

Addendum
COF Contract No. 2015-0144

This addendum shall modify and supersede the Pinnacle Merchant Application and Agreement (the "Agreement") attached hereto and entered into on the ___ day of _____, 2015. The Agreement, together with this Addendum and the attached documents, constitutes the entire agreement ("Contract"). Should any terms and conditions contained herein differ, then these terms and conditions shall supersede.

1. TERMS AND CONDITIONS FOR MERCHANT AGREEMENT, number 11. Indemnity, shall be removed in its entirety.
2. TERMS AND CONDITIONS FOR MERCHANT AGREEMENT, number 14. Disclaimer; Limitation of Damages, shall be amended as follows, by removing the language shown in ~~strikethrough~~ and inserting language shown in **bold**:

~~"Subject to Section 5, we will, at our own expense, correct any Transaction Data to the extent that such errors have been caused by us or by malfunctions of our processing systems. Under no circumstances will Bank's financial responsibility for our failure of performance under this Agreement exceed the total fees paid to us under this Agreement (net of Payment Brand fees, third party fees, interchange, assessments, and fines) for the six months prior to the time the liability arose. EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, IN NO EVENT WILL ANY PARTY, ITS RESPECTIVE DORECTORS, OFFICERS, EMPLOYEES, OR AFFILAITES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR ANY LOSS, THEFT, DISAPPEARANCE, OR DAMAGE TO DATE TRANSMITTED ELECTRONICALLY IN CONNECTION WITH THIS AGREEMENT. THIS AGREEMENT IS A SERVICE AGREEMENT, AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, BANK AND MEMBER DICLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM, OR USAGE OF TRADE) OF ANY SERVICES PROVIDED UNDER THIS AGREEMENT OR ANY GOODS PROVIDED INCIDENTAL TO SUCH SERVICES.~~

3. TERMS AND CONDITIONS FOR MERCHANT AGREEMENT, number 15.10 Governing Law; Waiver of Jury Trial; Arbitration, shall be removed in its entirety.
4. TERMS AND CONDITIONS FOR CARD ACCEPTANCE, number 9 (C) Indemnification and Limitation of Liability, shall be removed in its entirety.
11. Precedence. In the event of conflict between this Addendum and the provisions of the Agreement, or any other contract, agreement or other document to which the Agreement or this Addendum may accompany, the provisions of this Addendum will to the extent of such conflict take precedence unless such document expressly states that it is amending this Addendum.
12. Entire Agreement. This Addendum, including any contract, agreement or other document which it may accompany, constitutes the entire agreement between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of this Addendum. The terms and conditions of this Addendum may not be changed except by an amendment expressly referencing this Addendum by section number and signed by an authorized representative of each party.
13. Additions/Modifications. If seeking any addition or modification to the Contract, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Contract or to the

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specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Contract; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

14. Applicable Law; Choice of Forum/Venue. The Contract constitute the entire agreement and are made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, TN.
15. Breach. Upon deliberate breach of the Contract by either party, the non- breaching party shall be entitled to terminate the Contract without notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.
16. Survival. This Addendum shall survive the completion of or any termination of the Contract, agreement or other document to which it may accompany.

PINNACLE BANK

By: _____

Its: _____

CITY OF FRANKLIN:

By: _____

Eric S. Stuckey, City Administrator