivable Instructions (the "Service Instructions"), a copy of which has been delivered by Cadence and Company acknowledges receiving. As a condition precedent for use of this Service, Company accepts and agrees to the terms and conditions for the Secure File Transfer Service as set forth herein. Failure to meet the condition precedents and comply with the terms and conditions of Secure File Transfer Service may lead to immediate termination of this Service.

- ii. **Receivables Service.** Cadence will provide Company with payment and remittance notification services, through its Data Transmission Services, and related transmission medium and formats mutually selected by Cadence and Company. Cadence will provide a data transmission to Company on transaction basis: designated lockbox transaction information related to check deposits and the related remittance information, designated ACH transaction information and related information for each incoming ACH entry credited or debited to a Company Account, and/or designated wire transaction information and related remittance data for each incoming wire entry credited or debited to a Company Account. Transmission method, protocol, scope of transaction inclusion, mapping and timing of transaction types, related data and transmittal is mutually agreed upon in implementation documentation and definition of scope and deliverables ("DSD") between Cadence, Company and pertinent parties, such as but not limited to, Company's designated vendors and/or third parties as mutually agreed.

- iii. **Reporting.** Company acknowledges that any reporting is not intended to be used as a substitute

of your bank statement of your accounts but for informational purposes only.

- iv. **Formatting.** Company acknowledges and agrees that formatting and payment conventions by Company, its vendors, and/or third parties may vary thereby resulting in exceptions not contemplated in the DSD. Company agrees to indemnify and hold harmless Cadence and each Provider for any trade-related deficiency, loss of contractual compliance and actual and consequential damages resulting from any exception resulting from payment and/or data provided by Company or Company's vendors beyond the control of Cadence in the commercially reasonable performance of this Service.

- v. **Timing.** Company acknowledges that the receivable information and payment information is subject to certain cut-off times and, therefore, Cadence is not responsible for any delays in payment from the Service due to a missed cut-off time by Company.

- vi. **Limitation of Liability.** Company hereby releases Cadence from any claim, demand, loss, liability, or expense arising under, out of, or in connection with the Service or Cadence's performance under these provisions for the Service, provided such claim, demand, loss, liability or expense has not directly resulted from Cadence's gross negligence or willful misconduct. In no event shall Cadence be liable for any consequential, special, punitive or indirect loss or damage which Company may incur or suffer in connection with its use of the Service.

- vii. **Indemnity.** In addition to the indemnity contained in the General Terms section of this Agreement and Section 6.j.iv. herein, Company agrees to indemnify and hold Cadence, its affiliates, directors, officers, employees, and agents ("Indemnified Parties") harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys' fees and cost of litigation) to which Cadence may be subjected or which it may incur in connection with any claims which might arise from or out of Company's use of the Service, or data transmitted to Cadence by Company or Company's vendors, or reports provided by Cadence Company. Company shall also hold the Indemnified Parties harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys' fees and cost of litigation) to which Company may be subjected or which it may incur in connection with any claims which might arise from or out of Company's use of or the failure of any software or hardware provided, required or suggested by the Cadence. Company's indemnity obligations under this section shall survive termination of this Agreement.

**k. Remote Deposit Capture Service**

Upon Company's submission of a request for Remote Deposit Capture Services and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

- i. **Service Description.** By using Cadence's Remote Deposit Capture Service, Company may process original paper checks by capturing the image, front

and back along with the MICR line, of the original check for transmission to Cadence using the transmitted image file. Cadence will process the digital image or print an IRD and process the IRD check as if it were an original paper check. IRD's and digital images are processed for collection through the local Federal Reserve or other clearinghouses, or directly to the paying institution. Company must provide Cadence with a transmitted image file no later than the same Business Day as the Issuance Date of an Item. "Issuance Date" means the earlier of the date on which any check drawn against a Designated Account is mailed to the payee or given to the payee as reported to Cadence in a transmitted image file. In each transmitted image file, Company must accurately state the Issuance Date, check number, exact amount and (at Company's option) the payee name of each check drawn on a Designated Account since the last transmitted image file was submitted. Upon receipt of the transmitted image file, Cadence will provisionally credit the Designated Account for the amount of the deposit evidenced by such scanned items and enter the images of the checks into the collection process in accordance with the provisions of the deposit account agreement applicable to Company's Accounts, Service Instructions and this Agreement.

ii. **Designated Account; Information.** Company shall identify a Designated Account for use with the Service. Company agrees to provide to Cadence any and all information requested by Cadence to permit Cadence to provide the Service.

iii. **Items Deposited.** Company agrees to scan and remotely deposit only Items (as defined in Article 4 of the UCC), which are acceptable to Cadence for deposit into a deposit account as described in the provisions of the deposit account agreement applicable to Company's Accounts. Company understands and agrees that Company will not deposit Items that are issued by Company or Company's affiliates and drawn on Company's or Company's affiliates' accounts, prohibited by the procedures in the Remote Deposit Capture or Commercial Deposit User Guide ("User Guide"), or in violation of any Applicable Law, payable to anyone other than Company, unless specifically approved by Cadence, that Company suspects or should know to be fraudulent or not authorized by the legal owner of the account on which the check is drawn or drawn on financial institutions that are located outside of the United States or territories of the United States provided such instruments are drawn in USD.

iv. **Scanning of Items and Transmission of Deposits.** To use the Service, Company shall endorse each check to be deposited, scan or take a picture of the front and back of each Item to be deposited, capture the image of the front and back of each Item (including the MICR line of the check and the encoded check amount) and transmit the deposit to Cadence in accordance with the procedures in the User Guide provided to Company by Cadence.

To ensure accuracy, Company shall balance the deposit dollar amount to the sum of the Items ("Balanced Deposit") in accordance with the User Guide prior to transmitting the deposit. The

Balanced Deposit must be received by Cadence no later than the cut-off time specified in the User Guide ("Cut-Off Time"). A deposit which is received after the Cut-Off Time shall be deemed to have been received on the Business Day following the Business Day on which the deposit is actually received by Cadence. Company may send multiple deposits to Cadence throughout the day. Cadence may, at its option, set a daily dollar amount threshold ("Deposit Limit"), and may refuse to accept any deposits that exceed the Deposit Limit, or Cadence may accept and process such deposits. If a Deposit Limit is established by Cadence, Company agrees not to make deposits through the Service in an amount which exceeds the Deposit Limit. Cadence reserves the right to change the Deposit Limit and Cut-Off Time. Any such modifications shall be effective immediately and may be implemented prior to Company's receipt of the newly established Deposit Limit or Cut-Off Time.

v. **Maintenance and Destruction of Original Item.**

Company shall for security purposes place a uniquely selected mark on the original Item after scanning the Item (if such mark is not placed on the Item by the scanner). Company shall securely store the original Item for a period of not less than thirty (30) Business Days and for such additional period as may be required in the event of a disputed electronic image or substitute check ("Retention Period") after transmitting the deposit to Cadence. During the Retention Period, Company shall take appropriate security measures to ensure that only authorized personnel shall have access to the original Item, that the information contained on the Item will not be disclosed, and that the original Item will not be duplicated, will not be scanned more than one time, and will not be deposited or negotiated in any form. In addition, during the Retention Period, Company will furnish to Cadence, upon request, a copy of or the original of any Item transmitted to Cadence for processing. Company shall destroy the original Item upon the expiration of the Retention Period.

vi. **Image Quality.** Each Deposit transmitted by Company to Cadence in accordance with the procedures in the User Guide shall contain images of the front and the back of the Items scanned and remotely deposited by Company ("Images"). The Images shall be of such quality that the information can clearly be read by sight review of the Images. Images shall also meet any standards for image quality established by American National Standards Institute (ANSI), the Board of Governors of the Federal Reserve System, or any other regulatory agency, clearing house or association and shall be sufficient to create an IRD or a "Substitute Check."

vii. **Receipt of Deposit.** Company agrees that Company shall remain liable for, and that Cadence shall not be accountable to Company for, any deposit or Item that is not received by Cadence for any reason or that is intercepted or altered by an unauthorized Person. Company agrees that Cadence has no obligation to accept any deposit or Image and, therefore, that Cadence may reject any deposit or Images submitted by Company. Cadence has no obligation to notify Company of the rejection of a deposit or Image but will make reasonable efforts to



do so. Cadence shall have no liability to Company for rejection of a deposit or Image or for failure to notify Company of a rejection. Upon receipt of a deposit submitted by Company, Cadence may examine the deposit and the Images to ensure that Company has followed the established Procedures. If Company has not followed the procedures in the User Guide, if errors exist in the data or if the Images contained in the Deposit are unclear or defective in any manner, Cadence, in its sole discretion, may reject and not accept the entire deposit or portions thereof or Cadence may elect to accept and process the deposit. As a form of correction, Cadence may credit Company's account for the full amount of the deposit and make the necessary adjustments to correct any errors contained in the deposit. Cadence may, at its option, also perform a risk management analysis of the deposit submitted by Company to detect potentially fraudulent Items and/or check for viruses and malware, and, in its sole discretion, reject the deposit or any Image. Cadence may, but shall have no obligation to, notify Company that it has rejected a deposit and/or any Image and permit Company to resubmit such deposit or Image, as applicable. If, after final examination of a deposit and the related Images, Cadence determines that Company has processed and transmitted the deposit in accordance with the procedures in the User Guide, the deposit is balanced, and the Images meet the requirements of this Agreement, then Cadence shall accept the deposit ("Accepted Deposit") for deposit to Company's Account. Notwithstanding the fact that Cadence has accepted the deposit, any credit made to Company's Account shall be provisional and Company shall remain liable to Cadence for any errors, inaccuracies, breaches of warranties and any other losses sustained by or claims made against Cadence by any person, firm or entity.

viii. **Provisional Credit and Availability of Funds.** Upon acceptance of a deposit, Cadence shall grant the Designated Account provisional credit for the total amount of the Accepted Deposit. The provisional credit means that the credit is made to the Designated Account subject to final payment of the Items and will be made available as defined under the terms and conditions of Cadence's Funds Availability Policy as set forth in the provisions of the deposit account agreement applicable to Company's Accounts. Items will continue to be deferred based on the applicable collected funds calculations for analysis of account earnings ("Account Analysis") and automated sweep purposes.

ix. **Collection of Items.** Cadence, in its sole discretion, shall determine the manner in which Items shall be presented for payment to the drawee Cadence. Likewise, Cadence, in its sole discretion, shall select the clearing agents used to collect and present the Items, and Cadence's selection of the clearing agents shall be considered to have been designated by Company. Cadence shall not be liable for the negligence of any clearing agent. Company agrees to be bound by any agreements entered into by and between Cadence and any clearing agents, and Company agrees to be bound by all NACHA Rules, all regulations of the Board of Governors of the Federal Reserve System ("Regulations"), all Federal Reserve

Bank Operating Circulars ("Operating Circulars"), and all rules of the National Check Exchange ("NCE"), the Small Value Payments Company ("SVPCo"), Viewpointe and Endpoint Exchange (collectively, the "Other Rules") in which Cadence may be a member of or to which rules Cadence has agreed to be bound. Collection of Items is also subject to the provisions of the deposit account agreement applicable to Company's Accounts.

x. **Contingency Plan.** Company agrees that in the event that Company is not able to capture, balance, process, or otherwise transmit a deposit to Cadence for any reason, including, but not limited to, communications, equipment or software outages, interruptions or failures, Company will transport the physical checks and deposits to an office of Cadence and deposit the original checks with Cadence until such time that the outage or other interruption can be identified and resolved. The deposit of original checks at an office of Cadence shall be governed by the provisions of the deposit account agreement applicable to Company's Accounts and not by the terms of this Section.

xi. **Return Items.**

(A) **Chargeback of Returned Items.** If Images of Items previously deposited by Company are dishonored and returned unpaid by the drawee, Company understands and agrees that, since Company either maintains the original Item or has destroyed the original Item in accordance with this Agreement, the original Item will not be returned and Cadence may charge back an Image of the Item to Company's checking account. Company understands and agrees that the Image may be in the form of an electronic or paper reproduction of the original Item, IRD or a Substitute Check.

(B) **Special Instructions.** Company may request that Cadence re-present returned Items to the drawee or process returned Items according to instructions provided by Company to Cadence ("Special Instructions"). These Special Instructions may be given to Cadence in a separate document in conjunction with or subsequent to the execution of this Agreement. Cadence shall not be bound by such Special Instructions until such time as Cadence has accepted the Special Instructions. Notwithstanding the fact that Cadence has accepted the Special Instructions, Cadence may, in its sole discretion, disregard the Special Instructions and charge the returned Item back to the account of Company to which the Items were deposited. In the event that Company has requested that returned Items be re-presented, in no event will Cadence re-present an Item in excess of the limit established or permitted for the number of times that an Item may be re-presented by any Applicable Law, NACHA Rules, Regulations, Operating Circulars, Other Rules or this Agreement. Company may change or amend the Special Instructions by providing Cadence a written request to change or amend the Special Instructions. Changes or amendments to the Special Instructions shall

not become effective until accepted by Cadence.

- (C) Returned Items and Special Instructions Fees. Company hereby agrees to pay Cadence the fees for processing returned Items and Special Instructions contained in Cadence's Schedule of Fees.

xii. **Confirmation: Account Reconciliation.** Cadence will provide notice of receipt of deposits to the Designated Account on the periodic Designated Account statement. Company is responsible for detecting and reporting to Cadence any discrepancy between Company's records and the records Cadence provides to Company. Notwithstanding any other provision of this Agreement, if Company does not detect and notify Cadence of such a discrepancy within thirty (30) days of Company's receipt of any terminal printout, mailed report or periodic statement ("Report"), whichever is received first, then such transactions shall be deemed correct and Company shall be precluded from asserting such error or discrepancy against Cadence.

xiii. **Warranties and Covenants.** Company represents and warrants to Cadence and covenants and agrees with Cadence as follows:

- (A) Items Deposited. Company shall only deposit Items that are authorized by this Agreement and the provisions of the deposit account agreement applicable to Company's Accounts.
- (B) Image Quality. The Images shall comply with the requirements of this Agreement.
- (C) No Duplicates. Company will not create duplicate Images of the Items, transmit any duplicate Images or deposits to Cadence, or deposit or otherwise negotiate any original Item from which an Image was created or accepted. No subsequent transferee, including, but not limited to, Cadence, a collecting or returning Cadence, drawer, drawee, payee or endorser, will be asked to pay an original Item from which an Image was created or Item was previously accepted or a duplication (whether paper or electronic) of such Item.
- (D) No Loss. No subsequent transferee of any Item, including, but not limited to, Cadence, a collecting or returning Cadence drawer, drawee, payee or endorser, shall sustain a loss as the result of the fact that an Image, instead of an original Item, was presented for payment or returned.
- (E) Information. All information provided by Company to Cadence with respect to Company, its business, its owners and its officers is true, correct and complete. Company is not engaged or affiliated with any businesses, products or methods of selling other than those disclosed by Company to Cadence.
- (F) Computer Virus. The deposits and the Images do not and will not contain computer viruses or other harmful, intrusive, or invasive codes.
- (G) Representations Deemed Made for Each Image and Deposit. For each Image and deposit transmitted to Cadence, Company represents

and warrants to Cadence that: the preparation and presentment of such Image and/or deposit, as applicable, comply with the terms and conditions set forth in this Agreement; the digital image of the check transmitted to Cadence is a sufficient copy that is a true, correct and accurate image that represents all the information on the front and back of the original check at the time the original was truncated, so that an IRD or Substitute Check created from the image will satisfy legal equivalence requirements, and the image has not been altered in any manner by Company or any third party acting on behalf of Company, Company, or any third party acting on behalf of Company, has reviewed and confirmed that the transmission of MICR line information is identical in all respects to the original check and that the encoded check amount is accurate, Company understands that any message text or other information Company elects to add to the check image transmitted to Cadence may cause the depository Cadence's endorsement not to be legible which may result in the delayed return of the Item or electronic representation of the check if it is not paid, the original check, or a paper or electronic representation, has not previously been deposited for collection with Cadence or any other financial institution, and no depository Cadence, drawee, drawer, or endorser will be asked to pay a check that it already has paid, Company will retain the original check, or in the event Company utilizes services of a third party that the third party will retain the original check, for the time period required herein, and for such additional period as may be required in the event of a disputed truncated Item, IRD or Substitute Check, including claims that the IRD, Substitute Check or electronic representation does not satisfy legal equivalence requirements, so that the original check can be processed for collection, and that Company or such third party will take all reasonable efforts to safeguard any original checks until they are destroyed, Company understands that the appearance of the original check and the use of certain background colors, decorative images and choices in ink on the original check may affect the ability to produce a readable digital image of the check or the creation of a Substitute Check that meets legal equivalence requirements which may require the original check to be processed for collection and Company has no knowledge or notice of information to indicate that the transaction is fraudulent.

xiv. **Onsite Audits; Periodic Review.**

- (A) Onsite audits may be performed spontaneously by Cadence to ensure Company is meeting acceptable standards for the transmissions of deposits and Items, in connection with retainment procedures and otherwise in order to comply with this Agreement. Items for audit may include, but shall not be limited to, the following: security of physical items processes before and after scanning, item retention, image

quality, over limit items and number of duplicates issued. Cadence may mandate further internal controls by Company based on the results of any audit.

- (B) Company acknowledges that Cadence may from time-to-time review Company's use of the Service and, in its discretion, modify the terms and conditions of or discontinue providing the Service to Company.

xv. **Internet Disclaimer.** Cadence disclaims any and all liability resulting from or related to any disruptions in Internet service, whether such disruptions occur as a result of the Internet service of Cadence, the Internet service of Company or for any other reason, and in no event shall Cadence be liable for any damages (whether in contract or in tort) that are attributable to the Internet, third parties use of the Internet, Company's ability to connect to the Internet or Cadence's ability to connect to the Internet.

xvi. **Third Parties; Maintenance.**

- (A) Services from Others. Company may be using special equipment, services or software provided by a third party ("Third Party") to assist it in processing Items and deposits hereunder. Company agrees that any Third Party is acting as Company's agent in the delivery of Items and deposits to Cadence, and agrees to assume full responsibility and liability for any failure of that Third Party to comply with all Applicable Laws, the Rules, the Regulations, the Operating Circulars, the Other Rules or this Agreement. Cadence will not be liable for any losses or additional costs incurred by Company as a result of any error by a Third Party or a malfunction of equipment provided by a Third Party. Company is solely responsible for maintaining compliance with the requirements of any Third Party, including obtaining any software updates. Cadence shall not have any responsibility for any Item or deposit handled by a Third Party until that point in time when Cadence accepts and approves an Item or deposit from such Third Party for processing. If requested by Cadence, Third Party shall execute documentation acceptable to Cadence acknowledging the terms set forth herein.

- (B) Equipment Maintenance. Company shall be solely responsible for obtaining and properly maintaining its equipment and system requirements, including computer equipment, software, Internet connectivity, scanning terminals, Mobile Devices and any other equipment or items necessary to use the Service. Cadence shall not be liable to Company, in any manner whatsoever, for any type of errors, losses, damages or other claims related to Company's failure to do so.

xvii. **Proprietary Rights.** Company agrees that any specifications or programs developed by Cadence in connection with this Agreement or supplied or made available to Company by Cadence are the exclusive property of Cadence, its agents, suppliers, or contractors, and further agrees that such material

shall not be copied or used in any manner or for any purpose without the express written consent of Cadence. This clause shall survive the termination of the Agreement.

xviii. **Equipment.** To utilize the Remote Deposit Capture Services provided in this section, Company must use the equipment designated by Cadence (the "Equipment") from time to time. Company may purchase the Equipment from Cadence or from a third-party vendor approved by Cadence. Further, Company acknowledges and agrees that Cadence must know where the Equipment is physically located at all times. Company will give Cadence notice where the Equipment will be installed and Company shall request permission from Cadence in advance of any change in location of the Equipment, which permission Cadence may grant or refuse in its sole discretion. In addition to, but not in lieu of the foregoing, Company acknowledges that Equipment may not be moved outside the state it was initially installed and/or continental United States without permission from Cadence.

xix. **Software.** Cadence may select and/or require specific Software to be used for the Remote Deposit Capture Service (the "RDC Software"), including, but not limited to, (1) software to operate the Equipment and Service; (2) software to track the location of the Equipment using the Global Positioning System ("GPS") and (3) software to track, record and monitor the Equipment's use. Company acknowledges that any RDC Software is the property of Cadence or Cadence is the holder of a license for the RDC Software and that Company is a licensee or sublicensee of the RDC Software. Company's license of and permission to use the Software is non-exclusive and non-transferable, and it extends only to Company's own use of such Software for the purpose of processing transactions as set forth in this Agreement. RDC Software may not be used to process transactions with or through any other party without the express written consent of Cadence, and only RDC Software may be used in connection with this Service. Company further acknowledges that RDC Software contains confidential information and trade secrets, which Cadence has entrusted to Company in confidence. Company shall protect Cadence's property and its interest in the trade secrets contained in the RDC Software by controlling access to the Software, permitting none of its employees nor any other person not an employee or agent of Cadence to examine, alter, attach, add to, modify, decode, reverse engineer, transcribe, extract or reproduce, in whole or in part, the Software in any way. Without limiting the generality of the foregoing, Company specifically agrees that it will not delete, mask or obscure any proprietary notices, which Cadence places on any RDC Software. Company further agrees to install all new versions, upgrades, patches, protocols and/or any other changes, amendments or alterations (collectively referred to herein as "Upgrades") to the Software within ten (10) days of receipt of the same or receipt of notice from Cadence of where and/or how to retrieve the Upgrades. Company may make one (1) copy of the RDC Software to be used exclusively for backup purposes. Otherwise, Company shall not

copy the RDC Software and shall not transfer or disclose it to any other person, firm or corporation except for those employees of Company who require such knowledge of the RDC Software in the ordinary course and scope of their employment.

xx. **Account Number Keying.** Account number keying allows Company to modify account numbers read by the RDC Equipment and/or Software. Cadence and the provider of the RDC Software reserve the right in their sole discretion to approve or deny any request by Company to enable account number keying. Upon Company's submission of a request for account number keying and the approval of its use of account number keying, or upon its use of account number keying, whichever occurs first, Company agrees to hold harmless Cadence and the provider of the RDC Software for the amount of any loss or damage sustained by Company (including any and all costs (including attorney's fees), charges, fees, penalties, or fines associated with the same, whether charged by RDC Software or a third party) from all Returned Items (defined below). The amount of any Returned Item resulting from miskeying an account number will be charged to any or all accounts of Company where sufficient funds exist to pay the same. If the aggregate amounts of Company's accounts are insufficient to cover the amount of Returned Items, or if Company no longer has accounts with Cadence, Company agrees to pay to Cadence immediately upon demand, the amount of Returned Items. For purposes of this paragraph, "Returned Item" means any check, check image, IRD or other item transmitted to Cadence, negotiated, or deposited by, or on behalf of, Company through use of account number keying that is returned unpaid to Cadence by any payor bank, collecting bank, or clearinghouse, or that is disputed by Company or Company's client or any third party.

xxi. **Company Acknowledgement.**

Company acknowledges that the Service is provided by way of the Internet; that use of the Internet requires that Company receive and transmit information via connection to remote computers over telephone lines or other Internet connections; and that data, including e-mail, electronic communications, and confidential financial data transmitted over the Internet may be accessed by unauthorized third parties. The Company acknowledges its independent obligations to assure that: (a) its computer equipment and systems have adequate firewalls and are running comprehensive, up-to-date security packages which include protection against the latest viruses, spyware, adware, botnets and other computer infections and malicious software and which scan the Company's computer equipment and systems daily and which update virus definitions daily; (b) the Company closely safeguards all user IDs and passwords, strictly prohibiting the use of the same user ID and password by multiple users, and instructs its employees and agents as to the critical importance of such safeguarding; and (c) the Company instructs its employees and agents as to the proper exercise of good judgment when using the Internet and vigilance against fraud, such as e-mail messages which prompt the disclosure of a user ID or

password. CADENCE CANNOT AND DOES NOT GUARANTEE THAT THE COMPANY'S COMPUTER EQUIPMENT AND SYSTEMS ARE FREE FROM RISKS WHICH ARE INHERENT IN INTERNET-BASED APPLICATIONS. Company agrees to use software produced by third parties, including, but not limited to, "browser" software that supports a data security protocol compatible with the protocol used by Cadence. Until notified otherwise by Cadence, Company agrees to use software that supports the Secure Sockets Layer (SSL) protocol or other protocols accepted by Cadence and to follow Cadence's Access Devices and procedures that support such protocols. Company acknowledges that Cadence is not responsible for notifying Company of any upgrades, fixes or enhancements to any such software; or any compromise of data transmitted across computer networks or telecommunications facilities, including, but not limited to, the Internet. With the exception of applications commonly known as web browser software, or other applications or access devices formally approved by Cadence in writing, Company agrees not to use any software, program, application or any other device to access or log on to Cadence's computer systems, web site or proprietary software; or automate the process of obtaining, downloading, re-engineering, transferring or transmitting any information to or from Cadence's computer systems, web site or proprietary software. In the event of any system failure, Cadence may reserve the right to require additional documentation, including authorizations, from Company before accepting any order or re-instituting Company's access to the Service. In no event shall Cadence be liable for any defect in, failure of or unavailability of any telecommunications connection, internet site or other web-based application necessary for utilization of the Remote Deposit Capture Services, any associated software or hardware or for any technical or editorial errors contained in any user manual or guide pertaining thereto, whether designated by Cadence or not. Neither shall Cadence be liable for any consequential, special, punitive or indirect loss or damage which the Company may incur or suffer in connection with the subject matter of this Agreement. Company assumes full responsibility for its selection of, access to, and use of products purchased from Cadence as indicated on the Service Instructions. Company shall be responsible for the confidentiality, maintenance, and use of its financial information and of its access number(s), password(s), log-in ID(s), and account number(s). If Company requires more than one authorized signer's signature or authorization to conduct certain transactions related to Company's account(s) or the Services, this requirement will be deemed solely for Company's own purposes. Cadence will not be liable to Company as long as at least one authorized signer's signature appears on the Company's checks, drafts, instructions, or orders, or if Cadence's records indicate that a transaction, payment or other product use was made by or on behalf of one authorized signer by telephone, the Internet, or other method. This includes situations in which Company has provided its access number(s), password(s), log-in ID(s) and/or account number(s) to someone else to use. Company agrees not to hold

Cadence liable for following Company's written orders or instructions. Company agrees not to hold Cadence liable for any damages of any kind resulting from Company's disclosure of its access number(s), password(s), log-in ID(s), or account numbers to any person identified or not identified on the Service Instructions. Company will be responsible for all orders and instructions entered through and under Company's access number(s), password(s), log-in ID(s), and/or account number(s), and any orders or instructions so received by Cadence will be deemed to have been received from Company. Company agrees to immediately notify (in the manner prescribed by Cadence from time to time) Cadence if Company learns of: (a) any compromise, loss or theft of Company's access number(s), password(s), log-in ID(s) and/or account number(s); (b) any unauthorized use of any of Company's access number(s), password(s), log-in ID(s), and/or account number(s), or of the electronic Services or any of Company's information; or (c) any receipt by Company of confirmation of an order that Company did not place; or any similarly inaccurate or conflicting report or information.

**l. Smart Safe Services**

Upon Company's submission of a request for Smart Safe Services and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

- i. **Description of Service.** Smart Safe is a service whereby Company receives provisional credit for funds deposited into smart safe equipment ("Equipment") that is serviced and provided through a smart safe program of a third-party provider approved by Cadence ("Transporter").
- ii. **General.** To utilize the Smart Safe service, Company must execute a Smart Safe Services Agreement ("Smart Safe Services Agreement") for a smart safe program directly with the Transporter. Company acknowledges that the Smart Safe Services Agreement is between Company and Transporter, only, and Cadence is not a party to the Smart Safe Services Agreement. Company agrees to comply with all stated terms and conditions of the Smart Safe Services Agreement for the smart safe program.
- iii. **Provisional Credit.** Cadence may provide Company's account with provisional credit for deposits into the Equipment as reported electronically by Transporter. At Cadence's sole discretion, credit to Company's Designated Account may be provided in the form of immediate or delayed posting as of the close of business of any processing day. Company acknowledges that Cadence shall determine any shortages or overages during physical funds verification of the deposit and shall report any discrepancies to Company in a timely manner. In the event of a discrepancy between the amount of funds reported by Transporter to Cadence and the actual amount after physical funds verification by Cadence, the verified amount will prevail. Cadence may adjust the account balance, without prior notice to Company, via credit or debit should there be any deposit discrepancy. Until receipt and final physical funds verification by

Cadence has been completed, Cadence may, in its discretion and without prior notice to Company, reduce or revoke any provisional credit granted to Company hereby for any reason, including without limitation actual or suspected damage, theft or destruction of the funds or Equipment, failure of Company to make the Equipment and funds available to Cadence or Transporter, or any other event that results in a delay in Transporter's or Cadence's receipt and verification of funds, whether or not due to any fault of Cadence or Transporter.

- iv. **Duties/Risk of Loss.** Cadence's duties for this Service are limited to processing the deposit funds for credit to Company's Designated Account(s) in accordance with the deposit account agreement applicable to Company's Account and Applicable Law (collectively "Deposit Rules") and these services are provided by Cadence as a convenience to and at the sole and absolute risk of Company. Company agrees that for all purposes each item of Equipment delivered to Cadence and the contents thereof shall have no value, but shall include a "said to contain amount." All deposits made using the Service shall be subject to final count and verification by Cadence, and Company shall accept as conclusive and final Cadence's count of the Equipment and their contents unless such count is demonstrably erroneous and Company notifies Cadence of such error within fourteen (14) days of such deposit. With respect to any such Equipment, the relationship of debtor and creditor shall not exist between Cadence and Company, and Cadence shall have no responsibility or liability for the content, including but not limited to any cash or any items contained in the Equipment, until the deposit is actually and physically received and verified by an employee of Cadence at one of Cadence's depository locations and Cadence has produced a deposit receipt therefor. Company shall bear the entire risk of loss, damage, theft or destruction (and any cost, expense liability related thereto) for any deposit until actually and physically received by Cadence as contemplated in this paragraph. In case of a loss, damage, theft or destruction of funds in which Cadence has already provided provisional credit and such funds have not been delivered to Cadence, Cadence will have the right to set off against Company's Account for those funds previously credited.
- v. **Transporter.** Company agrees that Cadence will not bear any responsibility or liability for the smart safe program including the Equipment provided by the Transporter. Company understands that Transporter is responsible and liable for the deposit amount that is reported by Transporter on any given day and transmitted to Cadence for processing. The Transporter does not act as the agent of Cadence in performing activities for Company.
- vi. **Insurance.** Company shall at all times during the term hereof maintain an excess liability/enhanced guarantee coverage with the Transporter or maintain commercial crime insurance with reputable insurance carriers, to cover the loss or destruction of the deposited funds that are deposited in the Equipment or handled, stored or transported by the Transporter. The insurance policies relating to such insurance coverage shall: (a) name Cadence, at no

cost or expense to Cadence, as an additional insured and loss payee under such policies and Company shall cause such policies to include a provision whereby the insurance carrier waives its rights of subrogation against any named insured thereunder; and (b) contain provisions requiring the insurance carriers to notify Company in writing at least ten (10) days prior to the effective date of any termination or material change to the insurance coverage. Upon the reasonable request of Cadence, Company shall furnish Cadence with a certificate of insurance and a copy of the liability insurance endorsement evidencing such insurance coverage. Cadence is not an insurer of any deposits placed with and transported by the Transporter.

**vii. Billing. Transporter will bill the associated service fees for its smart safe program to Company as per the Smart Safe Services Agreement on a monthly basis. Company agrees to pay fees for the smart safe program directly to Transporter.**

**viii. Termination.** If, for any reason, Company terminates the Transporter Smart Safe Services Agreement with Transporter or terminates its relationship with Cadence, Company agrees that it will immediately inform the mutual parties in writing of such termination in addition to any specific termination requirements as stated in the Transporter Smart Safe Services Agreement or this Agreement.

**m. Vault Services**

Upon Company's submission of a request for Vault Services and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

**i. Transportation.** Company is required to employ a bonded and licensed armored carrier ("Transporter"), to provide transportation of deposits of cash and checks, coins and other items ("Deposits") from Company's place(s) of business and other locations to Cadence's vault identified in the Service Instructions for Vault Services (the "Vault") and receive Change Orders (as defined below) from Cadence.

**ii. Deposits.** Prior to making a deposit the customer shall:

- (A) Insert the cash and checks, coins and other items for deposit in a tamper-proof deposit bag or other kind of bag Cadence may require (the "Deposit Bag") accessible only by Company and Cadence.
- (B) Clearly indicate the amount of cash, coin, etc., each Bag contains by providing a complete deposit ticket, in duplicate, itemizing cash and checks and other items intended for credit to Company's account (NOTE: Checks are to be endorsed "For Deposit Only").
- (C) Seal the Bag and take all such precautions as may be necessary or appropriate to ensure that the Bag is secure and to prevent unauthorized persons from having access thereto.

(D) Ensure Deposit Bag is logged in the courier's manifest or logbook with signatures from the Company and courier before it is sent for delivery to the Vault.

**iii. Delivery.** Upon delivery of each Deposit, Company's Transporter shall abide by all rules and regulations relating to security at the Vault and surrounding areas (the "Safety and Security Rules"), whether or not the same have been previously communicated to Company or the Transporter. Company agrees that the Safety and Security Rules are subject to change without notice at any time. Company agrees that Cadence reserves the right to refuse to conduct business with any Transporter for any reason and that failure of a Transporter to abide by the Safety and Security Rules may result in immediate termination of Company's Vault Services and/or any other action Cadence may deem necessary or appropriate

**iv. Receipt of Deposit.** On the day of Company's or its designated Transporter's delivery of a Deposit to the Vault and Cadence's receipt and acceptance thereof, Cadence is authorized and instructed by Company to:

- (A) Open the Deposit Bag(s) and verify the amount(s) of the Deposit(s).
- (B) Process the Deposit(s) for credit to Company's Designated Account(s) in accordance with the deposit account agreement applicable to Company's Account and Applicable Law (collectively "Deposit Rules"). Deposits of coin will be subject to later verification from the time of the relevant Deposit except as is otherwise required by applicable Deposit Rules. If the amount of the Deposit as determined by Cadence is different from the amount indicated by the relevant deposit ticket or otherwise for deposit, Cadence will prepare and process an adjustment entry for the amount of the difference pursuant to the "Adjustment" provisions below.
- (C) Provide Company an advice of the transaction(s), except as noted above.
- (D) If there are any defects or damage or any evidence of tampering to a Bag, Cadence may, in its sole discretion, refuse to accept the same for deposit. The cost of replacement of any Deposit Bag shall be borne by Company.

**v. Change Orders.** Company may request United States currency and/or coin (a "Change Order") by contacting an authorized Cadence representative at the Vault, as requested by a Cadence representative. If Cadence has sufficient currency and/or coin available, Company's designated Transporter may retrieve, such Change Order at the Vault. Cadence is hereby authorized to debit Company's Designated Account for the amount of any such Change Order and any applicable fees associated with placing the Change Order. Company is responsible for filing any disputes regarding the currency and coin received within three (3) Business Days after receiving the funds.

**vi. Records.** Cadence may record electronic requests for (including but limited to Change Orders) by

Company. Such recordings and Cadence's other records shall evidence a Company's Change Order request and its other transactions with Cadence, including, without limitation, the amount of any Change Order or other transaction. Cadence shall not be required to investigate the reasonableness or authorization for any Change Order, any transaction, or request for any other service.

vii. **Adjustments.** In the event that the amount Company has indicated for deposit does not equal the actual amount of the Deposit determined by Cadence (an "Adjustment"), Cadence is hereby authorized to: execute a Deposit Correction Form, Debit Memo, and/or Credit Memo and, if applicable, debit (or credit) Company's account, as appropriate, to reflect the accurate amount of the Deposit. In lieu thereof, however Cadence may in its sole discretion, abide by any special instructions with respect to such Adjustments provided for on the Special Instructions Addendum executed by Company, if any. However, nothing therein and no course of dealing shall be construed as prohibiting Cadence from executing a Deposit Correction Form, Debit Memo and/or Credit Memo and, if applicable, correcting Company's deposit slip and debiting (or crediting) Company's account, as appropriate.

viii. **Limitation on Liability; Risk of Loss.** The Vault Services are provided by Cadence as a convenience to and at risk of Company, and Cadence shall have no responsibility or liability to Company or its Designated Transporter for any cash or any items contained in any deposit until the deposit is actually received and accepted by an employee at one of Cadence's depository locations. Company shall bear entirely the risk of loss for any deposit until received and accepted by Cadence. If Cadence, in its sole discretion, determines that the deposit bags appear to be tampered, deposit may be refused, and Cadence will not assume any responsibility or liability for loss.

ix. **Company Use Only.** Company agrees and warrants that it will order, deposit, or request delivery of currency or coin to or from Cadence only for its own purposes and not for or on behalf of any other person.

x. **Foreign Exchange Services**

Upon Company's submission of a request for Foreign Exchange Services and the approval of the Service Instructions for this Service, or upon its use of the Service, whichever occurs first, Company agrees:

a. **Service Description; Conditions Precedent; Definitions.**

i. The Foreign Exchange Service allows Company to purchase and sell foreign currencies through Cadence; to deposit foreign currencies into and/or transmit foreign currencies from a Company Account, and to effect such other transactions in foreign currencies as Cadence may from time to time agree.

ii. These terms and conditions for the Foreign Exchange Service are supplemented by the Service Instructions for the Service. As a condition precedent for use of this Service, Company agrees to

the terms and conditions of this Agreement for Funds Transfer Services. Failure to meet the conditions precedent and comply with the terms and conditions of the Online Funds Transfer Services may lead to immediate termination of this Service.

iii. For purposes of the Service, the following terms have the following meanings:

"Foreign Exchange" means Cadence's affecting purchases and sales of foreign currencies, including US Dollars ("USD"), on Company's behalf.

"FX Deposit Account" means a non-interest bearing account of Cadence for the benefit of Company (among others) to receive deposits in, hold and make Payments in FX Funds, or an interest-bearing time deposit account of Cadence for Company's benefit alone to hold FX Funds.

"FX Funds" means money denominated in the lawful currency of selected countries (other than USD) and transferred to Cadence to hold on Company's behalf in the FX Deposit Account.

"Payments" means Cadence's transfer of funds to and from third parties on Company's behalf by electronic means or draft.

"Written Direction" means a written direction executed by a Designated Person and directing Cadence to enter into a Foreign Exchange transaction, to disburse and/or convert all or a portion of FX Funds, to effect one or more Payments or to take or refrain from taking an action in connection with the Service.

b. **Foreign Exchange – General.**

i. **Description.** Company may deliver Service Instructions to effect Foreign Exchange transactions. The Service Instructions will identify a Designated Person authorized to deliver Written Direction to Cadence to execute Foreign Exchange on Company's behalf.

ii. **Company Covenants.** For so long as the Service is in effect, Company agrees to meet all obligations for Foreign Exchange trades between Company and Cadence, including, but not limited to:

(A) Taking delivery of currency on the predetermined value date and settling with Cadence in USD for Company's purchase of currency.

(B) Making good delivery of currency on the predetermined value date and receiving payment from Cadence in USD for Company's sale of currency.

(C) Delivering Written Directions for all forward contracts no later than two (2) Business Days prior to the value date of the contract. Cadence will not effect any transaction for Company's account until Cadence shall have received in full the funds required to effect the transaction, whether through account debit, funds transfer, or ACH or Cadence shall have established appropriate foreign exchange credit arrangements. In the case of a non-USD delivery due Cadence, credit advice from one of Cadence's foreign correspondent banks will be

considered proof of settlement. Failure to submit timely instructions will also result in late delivery of the purchased currency.

- (D) Complying with any Security Procedure established by Cadence in connection with the Service, as the same may be modified or amended by Cadence from time to time in its sole and absolute discretion.
- (E) Ensuring that Written Directions and the Foreign Exchange transactions relating thereto conform in every respect with Applicable Law.

Company acknowledges and agrees that failure to comply with the terms of a Foreign Exchange transaction could result in additional costs and fees, whether imposed by Cadence or third parties, or termination of the Service. Where such failure results in additional costs or fees, Company agrees to pay them promptly in accordance with the terms and conditions of this Agreement, or as otherwise specified by Cadence from time to time. Company further agrees that it may only amend Written Directions in writing, and understands that it shall be bound by the terms of prior Written Directions until Cadence has had a reasonable opportunity to act upon any amended Written Directions.

- iii. Cadence Covenants. Upon receipt of Written Directions, Cadence shall act promptly to effect any Foreign Exchange transactions as therein directed, subject to any Security Procedure established by Cadence from time to time; provided, however, that (i) Cadence shall in every event be deemed to have a reasonable time to act on such Written Directions, and (ii) where Written Directions are received by Cadence after any cutoff time established by Cadence (as such cutoff time may be from time to time modified in Cadence's sole and absolute discretion), such Written Directions shall be deemed received on the following Business Day.

### c. Foreign Exchange Deposits.

- i. Description. Company may as described herein accept deposits of FX Funds into, hold and make Payments of FX Funds out of a FX Deposit Account designated by Company and Cadence in the Service Instructions for the Service.
- ii. Deposit of Funds. Company may transfer, or cause to be transferred, FX Funds, by wire transfer of immediately available funds, to an account owned by Cadence. Upon receipt of FX Funds, Cadence shall provide Company a written confirmation of FX Funds received on Company's behalf. Pursuant to Company's Written Directions, Cadence shall hold the FX Funds in an FX Deposit Account, which account may either be a non-interest bearing deposit account or an interest-bearing time deposit account (as agreed by Cadence and Company), and in each case will be subject to the terms and conditions as set forth below.
  - (A) Deposit Account. Company may elect to have Cadence hold FX Funds on Company's behalf in a non-interest bearing deposit account. Cadence shall hold the FX Funds until receipt of Written

Directions or as otherwise provided herein. FX Funds held in a non-interest-bearing deposit account may be commingled with other funds and may be held in an account at a correspondent bank located outside the United States.

- (B) Disbursement of Funds. Each Written Direction shall contain wiring instructions and currency exchange instructions, as applicable. By providing Written Directions, Company authorizes Cadence to disburse the FX Funds pursuant to the Written Directions. Cadence reserves the right to select the method in which to remit FX Funds on Company's behalf. Further, Cadence will not be liable for any delay or failure to execute any Written Direction if such Written Direction contains incomplete or inaccurate information, is for an amount greater than the amount of FX Funds held by Cadence, or due to circumstances beyond Cadence's control.
- (C) Conversion of Currency. Any request for FX Funds to be exchanged for or converted into a currency other than the original currency in which FX Funds were deposited into the FX Deposit Account shall be exchanged at the exchange rate in effect at the time of final conversion. Company will be responsible for verification of any exchange rate information provided by Cadence in advance of final conversion. Company acknowledges that exchange rates may fluctuate significantly in a short period of time, and agrees to bear all exchange rate risk related to FX Funds and the exchange or conversion thereof.
- (D) Disclosure of Deposits and Transactions. Company acknowledges that Cadence will screen each Payment or other transfer of FX Funds in accordance with OFAC policies and procedures and Applicable Law, and may take such action as it deems is required by Applicable Law including, without limitation, adhering to any government orders, court orders and orders for legal garnishment, attachment, levy, or restraining notice relating to Company. Prior to any deposit, disbursement or Payment of FX Funds, Company shall provide details regarding the sending party, receiving party and any beneficiary for each transaction under the Services and, upon request, provide Cadence with copies of all documents related to the deposit or Payment or other transfer of FX Funds. If Company fails to provide all information and documents required, under Cadence's sole discretion, Cadence shall not be obligated to follow the Written Directions, effect such Payment or other transfer or accept any FX Funds for deposit, as applicable.
- (E) Statements. For as long as Cadence holds FX Funds in an FX Deposit Account, Cadence shall furnish Company with a monthly transaction statement which shall include the transaction history of all deposits, disbursements or Payments or exchange or conversions of the FX Funds and the current balance of FX Funds held on Company's behalf. Any value of the FX Funds



provided to Company in a statement shall be based on the date and time of any deposit or transfer of the FX Funds.

- (F) Risk of Loss in Foreign Currencies. Company acknowledges that (A) deposits denominated in foreign currencies are susceptible to losses and gains due to currency price fluctuations; (B) foreign exchange markets are volatile and unpredictable; (C) the value of foreign currencies may fluctuate widely against the USD (and vice versa); and (D) the FX Funds could lose significant value if the value of foreign currencies change adversely to the USD, and agree that Cadence shall have no liability for any gains or losses to the FX Funds as a result of any currency price fluctuations. Company further acknowledges and agrees that FX Funds held outside the United States are not insured by the Federal Deposit Insurance Corporation or any other United States governmental agency; are subject to cross-border risks; and may have a lesser preference as compared to deposits held in the United States in the event of a liquidation of the financial institution holding the FX Funds.
- (G) Global Risks. Cadence's ability to provide Company with the Services may be limited by conditions beyond Cadence's control. These conditions may include government restrictions, wars, insurrections, economic conditions in a foreign country or the United States, and other unforeseen events. Furthermore, there is a risk that a government may impose foreign exchange controls or prohibit transactions in a particular currency. These events could prevent Cadence from disbursing or exchanging the FX Funds or not allow Cadence to continue to hold FX Funds on Company's behalf. If this happens, Cadence will use reasonable efforts to follow Company's Written Directions, but may not be able to do so. Cadence may convert the FX Funds to USD at any time if Cadence believes, in its sole discretion, that such action is prudent, necessary or appropriate, in response to these events. Upon conversion of the FX Funds into USD, Cadence shall not have any liability to Company resulting from changes in the value of the FX Funds or resulting from the timing of converting the FX Funds.
- (H) Disbursement of Funds into Court. If, at any time, Cadence is unable to determine, to Cadence's sole satisfaction, the proper actions with respect to its obligations hereunder, then Cadence may, in its sole discretion, take either or both of the following actions: (A) suspend the performance of any of its obligations with respect to the FX Funds, the FX Deposit Account or the Service until such dispute or uncertainty shall be resolved to the sole satisfaction of Cadence, or (B) petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction in any venue convenient to Cadence, for instructions with respect to such dispute or uncertainty, and to the extent required or permitted by law, pay into such court, for holding and disposition in accordance with the

instructions of such court, all FX Funds, after deduction and payment to Cadence of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by Cadence in connection with the performance of its duties and the exercise of its rights hereunder.

Cadence shall have no liability to Company or any other person with respect to any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in the disbursement or Payment of the FX Funds or any delay in or with respect to any other action required or requested of Cadence.

- (I) Withdrawal by Cadence. Cadence may withdraw and be discharged from the performance of its duties hereunder at any time by giving ten (10) calendar days' prior written notice to Company specifying a date when such withdrawal shall take effect. Upon any such notice of withdrawal, Company shall provide Written Direction to Cadence for the disbursement, Payment or other transfer of FX Funds. If Company fails to provide Written Direction within twenty (20) days of Cadence's notice of withdrawal, Cadence may convert the FX Funds to USD and deposit the converted amount in any Company Account without further obligation or liability by Cadence.

**d. Additional Provisions.** With respect to the Service generally, the following provisions shall apply:

- i. Standard of Care. Cadence will exercise ordinary care in performing the Service, but will be responsible for any loss sustained by Company only to the extent such loss is finally determined in a final non-appealable judgment of a court of competent jurisdiction to have been primarily caused by Cadence's gross negligence or willful misconduct; provided, however, that in such case, Cadence's liability will be limited to any resulting direct loss in the currency market, and in no circumstances will Cadence be liable to Company for any consequential or special loss or damages. Cadence will not be responsible for liability, loss or damage resulting from any delay in the performance of or failure to perform responsibilities which are caused by an unforeseen event, fire or other catastrophe, electrical or computer failure, acts of, delays, or failure to act by any carrier and/or agent operating between Cadence and Company, or by recipients of transferred funds and their personnel; or, without limiting the generality of the foregoing, any other cause beyond Cadence's control. Cadence shall have no implied duties or obligations with respect to the Service, any Foreign Exchange, Payment, FX Funds, or FX Deposit Account or otherwise except as expressly stated herein.

- ii. Failure to Comply with Security Procedures; Right to Reply on Written Directions. Cadence shall not have any liability for any failure by Company to comply with any Security Procedure, including the failure of Company to reconfirm any Written Directions where such failure is the result of the unavailability of the

Designated Person at the time of any attempted reconfirmation by Cadence or otherwise. Additionally, Cadence shall be entitled to rely upon the validity and effectiveness of any Written Direction and to assume that any person identifying himself or herself as a Designated Person is truly that individual and duly authorized to deliver, confirm and/or reconfirm any Written Direction.

iii. No Duty to Take Action; Right to Comply. Cadence shall not be obligated to take any legal action or commence any proceeding in connection with the Service, any Foreign Exchange, FX Funds, FX Deposit Account, Payment or other transfer, or otherwise, or to appear in, prosecute or defend any such legal action or proceeding. Cadence is authorized, in its sole and absolute discretion, to comply with orders issued or process entered by any court with respect to the Service, any Foreign Exchange, FX Funds, FX Deposit Account, Payment or other transfer, without determination by Cadence of such court's jurisdiction in the matter. If any portion of the FX Funds is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, then and in any such event, Cadence is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and, if Cadence complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

iv. Notices. Notwithstanding any other provision of this Agreement, with respect to the Service, no such notice to Cadence shall be effective unless and until Company shall also provide a copy of such Notice to Cadence as follows:

Cadence Bank  
1333 Post Oak Boulevard, Suite 1800  
Houston, Texas 77027  
Attention: Foreign Exchange

Telephone: (713) 871-4061  
Facsimile: (713) 634-4950 new fax 281-573-0769  
E-Mail: fx@cadencebank.com