

## 5. **Limitation of Liability; Indemnification.**

The Bank warrants that the Licensed Software will operate in all material respects in a reasonable manner in accordance with its applicable Documentation. The Bank's sole obligation under (and your exclusive remedy for a breach of) the foregoing warranty shall be to use commercially reasonable efforts to:

- a. correct, repair, replace or adjust the Licensed Software to operate in such manner, or
- b. provide an avoidance procedure, reasonable under the circumstances, for the failure of the Licensed Software to so operate.

You acknowledge that the Bank:

- i. Has no means of controlling communication by means of the Internet or any other telecommunications service which you may select to transmit images that pertain to your account(s), and therefore, that such information may be intercepted.
  - ii. Is not responsible for the performance of any hardware or software not manufactured by the Bank, or for the performance of any Internet service provider or other provider of telecommunications service.
  - iii. Has not manufactured the Licensed Software, the Remote Scanner Hardware or the Scanner Software.
- c. Except for the Bank's obligation set forth in section 5(a) of this Addendum:
- i. The Bank, its affiliates, and all manufacturers, suppliers and licensors (collectively, the "Providers") of all portions of the Licensed Software, any Remote Scanner Hardware and/or any other software, documentation, product or service provided hereunder (collectively, the "Products and Services"), shall have no liability to you or any third party for any losses, damages, liabilities or costs suffered or incurred by you or by any third party, (whether direct, indirect, incidental, special, punitive or consequential) even if advised of the possibility thereof, arising from your acquisition or use of the Products and Services or any other matter arising under or related to this Addendum.
  - ii. The Products and Services are provided "as is" and "where is," and neither the Bank, its affiliates nor any Provider makes any warranties or representations of any nature, express or implied, with respect to this Addendum, including without limitation with regard to any of the Products and Services.
  - iii. The Bank and its affiliates and the Providers expressly disclaim any and all warranties and representations, express or implied, arising by law or otherwise, with respect to the Products and Services, including without limitation all warranties of merchantability and of fitness for a particular purpose, non-infringement or otherwise.
  - iv. **Neither the Bank, its affiliates nor the Providers warrant that the operation of any software provided or used by the Bank or its agent(s) hereunder will be error-free or that its operation will be uninterrupted, and the Bank, its affiliates and the Providers of the Products and Services hereby disclaim all liability on account thereof.**
  - v. To the extent that the Licensed Software or any other software used in connection with the Products and Services includes character recognition functionality, you acknowledge that character recognition is a statistical process and recognition errors are inherent in the process; and that, without limiting the generality of the foregoing subsections of this Section 5, the Bank, its affiliates and the Providers expressly disclaim any and all warranties with respect to the accuracy of the character recognition process, and you further acknowledge and agree that neither the Bank, its affiliates nor the Providers shall have any liability for character recognition errors whether or not caused by such character recognition functionality.
  - vi. You agree to indemnify and hold the Bank and each of the Providers and their affiliates, third party software provider(s) and its and their parents, subsidiaries and their directors, officers, employees and agents harmless from, any and all liability, damages, losses, costs and expenses (including, but not limited to, attorney's fees), arising or resulting from (i) any act or omission by you which would cause the Bank, any of its Affiliates or any Provider of the Products and Services to be in violation of or noncompliance with any applicable law, rule or regulation; (ii) any unauthorized use of or access to the Licensed Software or any other product, service or other materials provided to you hereunder; (iii) the unauthorized processing of Items using the Licensed Software or Remote Scanner Hardware or other Authorized Equipment; or (iv) any other failure by you to comply with the terms of this Addendum.

## 6. **Fees.**

You agree to pay (a) any and all fees and charges applicable to the Licensed Software, Remote Scanner Hardware, the Scanner Software and related services, including without limitation maintenance and support services, which are provided to you under this Addendum, as set forth on Schedule 1 to this Addendum or in any other applicable provision of this Addendum or other agreement or applicable writing executed by both parties. Such fees do not include any telecommunications fees, any fees for you to connect to the Internet, or any other fees for any Required Items, which fees are your sole responsibility. Further, such fees do not include the Bank's customary and usual fees applicable to your account(s). The Bank may upon thirty days' prior written notice to you increase the fees and charges applicable to this Addendum, including but not limited to those applicable to the Products and Services.