



**Alternate Contract Source (ACS)  
No. 78181701-21-NASPO-ACS  
For  
Fuel Card Services**

This Alternate Contract Source (“ACS” or “Contract”) No. 78181701-21-NASPO-ACS; for Fuel Card Services, is between the Department of Management Services (Department), an agency of the State of Florida (State), located at 4050 Esplanade Way, Tallahassee, FL 32399 and WEX Bank, 1 Hancock Street, Portland, Maine 04101 (Contractor), registered to do business in Florida as Wex Inc., collectively referred to herein as the “Parties.”

**WHEREAS**, the Department is authorized by section 287.042(16), Florida Statutes:

To evaluate contracts let by the Federal Government, another state, or a political subdivision for the provision of commodities and contract services, and, if it is determined in writing to be cost-effective and in the best interest of the state, to enter into a written agreement authorizing an agency to make purchases under such contract;

**WHEREAS**, the Department evaluated the Master Agreement and determined that use of the Master Agreement is cost-effective and in the best interest of the State.

**NOW THEREFORE**, in consideration of the mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Term and Effective Date.**

The Master Agreement became effective October 1, 2020, and its term currently ends on December 31, 2025. The Master Agreement has five years of renewals available. The ACS will become effective on April 6, 2021, or on the date signed by all Parties, whichever is later. The ACS will expire on December 31, 2025, unless terminated earlier or renewed in accordance with Exhibit B, Special Contract Conditions.

**2. Order of Precedence.**

This Contract document and the attached exhibits constitute the Contract and the entire understanding of the Parties. Exhibit A, Exhibit B, Exhibit C, and this Contract document constitute the Participating Addendum to the Master Agreement, and modify or supplement the terms and conditions of the Master Agreement (Exhibit D). All exhibits

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listed below are incorporated by reference into, and form part of, this Contract. In the event of a conflict, the following order of precedence shall apply:

- a) This ACS document and amendments, with the latest issued having priority.
- b) Exhibit A: Additional Special Contract Conditions (Florida)
- c) Exhibit B: Special Contract Conditions (Florida)
- d) Exhibit C: Schedule of Points and Fees
- e) Exhibit D: Cooperative Purchasing Master Agreement No. 00819, Fleet Card Services

Where the laws and regulations of a state other than the State of Florida are cited or referenced in the Master Agreement, such citation or reference shall be replaced by the comparable Florida law or regulation.

**3. National Annual Volume**

The National Annual Volume Incentive will be applied as an ancillary credit for each Customer.

**4. Purchases off this ACS.**

Upon execution of this ACS, agencies, as defined in section 287.012, Florida Statutes, may purchase products and services under this Contract. Any entity making a purchase off of this Contract acknowledges and agrees to be bound by the terms and conditions of this Contract. The Contractor shall adhere to the terms included in any contract or purchase orders issued pursuant to this Contract.

**5. Primary Contacts**

**Department's Contract Manager:**

Christopher McMullen  
Division of State Purchasing  
Florida Department of Management Services  
4050 Esplanade Way, Suite 360  
Tallahassee, Florida 32399-0950  
Telephone: (850) 922-9867  
Email: [Christopher.McMullen@dms.fl.gov](mailto:Christopher.McMullen@dms.fl.gov)

**Contractor's Contract Manager:**

Denise Baumgart  
Strategic Relationship Manager  
WEX Inc.  
1 Hancock Street  
Portland, ME 04101  
Telephone: (913) 538-6781  
Email: [denise.baumgart@wexinc.com](mailto:denise.baumgart@wexinc.com)

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**6. Modifications.**

Any amendments to this Contract must be in writing and signed by the Parties. If amendments are made to the Master Agreement after the effective date of this Contract, the Contractor shall: 1) notify the Department of such amendments; and 2) provided the Department is amenable to incorporating the amendments into this Contract, enter into a written amendment with the Department reflecting the addition of such amendments to this Contract.

**IN WITNESS THEREOF**, the Parties hereto have caused this Contract to be executed by their duly authorized undersigned officials.

**CONTRACTOR  
Wex Bank**

DS  
RSR

DocuSigned by:



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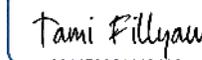
**Tim Laukka, President**

4/5/2021 | 12:28 PM PDT

**Date:**

**STATE OF FLORIDA,  
DEPARTMENT OF  
MANAGEMENT SERVICES**

DocuSigned by:



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**Tami Pillyaw, Chief of Staff**

4/5/2021 | 5:35 PM EDT

**Date:**



## **ADDITIONAL SPECIAL CONTRACT CONDITIONS Exhibit A**

The Contractor and Customers acknowledge and agree to be bound by the terms and conditions of the Master Agreement except as otherwise specified in the Department's Contract as modified and supplemented by the Special Contract Conditions and these Additional Special Contract Conditions.

Contractor acknowledges that the Participating State is an agency of the State of Florida and as such, the Contract will include the terms and conditions in these Additional Special Contract Conditions. All references to the Contract in these Additional Special Contract Conditions include the terms and conditions herein.

- A. Contractor and applicable subcontractors, affiliates, partners, resellers, distributors, and dealers: By execution of a Contract, the Contractor acknowledges that it will not be released of its contractual obligations to the Department or state agencies because of any failure of a subcontractor, reseller, distributor, or dealer. The Contractor is fully responsible for satisfactory completion of all work performed under the Contract.
- B. Purchases Prerequisites: Before fulfilling any Customer purchases and receiving payment, the Contractor and applicable subcontractors, affiliates, partners, resellers, distributors, and dealers must have met the following requirements, unless further notated below:
- Have an active registration with the Florida Department of State, Division of Corporations ([www.sunbiz.org](http://www.sunbiz.org)), or, if exempt from the registration requirements, provide the Department with the basis for such exemption.
  - Be registered in the MFMP Vendor Information Portal (<https://vendor.myfloridamarketplace.com>) \*only required if receiving payment.
  - Not be on the State's Convicted, Suspended, or Discriminatory Vendor lists ([http://www.dms.myflorida.com/business\\_operations/State\\_purchasing/vendor\\_information/convicted\\_suspended\\_discriminatory\\_complaints\\_vendor\\_lists](http://www.dms.myflorida.com/business_operations/State_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists))
  - Comply with E-Verify requirements set forth in section 448.095, F.S, if applicable.
  - Have a current W-9 filed with the Florida Department of Financial Services (<https://flvendor.myfloridacfo.com>) \*only required if receiving payment.
  - For subcontractors, affiliates, partners, resellers, distributors, and dealers (Third Party Entities) fulfilling any Customer purchases and receiving payment from a Customer, Contractor shall include in any agreement with such Third Party Entities that they shall adhere to the requirements set forth above, if applicable, prior to fulfilling any Customer purchases.
- C. Contract Reporting: The Contractor shall provide the following reports associated with this Contract.

- 1) **Contract Quarterly Sales Reports.** The Contractor shall submit Quarterly Sales Reports to the Department's Contract Manager within 60 calendar days after the close of each State fiscal quarter (the State's fiscal quarters close on September 30, December 31, March 31, and June 30). The Contractor's first Quarterly Sales Report will be due 60 calendar days after the first full quarter following Contract execution.

Reports must be submitted in MS Excel format in a format agreed upon between contractor and the Department's contract manager. The report shall include all Customer sales received and associated with this Contract during the quarter. Initiation and submission of the Quarterly Sales Report is the responsibility of the Contractor without prompting or notification from the Department's Contract Manager. If no orders are received during the period, the Contractor must submit a report stating that there was no activity. If the Contractor fails to submit two consecutive quarterly sales reports, the Contract may be terminated, or the Department may choose to not renew the Contract.

- 2) **Certified and Minority Business Enterprises Reports.** Upon Customer request, the Contractor shall report to each Customer, spend with certified and other minority business enterprises in the provision of commodities or services related to the Customer orders. These reports shall include the period covered; the name and minority code of each minority business enterprise utilized during the period; commodities and services provided by the minority business enterprise; and the amount paid to each minority business enterprise on behalf of the Customer.
- 3) **Ad Hoc Sales Reports.** The Department may require additional Contract sales information such as copies of purchase orders or ad hoc sales reports. The Contractor shall submit these mutually agreed upon documents and reports within the timeframe specified by the Department and the contractor.

- D. **Financial Consequences:** The following financial consequences will apply for the Contractor's non-performance of the provision of the Quarterly Sales Reports and the MFMP Transaction Fee Reports. The State of Florida reserves the right to withhold payment or implement other appropriate remedies, such as Contract termination or nonrenewal, when the Contractor has failed to comply with these provisions of the Contract. The Contractor and the Department agree that the financial consequences for non-performance are an estimate of damages which are difficult to ascertain and are not penalties.

The financial consequences will be paid via check or money order and made out to the Department of Management Services in U.S. dollars within 30 calendar days after the required report submission date. These consequences are individually assessed for failures over each target period beginning with the first full month or quarter of the contract performance and every month or quarter, respectively, thereafter.

### **Financial Consequences Chart**

Deliverable	Performance Metric	Performance Due Date	Financial Consequence for Non-Performance (Per Calendar Day Late/Not Received by the Contract Manager)
Contractor will timely submit complete Quarterly Sales Reports	All Quarterly Sales Reports will be submitted timely with the required information	Reports are due on or before the 60 <sup>th</sup> calendar day after the close of each State fiscal quarter	\$250

Quarterly reporting timeframes coincide with the State Fiscal Year as follows:

- Quarter 1 - (July-September) – due 60 calendar days after close of the period
- Quarter 2 - (October-December) – due 60 calendar days after close of the period
- Quarter 3 - (January-March) – due 60 calendar days after close of the period
- Quarter 4 - (April-June) – due 60 calendar days after close of the period

The Department may not consider renewal of a Contract or price adjustments if the Contractor is late on submitting required reports or for outstanding fees owed.

- E. Business Review Meetings: Both the Department and Customer reserve the right to schedule business review meetings. The Department or Customer will provide the format for the Contractor's agenda. In the event the Department or Customer schedules a business review meeting, the Contractor shall submit the completed agenda to the Department or Customer for review and acceptance prior to the meeting. The Contractor shall address the agenda items and any of the Department's or Customer's additional concerns at the meeting. At a minimum, the agenda items may include:
  - a. Contract compliance
  - b. Savings report (in dollar amount and cost avoidance)
  - c. Spend reports by Customer
  - d. Recommendations for improved compliance and performance

Failure to comply with this section may result in the Contractor being placed on a Corrective Action Plan and possible termination of the Contract.

- F. The following sections of Exhibit B, Special Contract Conditions are hereby deleted in their entirety:
  - Section 3.1 Pricing
  - Section 3.2 Pricing Decreases
  - Section 3.4 Purchase Order
  - Section 3.7 Transaction Fees
  - Section 6.4 Inspection and Acceptance of Commodities

Section 6.5 Safety Standards  
Section 6.8 Waiver  
Section 7.1 Workers' Compensation Insurance  
Section 7.2 General Liability  
Section 7.3 Florida Authorized Insurers  
Section 7.4 Performance Bond  
Section 7.5 Indemnification  
Section 7.6 Limitation of Liability  
Section 11.3 Performance Delay  
Section 11.4 Force Majeure , Notice of Delay, and No Damages for Delay.

G. The following sections of Exhibit B, Special Contract Conditions are hereby replaced in their entirety:

a. Section 2.3.1, Suspension of Work

The Department may, at its sole discretion, suspend any or all activities under the Contract, at any time, when it is in the best interest of the State of Florida to do so. The Customer may suspend a resulting contract or purchase order, at any time, when in the best interest of the Customer to do so. The Department or Customer will provide advance written notice of no fewer than 30 days outlining the particulars of the suspension. After receiving a suspension notice, the Contractor must comply with the notice and will cease the performance of the Contract or purchase order. Suspension of work will not entitle the Contractor to any additional compensation. The Contractor will not resume performance of the Contract or purchase order until so authorized by the Department.

b. Section 2.3.2, Termination of Convenience

The Contract may be terminated by the Department in whole or in part at any time subject to advance written notice of no fewer than 30 days, in the best interest of the State of Florida. If the Contract is terminated before performance is completed, the Contractor will be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the Contract price as the amount of work satisfactorily performed. All work in progress will become the property of the Customer and will be turned over promptly by the Contractor

c. Section 3.5, Travel

Travel expenses are not reimbursable.

d. Section 5.2, Dispute Resolution, Governing Law, and Venue

In the event there is a dispute concerning performance of the Contract, except for disputed transactions, the parties shall discuss and seek to arrive at a resolution in good faith. In the event the parties are unable to arrive at a resolution, then the Department's designated Contract Manager shall reduce State's decision as to such dispute to writing and serve a copy on the Contractor. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Contract or any other form of dispute resolution. The laws of the State of Florida govern the Contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Contract. Further, the Contractor hereby waives all privileges and rights relating to venue it may have under Chapter 47, F.S., and all

such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to, those based on convenience. The Contractor hereby submits to venue in the county chosen by the Department.

e. Section 6.2, Assignment

The Contractor will not sell, assign, or transfer any of its rights, duties, or obligations under the Contract without the prior written consent of the Department. However, the Contractor may waive its right to receive payment and assign same upon notice to the Department. In the event of any assignment, the Contractor remains responsible for performance of the Contract, unless such responsibility is expressly waived by the Department. The Department may assign the Contract upon prior written notice to the Contractor.

f. Section 8.1.2(d)

Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. Subject to any retention of data required by applicable taxing authorities. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

g. Section 9, Data Security

Contractor hereby represents, warrants and covenants that it shall cause and ensure that all measures set forth in Section 9.6 and Exhibit G, Section 7 of the Master Agreement be provided and delivered to the State, and all representations, warranties and covenants made in such sections are hereby also made to State.

h. Section 13.1, Background Check

The Department or Customer may request the Contractor to conduct background checks of its employees providing services under this Contract (directly or indirectly) and/or perform appropriate screening of all agents, representatives, and subcontractors providing services under this Contract (directly or indirectly). The cost of the background checks will be borne by the Contractor. The Department or Customer may require the Contractor to exclude the Contractor's employees, agents, representatives, or subcontractors should they fail a background check and/or screening process. In addition, the Contractor must ensure that all persons have a responsibility to self-report to the Contractor within five (5) calendar days (or sooner as directed by the relevant Contractor policy) any conviction (or plea of no contest) for any disqualifying offence listed in 13.3 below, that triggers reporting obligations pursuant to the relevant Contractor policies. The Contractor must promptly notify the Contract Manager of all details concerning any reported conviction. Upon the reasonable request of the Department or Customer, the Contractor will re-screen any of its employees providing services under this contract (directly or indirectly) or request re-

screening of any agents, representatives, and subcontractors providing services under this contract (directly or indirectly) in each case during the term of the Contract.

i. Section 13.2, E-Verify

The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of section 448.095, F.S., and maintain a copy of such affidavit for the duration of the Contract. In order to implement this provision, the Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Department's Contract Manager within five (5) days of Contract execution. This section serves as notice to the Contractor regarding the requirements of section 448.095, F.S., specifically sub-paragraph (2)(c)1, and the Department's obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one (1) year after the date of such termination. The Department reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the Department develop a good faith belief that the subcontractor has knowingly violated section 448.095(1), F.S. This section shall only be deemed to apply to the extent Contractor is subject to the applicable State E-Verify laws

j. Section 13.3 Disqualifying Offenses

If at any time it is determined that a person directly or indirectly providing commodities and services under this Contract has been found guilty of a misdemeanor or felony offense as a result of a trial or has entered a plea of guilty or nolo contendere, regardless of whether adjudication was withheld, within the last six (6) years from the date of the court's determination for the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that person from any position with access to State of Florida data or directly performing services under the Contract. The disqualifying offenses are as follows:

- (a) Computer related crimes;
- (b) Information technology crimes;
- (c) Fraudulent practices;
- (d) False pretenses;
- (e) Frauds;
- (f) Credit card crimes;
- (g) Forgery;
- (h) Counterfeiting;
- (i) violations involving checks or drafts;
- (j) Misuse of medical or personnel records; and
- (k) Felony theft.

k. Section 13.4, Confidentiality

The Contractor must maintain confidentiality of all confidential data, files, and records related to the commodities or contractual services provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor hereby represents, warrants and covenants that it shall cause and ensure that all measures set forth in Section 9.6 and Exhibit G, Section 7 of the Master Agreement be provided and delivered to the State, and all representations, warranties and covenants made in such sections are hereby also made to State. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.

# SPECIAL CONTRACT CONDITIONS JULY 1, 2019 VERSION

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**In accordance with Rule 60A-1.002(7), F.A.C., Form PUR 1000 is included herein by reference but is superseded in its entirety by these Special Contract Conditions.**

## **SECTION 1. DEFINITION.**

The following definition applies in addition to the definitions in Chapter 287, Florida Statutes (F.S.), and Rule Chapter 60A-1, Florida Administrative Code (F.A.C.):

### **1.1 Customer.**

The agency or eligible user that purchases commodities or contractual services pursuant to the Contract.

## **SECTION 2. CONTRACT TERM AND TERMINATION.**

### **2.1 Initial Term.**

The initial term will begin on the date set forth in the Contract documents or on the date the Contract is signed by all Parties, whichever is later.

### **2.2 Renewal.**

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part only as set forth in the Contract documents, and in accordance with section 287.057(13), F.S.

### **2.3 Suspension of Work and Termination.**

#### **2.3.1 Suspension of Work.**

The Department may, at its sole discretion, suspend any or all activities under the Contract, at any time, when it is in the best interest of the State of Florida to do so. The Customer may suspend a resulting contract or purchase order, at any time, when in the best interest of the Customer to do so. The Department or Customer will provide the Contractor written notice outlining the particulars of the suspension. After receiving a suspension notice, the Contractor must comply with the notice and will cease the performance of the Contract or purchase order. Suspension of work will not entitle the Contractor to any additional compensation. The Contractor will not resume performance of the Contract or purchase order until so authorized by the Department.

#### **2.3.2 Termination for Convenience.**

The Contract may be terminated by the Department in whole or in part at any time, in the best interest of the State of Florida. If the Contract is terminated before performance is completed, the Contractor will be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the Contract price as the amount of work satisfactorily performed. All work in progress will become the property of the Customer and will be turned over promptly by the Contractor.

#### **2.3.3 Termination for Cause.**

If the performance of the Contractor is not in compliance with the Contract requirements or the Contractor has defaulted, the Department may:

- (a) immediately terminate the Contract;
- (b) notify the Contractor of the noncompliance or default, require correction, and specify the date by which the correction must be completed before the Contract is terminated; or
- (c) take other action deemed appropriate by the Department.

### **SECTION 3. PAYMENT AND FEES.**

#### **3.1 Pricing.**

The Contractor will not exceed the pricing set forth in the Contract documents.

#### **3.2 Price Decreases.**

The following price decrease terms will apply to the Contract:

**3.2.1 Quantity Discounts.** Contractor may offer additional discounts for one-time delivery of large single orders;

**3.2.2 Preferred Pricing.** The Contractor guarantees that the pricing indicated in this Contract is a maximum price. Additionally, Contractor's pricing will not exceed the pricing offered under comparable contracts. Comparable contracts are those that are similar in size, scope, and terms. In compliance with section 216.0113, F.S., Contractor must annually submit an affidavit from the Contractor's authorized representative attesting that the Contract complies with this clause.

**3.2.3 Sales Promotions.** In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, the Contractor may conduct sales promotions involving price reductions for a specified lesser period. The Contractor must submit documentation identifying the proposed: (1) starting and ending dates of the promotion, (2) commodities or contractual services involved, and (3) promotional prices compared to then-authorized prices.

#### **3.3 Payment Invoicing.**

The Contractor will be paid upon submission of invoices to the Customer after delivery and acceptance of commodities or contractual services is confirmed by the Customer. Invoices must contain sufficient detail for an audit and contain the Contract Number and the Contractor's Federal Employer Identification Number.

#### **3.4 Purchase Order.**

A Customer may use purchase orders to buy commodities or contractual services pursuant to the Contract and, if applicable, the Contractor must provide commodities or contractual services pursuant to purchase orders. Purchase orders issued pursuant to the Contract must be received by the Contractor no later than the close of business on the last day of the Contract's term. The Contractor is required to accept timely purchase orders specifying delivery schedules that extend beyond the Contract term even when such extended delivery will occur after expiration of the Contract. Purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the Contract shall survive the termination or expiration of the Contract and apply to the Contractor's performance. The duration of purchase orders for recurring deliverables shall not exceed the expiration of the Contract by more than twelve months. Any purchase order terms and conditions conflicting with these Special Contract Conditions shall not become a part of the Contract.

#### **3.5 Travel.**

Travel expenses are not reimbursable unless specifically authorized by the Customer in writing and may be reimbursed only in accordance with section 112.061, F.S.

### 3.6 Annual Appropriation.

Pursuant to section 287.0582, F.S., if the Contract binds the State of Florida or an agency for the purchase of services or tangible personal property for a period in excess of one fiscal year, the State of Florida's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature.

### 3.7 Transaction Fees.

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(22), F.S. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, F.A.C., or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.

### 3.8 Taxes.

Taxes, customs, and tariffs on commodities or contractual services purchased under the Contract will not be assessed against the Customer or Department unless authorized by Florida law.

### 3.9 Return of Funds.

Contractor will return any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor. The Contractor must return any overpayment within forty (40) calendar days after either discovery by the Contractor, its independent auditor, or notification by the Department or Customer of the overpayment.

## **SECTION 4. CONTRACT MANAGEMENT.**

### 4.1 Composition and Priority.

The Contractor agrees to provide commodities or contractual services to the Customer as specified in the Contract. Additionally, the terms of the Contract supersede the terms of all prior agreements between the Parties on this subject matter.

### 4.2 Notices.

All notices required under the Contract must be delivered to the designated Contract Manager in a manner identified by the Department.

### 4.3 Department's Contract Manager.

The Department's Contract Manager, who is primarily responsible for the Department's oversight of the Contract, will be identified in a separate writing to the Contractor upon Contract signing in the following format:

Department's Contract Manager Name

Department's Name  
Department's Physical Address  
Department's Telephone #  
Department's Email Address

If the Department changes the Contract Manager, the Department will notify the Contractor. Such a change does not require an amendment to the Contract.

#### 4.4 Contractor's Contract Manager.

The Contractor's Contract Manager, who is primarily responsible for the Contractor's oversight of the Contract performance, will be identified in a separate writing to the Department upon Contract signing in the following format:

Contractor's Contract Manager Name  
Contractor's Name  
Contractor's Physical Address  
Contractor's Telephone #  
Contractor's Email Address

If the Contractor changes its Contract Manager, the Contractor will notify the Department. Such a change does not require an amendment to the Contract.

#### 4.5 Diversity.

##### 4.5.1 Office of Supplier Diversity.

The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small business enterprises to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity (OSD) at [osdinfo@dms.myflorida.com](mailto:osdinfo@dms.myflorida.com).

##### 4.5.2 Diversity Reporting.

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each agency purchasing under the Contract.

#### 4.6 RESPECT.

Subject to the agency determination provided for in section 413.036, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES;

AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INSOFAR AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.

Additional information about RESPECT and the commodities or contractual services it offers is available at <https://www.respectofflorida.org>.

#### 4.7 PRIDE.

Subject to the agency determination provided for in sections 287.042(1) and 946.515, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INSOFAR AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

Additional information about PRIDE and the commodities or contractual services it offers is available at <https://www.pride-enterprises.org>.

### **SECTION 5. COMPLIANCE WITH LAWS.**

#### 5.1 Conduct of Business.

The Contractor must comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. For example, the Contractor must comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, if applicable, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. The provisions of subparagraphs 287.058(1)(a)-(c), and (g), F.S., are hereby incorporated by reference.

#### 5.2 Dispute Resolution, Governing Law, and Venue.

Any dispute concerning performance of the Contract shall be decided by the Department's designated Contract Manager, who will reduce the decision to writing and serve a copy on the Contractor. The decision of the Contract Manager shall be final and conclusive. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Contract or any other form of dispute resolution. The laws of the State of Florida govern the Contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Contract. Further, the Contractor hereby waives all privileges and rights relating to venue it may have under Chapter 47, F.S., and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to, those based on convenience. The Contractor hereby submits to venue in the county chosen by the Department.

#### 5.3 Department of State Registration.

Consistent with Title XXXVI, F.S., the Contractor and any subcontractors that assert status, other than a sole proprietor, must provide the Department with conclusive evidence of a certificate of status, not subject to qualification, if a Florida business entity, or of a certificate of authorization if a foreign business entity.

#### 5.4 Suspended, Convicted, and Discriminatory Vendor Lists.

In accordance with sections 287.042, 287.133, and 287.134, F.S., an entity or affiliate who is on the Suspended Vendor List, Convicted Vendor List, or Discriminatory Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the Suspended Vendor List, Convicted Vendor List, or Discriminatory Vendor List during the term of the Contract.

#### 5.5 Scrutinized Companies - Termination by the Department.

The Department may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

#### 5.6 Cooperation with Inspector General and Records Retention.

Pursuant to section 20.055(5), F.S., the Contractor understands and will comply with its duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor will retain such records for the longer of five years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State, at the Department of State's Records Management website. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor agrees to impose the same obligations to cooperate with the Inspector General and retain records on any subcontractors used to provide goods or services under the Contract.

### **SECTION 6. MISCELLANEOUS.**

#### 6.1 Subcontractors.

The Contractor will not subcontract any work under the Contract without prior written consent of the Department. The Contractor is fully responsible for satisfactory completion of all its subcontracted work. The Department supports diversity in its procurements and contracts, and requests that the Contractor offer subcontracting opportunities to certified woman-, veteran-, and minority-owned small businesses. The

Contractor may contact the OSD at [osdhelp@dms.myflorida.com](mailto:osdhelp@dms.myflorida.com) for information on certified small business enterprises available for subcontracting opportunities.

#### 6.2 Assignment.

The Contractor will not sell, assign, or transfer any of its rights, duties, or obligations under the Contract without the prior written consent of the Department. However, the Contractor may waive its right to receive payment and assign same upon notice to the Department. In the event of any assignment, the Contractor remains responsible for performance of the Contract, unless such responsibility is expressly waived by the Department. The Department may assign the Contract with prior written notice to the Contractor.

#### 6.3 Independent Contractor.

The Contractor and its employees, agents, representatives, and subcontractors are independent contractors and not employees or agents of the State of Florida and are not entitled to State of Florida benefits. The Department and Customer will not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in all its subcontracts under the Contract.

#### 6.4 Inspection and Acceptance of Commodities.

##### 6.4.1 Risk of Loss.

Matters of inspection and acceptance are addressed in section 215.422, F.S. Until acceptance, risk of loss or damage will remain with the Contractor. The Contractor will be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer will: record any evidence of visible damage on all copies of the delivering carrier's bill of lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's bill of lading and damage inspection report.

##### 6.4.2 Rejected Commodities.

When a Customer rejects a commodity, Contractor will remove the commodity from the premises within ten (10) calendar days after notification of rejection, and the risk of loss will remain with the Contractor. Commodities not removed by the Contractor within ten (10) calendar days will be deemed abandoned by the Contractor, and the Customer will have the right to dispose of such commodities. Contractor will reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected commodities.

#### 6.5 Safety Standards.

Performance of the Contract for all commodities or contractual services must comply with requirements of the Occupational Safety and Health Act and other applicable State of Florida and federal requirements.

#### 6.6 Ombudsman.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, F.S., which include disseminating information relative to prompt payment and assisting contractors in receiving their payments in a timely manner from a Customer. The Vendor Ombudsman may be contacted at (850) 413-5516.

**6.7 Time is of the Essence.**

Time is of the essence regarding every obligation of the Contractor under the Contract. Each obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

**6.8 Waiver.**

The delay or failure by the Department or the Customer to exercise or enforce any rights under the Contract will not constitute waiver of such rights.

**6.9 Modification and Severability.**

The Contract may only be modified by written agreement between the Department and the Contractor. Should a court determine any provision of the Contract is invalid, the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the provision held invalid.

**6.10 Cooperative Purchasing.**

Pursuant to their own governing laws, and subject to the agreement of the Contractor, governmental entities that are not Customers may make purchases under the terms and conditions contained herein, if agreed to by Contractor. Such purchases are independent of the Contract between the Department and the Contractor, and the Department is not a party to these transactions. Agencies seeking to make purchases under this Contract are required to follow the requirements of Rule 60A-1.045(5), F.A.C.

**SECTION 7. LIABILITY AND INSURANCE.**

**7.1 Workers' Compensation Insurance.**

The Contractor shall maintain workers' compensation insurance as required under the Florida Workers' Compensation Law or the workers' compensation law of another jurisdiction where applicable. The Contractor must require all subcontractors to similarly provide workers' compensation insurance for all of the latter's employees. In the event work is being performed by the Contractor under the Contract and any class of employees performing the work is not protected under Workers' Compensation statutes, the Contractor must provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of employees not otherwise protected.

**7.2 General Liability Insurance.**

The Contractor must secure and maintain Commercial General Liability Insurance, including bodily injury, property damage, products, personal and advertising injury, and completed operations. This insurance must provide coverage for all claims that may arise from performance of the Contract or completed operations, whether by the Contractor or anyone directly or indirectly employed by the Contractor. Such insurance must include the State of Florida as an additional insured for the entire length of the resulting contract. The Contractor is responsible for determining the minimum limits of liability necessary to provide reasonable financial protections to the Contractor and the State of Florida under the resulting contract.

**7.3 Florida Authorized Insurers.**

All insurance shall be with insurers authorized and eligible to transact the applicable line of insurance business in the State of Florida. The Contractor shall provide Certification(s) of Insurance evidencing that all appropriate coverage is in place and showing the Department to be an additional insured.

#### 7.4 Performance Bond.

Unless otherwise prohibited by law, the Department may require the Contractor to furnish, without additional cost to the Department, a performance bond or irrevocable letter of credit or other form of security for the satisfactory performance of work hereunder. The Department shall determine the type and amount of security.

#### 7.5 Indemnification.

To the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the Customer and the State of Florida, its officers, employees, and agents harmless from all fines, claims, assessments, suits, judgments, or damages, including consequential, special, indirect, and punitive damages, including court costs and attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret, or intellectual property right or out of any acts, actions, breaches, neglect, or omissions of the Contractor, its employees, agents, subcontractors, assignees, or delegates related to the Contract, as well as for any determination arising out of or related to the Contract that the Contractor or Contractor's employees, agents, subcontractors, assignees, or delegates are not independent contractors in relation to the Customer. The Contract does not constitute a waiver of sovereign immunity or consent by the Customer or the State of Florida or its subdivisions to suit by third parties. Without limiting this indemnification, the Customer may provide the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense.

#### 7.6 Limitation of Liability.

Unless otherwise specifically enumerated in the Contract or in the purchase order, neither the Department nor the Customer shall be liable for special, indirect, punitive, or consequential damages, including lost data or records (unless the Contract or purchase order requires the Contractor to back-up data or records), even if the Department or Customer has been advised that such damages are possible. Neither the Department nor the Customer shall be liable for lost profits, lost revenue, or lost institutional operating savings. The Department or Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs, and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

### **SECTION 8. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT, AND INTELLECTUAL PROPERTY.**

#### 8.1 Public Records.

##### 8.1.1 Termination of Contract.

The Department may terminate the Contract for refusal by the Contractor to comply with this section by not allowing access to all public records, as defined in Chapter 119, F. S., made or received by the Contractor in conjunction with the Contract.

#### 8.1.2 Statutory Notice.

Pursuant to section 119.0701(2)(a), F.S., for contracts for services with a contractor acting on behalf of a public agency, as defined in section 119.011(2), F.S., the following applies:

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS, AND MAILING ADDRESS PROVIDED IN THE RESULTING CONTRACT OR PURCHASE ORDER.**

Pursuant to section 119.0701(2)(b), F.S., for contracts for services with a contractor acting on behalf of a public agency as defined in section 119.011(2), F.S., the Contractor shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if the Contractor does not transfer the records to the public agency.
- (d) Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

#### 8.2 Protection of Trade Secrets or Otherwise Confidential Information.

8.2.1 Contractor Designation of Trade Secrets or Otherwise Confidential Information. If the Contractor considers any portion of materials to be trade secret under section 688.002 or 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as trade secret or otherwise confidential when submitted to the Department. The Contractor will be

responsible for responding to and resolving all claims for access to Contract-related materials it has designated trade secret or otherwise confidential.

#### 8.2.2 Public Records Requests.

If the Department receives a public records request for materials designated by the Contractor as trade secret or otherwise confidential under Florida or federal law, the Contractor will be responsible for taking the appropriate legal action in response to the request. If the Contractor fails to take appropriate and timely action to protect the materials designated as trade secret or otherwise confidential, the Department will provide the materials to the requester.

#### 8.2.3 Indemnification Related to Confidentiality of Materials.

The Contractor will protect, defend, indemnify, and hold harmless the Department for claims, costs, fines, and attorney's fees arising from or relating to its designation of materials as trade secret or otherwise confidential.

#### 8.3 Document Management.

The Contractor must retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers, and documents that were made in relation to this Contract. The Contractor must retain all documents related to the Contract for five (5) years after expiration of the Contract or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State available at the Department of State's Records Management website.

#### 8.4 Intellectual Property.

##### 8.4.1 Ownership.

Unless specifically addressed otherwise in the Contract, the State of Florida shall be the owner of all intellectual property rights to all property created or developed in connection with the Contract.

##### 8.4.2 Patentable Inventions or Discoveries.

Any inventions or discoveries developed in the course, or as a result, of services in connection with the Contract that are patentable pursuant to 35 U.S.C. § 101 are the sole property of the State of Florida. Contractor must inform the Customer of any inventions or discoveries developed or made through performance of the Contract, and such inventions or discoveries will be referred to the Florida Department of State for a determination on whether patent protection will be sought. The State of Florida will be the sole owner of all patents resulting from any invention or discovery made through performance of the Contract.

##### 8.4.3 Copyrightable Works.

Contractor must notify the Department or State of Florida of any publications, artwork, or other copyrightable works developed in connection with the Contract. All copyrights created or developed through performance of the Contract are owned solely by the State of Florida.

### **SECTION 9. DATA SECURITY.**

The Contractor will maintain the security of State of Florida data including, but not limited to, maintaining a secure area around any displayed visible data and ensuring data is stored and secured when not in use. The Contractor and subcontractors will not perform any of the services from outside of the United States, and the Contractor will not allow any State of Florida data to be sent by any medium, transmitted, or accessed outside the United States due to Contractor's action or inaction. In the event of a security breach involving State of Florida data, the Contractor shall give notice to the Customer and the Department within one business day. "Security breach" for purposes of this section will refer to a confirmed event that compromises the confidentiality, integrity, or availability of data. Once a data breach has been contained, the Contractor must provide the Department with a post-incident report documenting all containment, eradication, and recovery measures taken. The Department reserves the right in its sole discretion to enlist a third party to audit Contractor's findings and produce an independent report, and the Contractor will fully cooperate with the third party. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

## **SECTION 10. GRATUITIES, LOBBYING, AND COMMUNICATIONS.**

### 10.1 Gratuities.

The Contractor will not, in connection with this Contract, directly or indirectly (1) offer, give, or agree to give anything of value to anyone as consideration for any State of Florida officer's or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone anything of value for the benefit of, or at the direction or request of, any State of Florida officer or employee.

### 10.2 Lobbying.

In accordance with sections 11.062 and 216.347, F.S., Contract funds are not to be used for the purpose of lobbying the Legislature, the judicial branch, or the Department. Pursuant to section 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract after the Contract is executed and during the Contract term.

### 10.3 Communications.

#### 10.3.1 Contractor Communication or Disclosure.

The Contractor shall not make any public statements, press releases, publicity releases, or other similar communications concerning the Contract or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with the Contract, without first notifying the Customer's Contract Manager and securing the Customer's prior written consent.

#### 10.3.2 Use of Customer Statements.

The Contractor shall not use any statement attributable to the Customer or its employees for the Contractor's promotions, press releases, publicity releases, marketing, corporate communications, or other similar communications, without first notifying the Customer's Contract Manager and securing the Customer's prior written consent.

## **SECTION 11. CONTRACT MONITORING.**

### **11.1 Performance Standards.**

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Contract. The Department and the Customer will be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof.

### **11.2 Performance Deficiencies and Financial Consequences of Non-Performance.**

#### **11.2.1 Proposal of Corrective Action Plan.**

In addition to the processes set forth in the Contract (e.g., service level agreements), if the Department or Customer determines that there is a performance deficiency that requires correction by the Contractor, then the Department or Customer will notify the Contractor. The correction must be made within a time-frame specified by the Department or Customer. The Contractor must provide the Department or Customer with a corrective action plan describing how the Contractor will address all performance deficiencies identified by the Department or Customer.

#### **11.2.2 Retainage for Unacceptable Corrective Action Plan or Plan Failure.**

If the corrective action plan is unacceptable to the Department or Customer, or implementation of the plan fails to remedy the performance deficiencies, the Department or Customer will retain ten percent (10%) of the total invoice amount. The retainage will be withheld until the Contractor resolves the performance deficiencies. If the performance deficiencies are resolved, the Contractor may invoice the Department or Customer for the retained amount. If the Contractor fails to resolve the performance deficiencies, the retained amount will be forfeited to compensate the Department or Customer for the performance deficiencies.

### **11.3 Performance Delay.**

#### **11.3.1 Notification.**

The Contractor will promptly notify the Department or Customer upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any commodity or contractual service. The Contractor will use commercially reasonable efforts to avoid or minimize any delays in performance and will inform the Department or the Customer of the steps the Contractor is taking or will take to do so, and the projected actual completion (or delivery) time. If the Contractor believes a delay in performance by the Department or the Customer has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor will promptly so notify the Department and use commercially reasonable efforts to perform its obligations on time notwithstanding the Department's delay.

#### **11.3.2 Liquidated Damages.**

The Contractor acknowledges that delayed performance will damage the Department/Customer, but by their nature such damages are difficult to ascertain. Accordingly, the liquidated damages provisions stated in the Contract documents will apply. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

### **11.4 Force Majeure, Notice of Delay, and No Damages for Delay.**

The Contractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay, and the delay is due directly to fire, explosion, earthquake, windstorm, flood, radioactive or toxic chemical hazard, war, military hostilities, terrorism, civil emergency, embargo, riot, strike, violent civil unrest, or other similar cause wholly beyond the Contractor's reasonable control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. The foregoing does not excuse delay which could have been avoided if the Contractor implemented any risk mitigation required by the Contract. In case of any delay the Contractor believes is excusable, the Contractor will notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) calendar days after the cause that created or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe that a delay could result. The foregoing will constitute the Contractor's sole remedy or excuse with respect to delay. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages will be asserted by the Contractor. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor will perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State of Florida or to Customers, in which case the Department may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers and the Department with respect to commodities or contractual services subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the commodity or contractual services that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

## **SECTION 12. CONTRACT AUDITS.**

### **12.1 Performance or Compliance Audits.**

The Department may conduct or have conducted performance and/or compliance audits of the Contractor and subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and subcontractors' data and records that directly relate to the Contract. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners, or agents of the Contractor, pertaining to the Contract, may be inspected by the Department upon fifteen (15) calendar days' notice, during normal working hours and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners, or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this Contract. The Inspector General, in accordance with section 5.6, the State of Florida's Chief Financial Officer, the Office of the Auditor General also have authority to perform audits and inspections.

## 12.2 Payment Audit.

Records of costs incurred under terms of the Contract will be maintained in accordance with section 8.3 of these Special Contract Conditions. Records of costs incurred will include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Department, the State of Florida's Chief Financial Officer, or the Office of the Auditor General.

## **SECTION 13. BACKGROUND SCREENING AND SECURITY.**

### 13.1 Background Check.

The Department or Customer may require the Contractor to conduct background checks of its employees, agents, representatives, and subcontractors as directed by the Department or Customer. The cost of the background checks will be borne by the Contractor. The Department or Customer may require the Contractor to exclude the Contractor's employees, agents, representatives, or subcontractors based on the background check results. In addition, the Contractor must ensure that all persons have a responsibility to self-report to the Contractor within three (3) calendar days any arrest for any disqualifying offense. The Contractor must notify the Contract Manager within twenty-four (24) hours of all details concerning any reported arrest. Upon the request of the Department or Customer, the Contractor will re-screen any of its employees, agents, representatives, and subcontractors during the term of the Contract.

### 13.2 E-Verify.

The Contractor must use the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the Contract for the services specified in the Contract. The Contractor must also include a requirement in subcontracts that the subcontractor must utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term. In order to implement this provision, the Contractor must provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five (5) calendar days of Contract execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five (5) calendar days of notice of Contract award and provide the Contract Manager a copy of its MOU within five (5) calendar days of Contract execution. The link to E-Verify is <https://www.uscis.gov/e-verify>. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five (5) calendar days to the Contract Manager identifying the new hire with its E-Verify case number.

### 13.3 Disqualifying Offenses.

If at any time it is determined that a person has been found guilty of a misdemeanor or felony offense as a result of a trial or has entered a plea of guilty or nolo contendere, regardless of whether adjudication was withheld, within the last six (6) years from the date of the court's determination for the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that person from any position with access to State of Florida data or directly performing services under the Contract. The disqualifying offenses are as follows:

- (a) Computer related crimes;
- (b) Information technology crimes;

- (c) Fraudulent practices;
- (d) False pretenses;
- (e) Frauds;
- (f) Credit card crimes;
- (g) Forgery;
- (h) Counterfeiting;
- (i) Violations involving checks or drafts;
- (j) Misuse of medical or personnel records; and
- (k) Felony theft.

#### 13.4 Confidentiality.

The Contractor must maintain confidentiality of all confidential data, files, and records related to the commodities or contractual services provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures must be consistent with the most recent version of the Department security policies, protocols, and procedures. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.

#### **SECTION 14. WARRANTY OF CONTRACTOR'S ABILITY TO PERFORM.**

The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the Suspended Vendor List, Convicted Vendor List, or the Discriminatory Vendor List, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Contract.

**EXHIBIT C**  
**SCHEDULE OF POINTS AND FEES**

1. **Incentive Share #1 – Standard Volume Incentive** – Each Customer will receive a basis point (percentage) of their quarterly standard sales volume. The formula for calculating the Standard Volume Incentive is:

Quarterly Total Volume x basis points = Quarterly Standard Volume Incentive.

**Basis Points Offered:** 170 basis points (1.70%)

2. **Incentive Share #2 – Prompt Payment Incentive** – Each Customer will receive a basis point (percentage) of their Quarterly Total Volume based on the entity's average speed of pay. The formula for calculating the Prompt Payment Incentive is:

Quarterly Total Volume x Basis Points for Entity average file turn days = Quarterly Prompt Payment Incentive.

**Note: The payment terms for the Master Agreement is forty-five (45) days.**

**Basis Points Offered:**

Avg File Turn Days	Basis Point	Avg File Turn Days	Basis Point	Avg File Turn Days	Basis Point
1	20	21	7.375	41	1.25
2	19	22	7	42	1
3	18	23	6.625	43	0.75
4	17	24	6.25	44	0.5
5	16	25	5.875	45	0.25
6	15	26	5.5	46	0
7	14	27	5.125	47	0
8	13.5	28	4.75	48	0
9	13	29	4.375	49	0
10	12.5	30	4	50	0
11	12	31	3.75	51	0
12	11.5	32	3.5	52	0
13	11	33	3.25	53	0
14	10.5	34	3	54	0
15	10	35	2.75	55	0
16	9.5	36	2.5	56	0
17	9	37	2.25	57	0
18	8.5	38	2	58	0
19	8.125	39	1.75	59	0
20	7.75	40	1.5	60	0

3. **Incentive Share #3 – National Annual Volume Incentive** – Each Participating State will receive an incentive based on the total National Annual Volume (total annual sales for all Participating States/Participating Entities). The formula for calculating the National Annual Sales Volume Incentive is:

National Annual Volume (for all Fleet products) x basis points = National Annual Sales Volume Incentive.

**Basis Points Offered:**

Total Annual Spend	Basis Points
\$50,000,000 – \$100,000,000	10
\$100,000,001– \$200,000,000	15
\$200,000,001– \$300,000,000	20
\$300,000,001– \$400,000,000	25
\$400,000,001+	30

**FEES**

Below is a list of fees allowed under this Master Agreement. If choosing to charge these fees throughout the agreement, indicate the amount and/or rates here.

Fee Type	Fee Amount
Foreign Transaction Fee	1.5% of the total transaction value
Overnight Delivery Fee	\$15.00 per occurrence

**COOPERATIVE PURCHASING MASTER AGREEMENT**

**No. 00819**

**FLEET CARD SERVICES**

*For Use by Eligible Participating States*

By and Between

**STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES**

and

**WEX BANK**

Dated October 1, 2020

## COOPERATIVE PURCHASING MASTER AGREEMENT

No. 00819

### FLEET CARD SERVICES

This Cooperative Purchasing Master Agreement (“Master Agreement”) is made and entered into by and between Enterprise Services acting by and through the State of Washington (“Enterprise Services”) and WEX Bank, a Utah corporation (“Contractor”) and is dated as of October 1, 2020.

#### RECITALS

- A. Pursuant to Legislative authorization, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish master contracts for goods and/or services to support Washington state agencies. See RCW 39.26.050(1); RCW 39.26.080(3). The Washington State Legislature has authorized Enterprise Services to make these master contracts available, pursuant to an agreement in which Enterprise Services ensures full cost recovery, to any other local or federal government agency or entity, any public benefit nonprofit organizations, or any tribes located in the State of Washington. See RCW 39.26.050(1) & (2).
- B. The Washington State Legislature also has authorized Enterprise Services to participate in, sponsor, conduct, or administer certain cooperative purchasing agreements for the procurement of goods or services. See RCW 39.26.060(1). One of the approaches that Enterprise Services utilizes to participate in cooperative purchasing agreements with other states is NASPO ValuePoint.
- C. NASPO ValuePoint is the cooperative contracting arm of the National Association of State Procurement Officials (NASPO). NASPO ValuePoint is led by state procurement officers from member states. NASPO ValuePoint does not award contracts, rather, it assists states, for an administrative fee, in their collaboration pertaining to solicitations and the resulting Master Agreements.
- D. Pursuant to the NASPO ValuePoint cooperative purchasing model, a state serves as the ‘lead state’ to conduct a competitive procurement in compliance with that state’s procurement laws and award a Master Agreement with a contractor for the specified goods or services. States (including the District of Columbia and the organized territories of the United States), including the lead state, then may participate in that Master Agreement by executing a Participating Addendum with the awarded contractor. Until a Participating Addendum is executed by the applicable state (a ‘participating state’), no agency or other eligible organization (a ‘purchasing entity’) may utilize the products and services offered pursuant to the cooperative purchasing Master Agreement. Under Washington law, at the time of solicitation, states may provide supplemental substantive terms and conditions to inform the competitive procurement. In addition, pursuant to their Participating Addendum, states may require certain administrative terms and conditions (e.g., a vendor management fee for sales within the state, state registration and reporting). Contractor, however, has no obligation to condition execution of a Participating Addendum on substantive terms and conditions that were not competitively procured.
- E. Enterprise Services, as a part of a cooperative purchasing competitive governmental procurement, with administrative support from NASPO ValuePoint, issued Competitive Solicitation No. 00719/00819 dated June 4, 2019 regarding Commercial Card Services, resulting in two separate Cooperative Purchasing Master Agreements. Eleven (11) states indicated an intent to utilize the resulting cooperative purchasing Master Agreement.

- F. Enterprise Services and a stakeholder team consisting of representatives from Washington, Oregon, California, Colorado, and Minnesota evaluated all responses to the Competitive Solicitation and identified Contractor as the Apparent Successful Bidder (ASB) Category 2 – Fleet Card Services.
- G. Enterprise Services determined that entering into this Master Agreement will meet the cooperative purchasing needs and be in the best interest of the State of Washington.
- H. The purpose of this Master Agreement is to enable Participating or Purchasing Entities to utilize Commercial Card Services – Fleet Card Services as set forth herein.

## AGREEMENT

**NOW THEREFORE**, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. **TERM.** The term of this Master Agreement starts on October 1, 2020 and ends on December 31, 2025; The Fleet Card services provided pursuant to this Master Agreement start January 1, 2021 and end on December 31, 2025; provided, however that, the contract term shall be extended for twenty-four (24) months if, in Enterprise Services' sole, reasonable judgement, Contractor meets the following performance metrics:

- Reports: Contractor provides timely and accurate reports as detailed in this Master Agreement and Participating Addendums; and
- Rebate: Contractor provides timely and accurate rebates as detailed in this Master Agreement and Participating Addendums.

*Provided, further however*, Contractor shall provide implementation and transition support to Participating States who wish to utilize the Master Agreement, beginning upon the Participating Addendum execution date so as to effectuate a smooth transition for Participating States and Purchasing Entities for Fleet Card services to start on January 1, 2021.

2. **PARTICIPANTS.** Use of this Master Agreement may be authorized by Participating States for use by Purchasing Entities as set forth herein.

2.1. **PARTICIPATING STATES.** For the purpose of this Master Agreement, a Participating State shall mean: any state, or U.S. territory (e.g., District of Columbia, Puerto Rico, etc.) ("State") that executes a Participating Addendum with the Contractor. Such Participating Addendum will authorize Purchasing Entities for such Participating State and must be executed by the chief procurement officer for the applicable Participating State; *provided however*, that some States, with state authority to do so and permission from such state chief procurement officer, may authorize local governments, political subdivisions, and other entities to execute a Participating Addendum. Contractor may not provide Fleet Card Services under this Master Agreement until a Participating Addendum acceptable to the Participating State and Contractor is executed.

2.2. **PURCHASING ENTITIES.** For the purpose of this Master Agreement, a Purchasing Entity is any eligible entity authorized by a Participating State to participate in the Master Agreement (i.e. to purchase from the Master Agreement) pursuant to a Participating Addendum. Purchasing Entities may be required to execute a Card User Agreement (CUA) as outlined in this Master Agreement and shall be financially committed to the card account unless otherwise agreed to in the Participating Addendum.

- 2.3. **PARTICIPATING ADDENDUM.** For the purpose of this Master Agreement, a Participating Addendum is the document executed between a Participating State and Contractor that enables eligible Purchasing Entities to utilize the Master Agreement. The terms and conditions set forth in the Master Agreement are applicable to any Purchasing Entity except to the extent altered, modified, supplemented, or amended by a Participating Addendum. The Participating Addendum enables Participating States to specify state specific administrative terms and conditions to enable utilization of the Master Agreement. In no event shall a Participating Addendum change the material terms and conditions set forth in this Master Agreement. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.
- 2.4. **PARTICIPATING ADDENDUM CHANGES.** Participating Addenda shall not be construed to amend the Master Agreement provisions pertaining to NASPO ValuePoint program requirements.

### **3. SCOPE – INCLUDED GOODS/SERVICES AND PRICE.**

- 3.1. **SCOPE.** Pursuant to this Master Agreement, Contractor is authorized to provide only those goods and services set forth in Exhibit A – Fleet Card Products and Exhibit G Fleet Card Requirements and provide the Rebate/Incentive Share as set forth in Exhibit B – Rebate/Incentive Share. Contractor shall not represent to any Participating or Purchasing Entity under this Master Agreement that Contractor has contractual authority to provide any goods and services beyond those set forth in Exhibit A – Fleet Card Products and Exhibit G Fleet Card Requirements.
  - 3.2. **LEAD STATE’S ABILITY TO MODIFY SCOPE OF MASTER AGREEMENT.** Subject to mutual written agreement between the parties, Enterprise Services reserves the right to modify the goods and services included in this Master Agreement; *Provided*, however, that any such modification shall be effective only upon thirty (30) days advance written notice; and *Provided further*, that any such modification must be within the scope of this Master Agreement.
  - 3.3. **INCENTIVE SHARE ADJUSTMENT.** Incentive share and fees shall remain firm and fixed for the term of the Agreement. Enterprise Services reserves the right to negotiate a greater incentive share at any time during the life of the Agreement. A greater incentive share must be mutually agreed between the Parties. A Participating State may negotiate the specifics of the Incentive Share Component, but shall not exceed the total basis points offered by the Contractor.
  - 3.4. **PRICE CEILING.** Contractor’s Basis Points as set forth in this Master Agreement shall be fixed. Contractor’s fees (e.g. overnight card delivery and international transactions) set forth in this Master Agreement shall be the maximum fees Contractor may charge during the term of the Master Agreement.
  - 3.5. **MASTER AGREEMENT INFORMATION.** Enterprise Services shall maintain and provide information regarding this Master Agreement, including scope and pricing, to the eligible Participating Entities.
- 4. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Master Agreement and at the time any Card User Agreement (CUA) is placed pursuant to this Master Agreement and Participating Addendum. If, at the time of any such agreement, Contractor cannot make such representations and warranties, the Contractor shall not process any additional CUA and shall notify Enterprise Services, in writing, of such breach as soon as commercially reasonable but, in no event, later than ten (10) days after Contractor has knowledge of any such breach.

- 4.1. **QUALIFIED TO DO BUSINESS.** Contractor represents and warrants that it is in good standing and qualified to do business in the State of Washington and that, if required to by law, it will register with the Washington State Department of Revenue and the Washington Secretary of State, that it possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington. Contractor further represents and warrants that it will do the equivalent, to the extent required, for any Participating State for which it executes a Participating Addendum.
- 4.2. **SUSPENSION & DEBARMENT.** Contractor represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.
- 4.3. **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Master Agreement and the three (3) year period immediately preceding the award of the Master Agreement, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.
- 4.4. **PAY EQUALITY.** Contractor represents and warrants that, among its workers, similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Master Agreement and any Participating Entity hereunder similarly may suspend or terminate its use of the Master Agreement and/or any Participating Addendum entered into pursuant to the Master Agreement.
- 4.5. **EXECUTIVE ORDER 18-03 WORKERS' RIGHTS (MANDATORY INDIVIDUAL ARBITRATION).** Contractor represents and warrants, as previously certified in Contractor's bid submission, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Master Agreement, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.
- 4.6. **INTENTIONALLY DELETED.**
- 4.7. **INTENTIONALLY DELETED.**

- 4.8. **QUALITY OF GOODS AND SERVICES.** Contractor represents and warrants that any goods and services provided pursuant to this Master Agreement, shall conform to this Master Agreement and Cardholder User Agreement, and shall be provided in full compliance with applicable law.
- 4.9. **NO EFFECT OF ADDITIONAL TERMS AND CONDITIONS.** Other than the terms and conditions listed in *Exhibit E - WEX Forms and Specific Terms & Conditions*, attached hereto, the terms of which shall govern the parties' relationship with respect to the relevant subject matter, Contractor represents and warrants that any Authorized Users agreement to "click through" or other terms and conditions shall not be binding and shall have no force or effect as to the Services of this Master Agreement or Participating Addendum, unless agreed to in writing between the parties. Without prejudice to first sentence of this Section 4.9, the parties agree that the terms and conditions listed in Exhibit E do not modify, amend or change the Master Agreement in any way and if there is a conflict between Master Agreement and any of the terms in Exhibit E, Master Agreement will govern. The parties agree that the "WEX Click Through Agreement" as set forth in Exhibit E shall apply with respect to any Purchasing Entity's use of the WEX website, notwithstanding anything to the contrary in the click-through terms and conditions that any Purchasing Entity shall click to approve in order to access such website.
- 4.10. **PROCUREMENT ETHICS & PROHIBITION ON GIFTS.** Contractor represents and warrants that it complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Participating Entity's employees. Contractor further represents and warrants that it will do the equivalent for any Participating State for which it executes a Participating Addendum.
- 4.11. **WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS).** Contractor represents and warrants that it is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of its information therein is current and accurate and that throughout the term of this Master Agreement, Contractor shall maintain an accurate profile in WEBS.
- 4.12. **STATEWIDE PAYEE DESK.** Contractor represents and warrants that, prior to conducting any transactions under this Master Agreement, Contractor will register with Washington's Statewide Payee Desk, which registration is a condition to invoice payment for the State of Washington.
- 4.13. **MASTER AGREEMENT PROMOTION; ADVERTISING AND ENDORSEMENT.** Contractor represents and warrants that it shall use commercially reasonable efforts both to promote and market the use of this Master Agreement with eligible Participating Entities and ensure that those entities that utilize this Master Agreement are eligible Participating Entities. Contractor understands and acknowledges that neither Enterprise Services nor any Participating Entity are endorsing Contractor's goods and/or services or suggesting that such goods and/or services are the best or only solution to their needs. Accordingly, Contractor represents and warrants that it shall make no reference to Enterprise Services, the State of Washington, or any Participating or Purchasing Entity in any promotional material without the prior written consent of Enterprise Services.
- 4.14. **MASTER AGREEMENT TRANSITION.** Contractor covenant that, in the event this Master Agreement or a similar contract, is transitioned to another contractor (e.g., Master Agreement expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services for a period of nine (9) months to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington and all other Participating Entities.
- 5. USING THE MASTER AGREEMENT – ESTABLISHING A CARD USER AGREEMENT.**

- 5.1. **ESTABLISHING A CARD USER AGREEMENT (CUA).** Purchasing Entities shall establish a Card User Agreement as described in Exhibit D or as modified by the Participating State's Participating Addendum in order to receive cards, establish access to the online system, and leverage any other goods and services from this Master Agreement.
- 5.2. **EXTENSION OF CREDIT.** Contractor in its sole discretion extends credit and establishes accounts for Purchasing Entities. Contractor may research the financial condition of any Purchasing Entity. If requested, Purchasing Entity agrees to furnish Contractor copies of its official and finalized financial statements or other applicable financial information no later than 120 days following the end of each of its fiscal years. The financial statements shall have been prepared, consistently year over year and shall be in accordance with the books and records of Purchasing Entity. Any financial information submitted shall be kept strictly confidential by Contractor.
- (a) Purchasing Entities or any other entity or individual authorized by a Purchasing Entity to use an account opened pursuant to this Master Agreement or, as applicable, a Participating Addendum, or cards issued by Contractor pursuant to this Master Agreement or, as applicable, a Participating Addendum (each such entity or individual an "Account User") can make purchases up to the credit limit that is assigned by Contractor. The credit limit appears on the billing statement and can be monitored via WEXOnline®. Each Purchasing Entity shall not to exceed its credit limit. Contractor may change the credit limit without prior notice. Contractor will use its best efforts to provide advance notice of any changes to the credit limit. If Contractor is unable to provide advance notice, Purchasing Entity will receive notification promptly following any such change. If Contractor has previously permitted Participating Entity to exceed its credit limit, it does not mean that Contractor will permit Participating Entity to exceed its credit limit again.
  - (b) Contractor may suspend an account or refuse to authorize any transaction in its sole discretion and specifically in the event that: (i) any balance is past due more than 60 days (Purchasing Entity are contacted by WEX strategic receivables team prior to suspension. Should the authorized contact not respond, WEX strategic receivables will notify the Purchasing Entity's WEX premium fleet account manager to escalate concern to other contacts within that Purchasing Entity); and/or (ii) the amount of the transaction plus the outstanding balance (including transactions authorized but not yet posted) exceeds the credit limit. Contractor shall notify the Purchasing Entity prior to account suspension for past due balances or exceeding credit limits. Each Purchasing Entity shall, immediately upon request, pay the amount over the limit and any associated fees or the entire balance due on the account. Nothing contained in this Master Agreement prevents Purchasing Entity or an Account User from requesting a modification of the credit limit.
- 5.3. **ACCOUNTS AND ACCOUNT USERS.**
- (a) Purchasing Entity shall designate its Account Users as well as those contacts authorized to: (i) provide Contractor with the information necessary to establish and maintain Account(s), Cards, and DINs; (ii) provide vehicle, driver and other information; (iii) receive all Account numbers, Cards or reports; (iv) receive other Account information; and (v) select additional products and/or services that may be offered. Purchasing Entity will provide notice of any change or removal of any contact or Account User either in writing, by telephoning Contractor's customer service department or through Contractor's online system. Purchasing Entity remains liable for any unauthorized use until Contractor receives notice of any change in or removal of any Account User or contact. Contractor is

authorized to take instruction from any Account User or contact with apparent authority to act on Purchasing Entity's behalf. Unless Purchasing Entity reports any errors in Account information or Cards, Contractor is entitled to rely on that information for servicing the Account.

- (b) Purchasing Entity is responsible for notifying Contractor of any revocation of any Account User's authority and Purchasing Entity shall remain liable for any charges made by an Account User until notice of revocation of authority is received by Contractor. Purchasing Entity agrees that use of a Card and the applicable DIN is deemed authorized use of the Account. Purchasing Entity assumes all risk if Purchasing Entity chooses to leave a Card at an accepting location for use by its drivers or Account Users and as such, agrees to pay for all charges made with that Card or on that Account. Purchasing Entity agrees to keep DINs confidential and to provide for its employees or Account Users to not disclose any DIN. If Account Users or other employees disclose a DIN or write a DIN on a Card, then Purchasing Entity is liable for any fraudulent use that may result even if the disclosure is inadvertent or unintentional.
- (c) All Cards will be valid through the expiration date listed on the Card. Participating Entity will automatically receive new Cards prior to the expiration date of their current Cards. Standard delivery time for renewal cards is 30 to 45 days prior to the card expiration. Purchasing Entity's may request an earlier renewal timeframe if necessary.
- (d) Accounts and Cards will only be used for the purchase of products and services for business or commercial purposes and not for personal, family or household purposes. Purchasing Entity shall adopt internal policies and controls to ensure that the Accounts and Cards are used strictly for business or commercial purposes. Purchases of lottery tickets or other games of chance, gift cards, pre-paid cards or other cash equivalent charges are prohibited. Purchasing Entity agrees that Purchasing Entity's use of Cards or Accounts is deemed acceptance by Purchasing Entity of this Agreement's terms.
- (e) Contractor is not responsible in the event a merchant does not accept or honor a Card or Account number as payment.

#### 5.4. DISPUTED AMOUNTS.

- (a) Purchasing Entity shall use its best efforts to resolve purchase disputes directly with the relevant merchant particularly such disputes arising out of quality or warranty issues.
- (b) During dispute a temporary credit may be placed on Purchasing Entity's account. All disputed items must be submitted in writing within sixty (60) days from the billing date or they will be final and binding. Purchasing Entity may dispute an amount reflected on a billing statement if: (i) the amount does not reflect the face value of the Transaction; (ii) the amount being disputed is a fee that is not properly accrued under this Agreement; or (iii) Purchasing Entity does not believe it is liable for that amount.
- (c) Transactions made at an island card reader where the Purchasing Entity or Account User did not obtain a receipt at the time of sale are eligible for dispute. However, the receipt may provide the only opposing record to the transaction information submitted by the

merchant. It is also important to note that island card reader transactions require both a valid card and DID to be authorized.

- (d) Transactions in dispute may qualify for charge back to the merchant. Contractor shall attempt to charge the Transaction back to the merchant in accordance with its procedures under its merchant acceptance agreements. Any accepted charge back will be credited to the relevant Account. The Purchasing Entity may be liable for the Transaction if the disputed item is found to be no fault of the merchant and therefore cannot be charged back to the merchant.

5.5. NOTICE OF LOSS, THEFT OR UNAUTHORIZED USE. In the event that Purchasing Entity or an Account User knows of or suspects the loss, theft or possible unauthorized use of a Card or Account or if Purchasing Entity would like to terminate an Account User, Contractor must be immediately notified by calling 1-800-492-0669.

5.6. CONTROLS. Purchasing Entity may request that Controls be applied to its Account(s).

5.7. UNAUTHORIZED USE AND UNAUTHORIZED TRANSACTIONS.

- (a) The availability and effectiveness of Controls is dependent upon each merchant's adoption of card specifications and the information, including product codes that the merchant transmits to Contractor. The product codes are assigned by each merchant and not by the Contractor. In addition, some Controls are not enforceable at island card readers due to equipment restrictions at the merchant location.
- (b) Default Control values are only assigned by Participating Entity through the online product. More detailed information related to Controls and their limitations is available online. Contractor is not responsible for the prudence of any particular Control level selected by Participating Entity. Contractor shall use reasonable efforts to deny requests for Transaction authorizations that fall outside the selected Control parameters. Purchasing Entity remains responsible for payment in full of Transactions which fall outside of the Control parameters selected, if such Transactions are made with a valid Card and are processed by Contractor. The existence and/or use of Controls will not affect Purchasing Entity's liability for Unauthorized Transactions in certain circumstances and is more fully described in the guidance information provided when Purchasing Entities make Control elections. Only transactions submitted for authorization are subject to Controls and those Controls can only be enforced when the merchant provides sufficient information as part of the authorization.
- (c) Contractor may, in its sole discretion and/or without prior notice, modify Authorization Controls for the purpose of the prevention of suspected fraudulent activity, see Exhibit G Section 15 Fraud Protection. Contractor will notify Purchasing Entity after any modification is made. Purchasing Entity agrees it is responsible for reviewing fraud control data provided by Contractor for the purpose of detecting fraud that may occur within Control parameters.

5.8. REPORTS AND OTHER PRODUCT FEATURES.

- (a) Contractor provides transaction data for each Account to the Purchasing Entity as transmitted by merchants. Purchasing Entity is responsible for reconciling that data. Contractor will report the data received from merchants and as such is not liable for accuracy or completeness of the data received, posted or contained in any specialty reports, management reports, data services or other information services provided. In

addition, Purchasing Entity understands that in the event an error is identified in a report, such as incorrect product code, Purchasing Entity is still liable for the Transaction, but may follow the dispute process to obtain clarifying information.

- (b) Except as otherwise expressly provided below, Purchasing Entity will be liable to Contractor for all unauthorized use or Unauthorized Transactions that occur: (i) when a Card is lost or stolen, for the period prior to which a Purchasing Entity gives notice to Contractor as provided in this Agreement; (ii) if such use or suspected use occurs as a result of the Purchasing Entity's lack of reasonable security precautions and controls surrounding the Cards or Accounts as described in this Agreement; or (iii) if such use results in a benefit, directly or indirectly, to the Purchasing Entity or Account User. Misuse as defined by Purchasing Entity internal Purchasing Entity policy by an Account User or other employee does not constitute fraud, unauthorized use, or an Unauthorized Transaction.
  - (c) Purchasing Entity may purchase dyed special fuel using its Account or Cards. Purchasing Entity acknowledges that all dyed special fuel purchases will be used exclusively for off-road purposes and according to all applicable laws governing its use. Contractor is not liable in any way for any misuse or mishandling by Purchasing Entity of any dyed special fuel. Upon request from applicable governmental authorities, Contractor may provide information regarding Participating Entity's dyed special fuel purchases without prior authorization from Purchasing Entity.
- 5.9. DELIVERY REQUIREMENTS. Contractor must ensure that delivery of goods and/or services will be made as required by this Master Agreement, the Participating Addendum or as otherwise mutually agreed in writing between the Purchasing Entity and Contractor.
- (a) On-Site Requirements. Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Purchasing Entity's physical, fire, access, safety, or other security requirements required by any Participating State or Purchaser Entity while on their premises. Purchase Entities shall clearly communicate any such requirements to Contractor in the event Contractor is on their premises.
- 5.10. INTERNATIONAL USE OF CARDS/CURRENCY CONVERSION.
- (a) Cards are issued for use by Purchasing Entity's United States based operations, but may be used in Canada. Purchasing Entity may not distribute Cards to employees based in countries other than the United States. If Cards are used in any other country other than the United States, Purchasing Entity will: (i) be billed in US Dollars; and (ii) receive reporting in English.
  - (b) Contractor will convert any purchase made in a foreign currency into a U.S. Dollar amount before the Transaction is posted to the Account. The exchange rate between the Transaction currency (the foreign currency) and the billing currency (U.S. Dollars) used for processing international Transactions is a rate selected by Contractor using rates available from the Oanda Index for the date that the Transaction is posted by Contractor, which rate may vary from the rate Contractor itself receives, or the government mandated rate in effect at that time.

## 6. STATEMENTS & PAYMENT.

6.1. **CONTRACTOR STATEMENT.** Contractor shall submit to Purchasing Entity's designated statement contact properly itemized account statements on a monthly basis. Such statements shall itemize the following:

- (a) Master Agreement No. 00819
- (b) Participating Addendum No.
- (c) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Purchasing Entity Service Representative)
- (d) Contractor's Federal Tax Identification Number
- (e) Statement amount; and
- (f) Payment terms, including any available prompt payment discounts.

Statements will not be processed for payment until receipt of a complete statement as specified herein.

## 6.2. PAYMENT.

- (a) Payment is the sole responsibility of, and will be made by, the Purchasing Entity. Payment is due in full within the earlier of (a) forty-five (45) days of statement or (b) the date required pursuant to the applicable Participating Entity's prompt pay act or similar legislation, in each case on or before the relevant cutoff time on or before the Due Date. If Purchasing Entity fails to make timely payment(s) (i.e., by the applicable Due Date) in full, such failure shall constitute a "Payment Default." "Due Date" means the date on which the repayment of the balance of the account is due as provided on a billing statement. In the event of a Payment Default, Contractor may invoice in the amount of up to one percent (1%) per month on the amount overdue or a minimum of \$1 (or as otherwise agreed in the applicable Participating Addendum) (the "Late Fee"). The Late Fee will be applied to the Total Outstanding Balance (as defined below) on the Calculation Date, not to exceed the amount allowable by applicable law]. The "Calculation Date" is the earlier of (a) the posting date for the Purchasing Entity's payment in full of the invoiced amount to its account, or (b) the last day of the Billing Cycle during which the Payment Default occurred. The "Total Outstanding Balance" is the invoiced amount, plus the amount of any unbilled transactions delivered by a merchant to Contractor, and minus any credits that have posted to the account, through the Calculation Date.
- (b) Each Purchasing Entity shall be liable for all Transactions on the account to the fullest extent permitted by applicable law, except as expressly provided in this Agreement. Purchasing Entities may pay the entire balance of the account or a portion of it, at any time prior to its Due Date without penalty.
- (c) Payments made via paper check are posted to the account after processing and must arrive at Contractor at least three Business Days before the Due Date on the billing statement. It can take up to three Business Days to process a check from the time the envelope containing a check arrives at Contractor's facility to posting of the check amount to the account.
- (d) For payments not made by paper check, payments on a Business Day before the cut-off time (the "Cut-off Time") will be posted on that Business Day. Payments after the Cut-off Time on a Business Day, or on a day other than a Business Day, will be posted on the

following Business Day. The Cut-off Times for payments not made by check are as follows: a payment transaction made via Contractor’s online payment portal must be completed by 3:00 p.m. ET; a payment transaction made via IVR must be completed by 3:00 p.m. ET; and a payment transaction made via ACH must arrive to Contractor by 3:00 p.m. ET.

- (e) Regardless of payment method, each Purchasing Entity must ensure that Purchasing Entity’s account number is provided with the payment. Failure to do so will cause processing delays in posting the payment to the account. Payments that are received at locations other than the address specified on the billing statement, or that do not otherwise comply with instructions on the billing statement or this Master Agreement, may be delayed in posting.
- (f) Each Purchasing Entity shall: (i) pay all fees set forth herein; (ii) pay all amounts payable for transactions on each card issued by Contractor, and (iii) perform all obligations, covenants, and warranties in this Master Agreement.
- (g) Payments will be applied first to unpaid Late Fees and then to any unpaid balances. Each Participating Entity may pay their account balance or a portion of it, at any time prior to its due date without penalty.

- 6.3. **OVERPAYMENTS.** Contractor promptly shall refund to Purchasing Entity the full amount of any erroneous payment or overpayment. Such refunds shall occur promptly upon discovery by Contractor or within thirty (30) days of written notice to Contractor; *Provided*, however, that Purchasing Entity shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely payment(s) or issuance of such credit memos, Purchasing Entity may impose a one percent (1%) per month on the amount overdue thirty (30) days after notice to the Contractor.
- 6.4. **NO ADDITIONAL CHARGES.** Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, or payment processing.
- 6.5. **TAXES/FEES.** Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Master Agreement.

**7. MASTER AGREEMENT MANAGEMENT.**

- 7.1. **MASTER AGREEMENT ADMINISTRATION & NOTICES.** Except for legal notices, the parties hereby designate the following administrators as the respective single points of contact for purposes of this Master Agreement. Enterprise Services’ contract administrator shall provide Master Agreement oversight. Contractor’s contract administrator shall be Contractor’s principal contact for business activities under this Master Agreement. The parties may change contractor administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

<b>Enterprise Services</b>	<b>Contractor</b>
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<p>Attn:                  WA Dept. of Enterprise Services                  PO Box 41411                  Olympia, WA 98504-1411                  Tel: (360) 407-2218                  Email: <a href="mailto:DESContractsTeamCypress@des.wa.gov">DESContractsTeamCypress@des.wa.gov</a></p>	<p>Attn: Ryan Kelly                  WEX Inc. – North American Fleet                  1 Hancock Street                  Portland, ME 04101                  Tel: (952)-922-1104                  Email: <a href="mailto:ryan.kelly@wexinc.com">ryan.kelly@wexinc.com</a></p>
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Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- 7.2. **CONTRACTOR RELATIONSHIP MANAGER.** In each Participating Addendum, Contractor shall designate a Relationship Manager who shall be responsible for addressing Purchasing Entity issues pertaining to this Master Agreement and Participating Addendum. Notwithstanding any provision to the contrary, Contractor agrees that upon written notice from Participating State it shall collaborate with such State to transition the Relationship Manager duties to an alternative representative so as to achieve the mutually beneficial relationship intended by this Master Agreement.
- 7.3. **ACCOUNT COORDINATOR.** In each Participating Addendum, Contractor shall designate an Account Coordinator who shall be responsible for addressing Purchasing Entity issues pertaining to this Master Agreement and Participating Addendum. Notwithstanding any provision to the contrary, Contractor agrees that upon written notice from Participating State it shall collaborate with such State to transition the Account Coordinator duties to an alternative representative so as to achieve the mutually beneficial relationship intended by this Master Agreement.
- 7.4. **LEGAL NOTICES.** Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

**Enterprise Services**

Attn: Legal Services Manager  
 Washington Dept. of Enterprise Services  
 PO Box 41411  
 Olympia, WA 98504-1411  
 Email: [greg.tolbert@des.wa.gov](mailto:greg.tolbert@des.wa.gov)

**Contractor**

Attn: Gabriel Weiss  
 Legal Director, North American Fleet  
 1 Hancock Street  
 Portland, ME 04101  
 Email: [gabriel.weiss@wexinc.com](mailto:gabriel.weiss@wexinc.com)

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

**8. CONTRACTOR SALES REPORTING; ADMINISTRATIVE FEE; & CONTRACTOR REPORTS.**

- 8.1. **NASPO VALUEPOINT ADMINISTRATIVE FEE.** Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter (1/4 or 25%) of one basis point (0.0025% or 0.000025) of the National Annual Volume no later than sixty (60) days following the end of the calendar year. The NASPO ValuePoint administrative fee is not negotiable. This fee may not be adjusted in any Participating Addendum. This fee is to be included as part of the pricing submitted with the bid.

- 8.2. **PARTICIPATING STATE ADMINISTRATIVE FEE.** Some states may require an additional fee be paid directly to the state only on PURCHASES made by Purchasing Entities within that state. The fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee set forth above shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.
9. **NASPO VALUEPOINT SUMMARY AND DETAILED USAGE REPORTS.** In addition to other reports that may be required by the Master Agreement, Contractor shall provide the following NASPO ValuePoint reports.
- 9.1. **SUMMARY SALES DATA.** Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zeros sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).
- 9.2. **DETAILED SALES DATA.** Contractor also shall report detailed sales data by: (1) Participating State, (2) Purchasing Entity (customer type, e.g. local government, higher education, K12, non-profit); (3) transaction date; (4) transaction amount; and (5) line item description for transactions with Level 3 data. Reports are due on a quarterly basis and must be received by Enterprise Services and NASPO ValuePoint no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to Enterprise Services and to NASPO ValuePoint electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by Enterprise Services and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under participating addenda executed under this Master Agreement. The format for the detailed sales data report is shown in this Master Agreement.
- 9.3. **NATIONAL ANNUAL SALES INCENTIVE REPORT.** Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator and Enterprise Services Contract Administrator with a National Annual Sales Volume Incentive Report reflecting each State's total annual spend, National Annual Volume Rebate earned no later than thirty (30) days after the end of the calendar year.
- 9.4. **NASPO VALUEPOINT EXECUTIVE SUMMARY.** Contractor shall provide NASPO ValuePoint an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.
- 9.5. **REPORT OWNERSHIP.** Timely submission of these reports is a material requirement of the Master Agreement. Enterprise Services and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy and otherwise use reports, data and information provided under this section.

**9.6. CONFIDENTIALITY OF DETAILED SALES DATA AND PARTICIPATING ADDENDA.**

- (a) Participating Addenda, as well as transaction data relating to purchases under this Master Agreement that identify the entity, transaction dates, line item descriptions and volumes, and prices/rates, shall be Confidential Information. Except as required by law, Contractor shall hold Confidential Information in confidence and shall not transfer or otherwise disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of purchase transactions under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. This provision does not apply to disclosure to the Lead State, a Participating State or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.
- (b) Contractor shall use and disclose Data solely and exclusively for the purpose of providing the services; and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Data for Contractor's own purposes or for the benefit of anyone other than the Participating Entity without their prior written consent.

**10. NASPO VALUEPOINT COOPERATIVE PROGRAM MARKETING AND PERFORMANCE REVIEW.**

- 10.1. NASPO VALUEPOINT COOPERATIVE PROGRAM. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement, including the competitive nature of NASPO ValuePoint procurements, the Master Agreement and Participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.
- 10.2. LOGOS. NASPO ValuePoint logos may not be used by the Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- 10.3. ANNUAL CONTRACT REVIEW. Contractor agrees to participate in an annual contract performance review at a location selected by Enterprise Services and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

**11. RECORDS RETENTION & AUDITS.**

- 11.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Card User Agreements (CUA) entered into by Participating or Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Master Agreement or final payment for any order placed by a Participating or Purchasing Entity against this Master Agreement, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 11.2. AUDIT. Enterprise Services reserves the right to audit, or have a designated third party audit, applicable records to ensure that Contractor has properly issued the Purchasing Entity the applicable rebate/incentive share. Accordingly, no more than once per calendar year (or more

frequently to the extent agreed between the parties), upon advance written notice of no fewer than 60 days from Enterprise Services, Contractor shall permit Enterprise Services, any Participating or Purchasing Entity, and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or agreements entered into by Participating and/or Purchasing Entities under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Master Agreement or final payment for any account under this Master Agreement, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

- 11.3. **OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES.** Without limiting any other remedy available to any Participating or Purchasing Entity, Contractor shall (a) reimburse Participating or Purchasing Entity for any overpayments inconsistent with the terms of this Master Agreement, at a rate of 100% of such overpayments, found as a result of the examination of the Contractor's records; and (b) reimburse Purchasing Entity for any underpayment of fees, at a rate of 100% of such fees found as a result of the examination of the Contractor's records.

**Underpayment of Rebate/Incentive Share.** Without limiting any other remedy available to any Participating or Purchasing Entity, in the event of a material underpayment of the Rebate/Incentive Share, in addition to compensating such Participating or Purchasing Entity for the deficiency, Contractor shall reimburse such Participating or Purchasing Entity for its reasonable out-of-pocket expenses incurred to discover and calculate the amount of such deficiency, or 25% of the amount of the deficiency, whichever is less, up to a maximum of \$15,000 per calendar year.

## 12. INSURANCE.

- 12.1. **REQUIRED INSURANCE.** DURING the term of this Master Agreement, Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C – Insurance Requirements*.
- 12.2. **WORKERS COMPENSATION.** Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Enterprise Services may terminate this Master Agreement. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. In addition, Contractor waives its immunity under RCW Title 51 to the extent it is required to indemnify, defend, and hold harmless the State of Washington and its agencies, officials, agents, or employees.
- 12.3. **INSURANCE CERTIFICATE.** Prior to commencement of performance, Contractor shall provide to Enterprise Services a written endorsement to the Contractor's general liability insurance policy or other documentation evidence acceptable to the Lead State that (1) names the Participating States identified in the Competitive Solicitation as additional insureds, (2) provides for written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other Participating States' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable Participating State.

**13. PUBLIC INFORMATION.** This Master Agreement, all related documents, and all records created as a result of the Master Agreement are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56. In addition, Participating Addendums and related records shall be subject to public disclosure as required by applicable law pertaining to such Purchasing Entity. Consistent with the Public Records Act, to the extent that any such Contractor document or record – in whole or in part – includes information exempted or protected from disclosure by the Public Records Act, Contractor may mark such document or record – the exempted or protected portions only – with the specific basis for protection under the Public Records Act. In the event that Enterprise Services receives a public records disclosure request that pertains to such properly marked documents or records, Enterprise Services shall notify Contractor of such disclosure request and of the date that the records will be released to the requester unless Contractor, at Contractor's sole expense, timely obtains a court order enjoining such disclosure, Enterprise Services shall release the requested documents on the date specified. Contractor's failure properly to identify exempted or protected information or timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are protected or exempt from disclosure.

**14. CLAIMS.**

**14.1 ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES.** Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees, and agents in connection with Contractor's operations under this Master Agreement. Enterprise Services has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any Purchasing Entity's property resulting directly from its grossly negligent or fraudulent acts or omissions, or acts of willful misconduct under this Master Agreement.

**14.2 THIRD-PARTY CLAIMS; INDEMNITY.** Contractor shall defend, indemnify, and hold harmless Enterprise Services and any Purchasing Entity and their employees and agents from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, reasonable attorneys' fees, consultant fees, and expert fees (collectively "claims") directly arising from any grossly negligent act or omission, or willful misconduct, of Contractor or its agents and subcontractors under this Master Agreement, except claims caused solely by Enterprise Services or any Purchasing Entity's gross negligence. Contractor shall take all steps needed to keep Purchasing Entity's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.

**14.3 THIRD- PARTY CLAIMS; INDEMNITY - INTELLECTUAL PROPERTY.** Contractor shall defend, indemnify and hold harmless Enterprise Services and any Purchasing Entity, along with their officers and employees, from and against claims, damages or causes of action brought against Enterprise Services or any Purchasing Entity including reasonable attorney fees and related costs arising out of the claim that Contractor's operations/products or their use, infringes Intellectual Property rights of any person or entity.

- (a) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
- i. Provided by the Contractor or the Contractor's subsidiaries or affiliates;
  - ii. Specified by the Contractor to work with the Product; or
  - iii. Reasonably required, in order to use the product in its intended manner, and in the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

- iv. It would be reasonably expected to use the Product in combination with such product, system, or method.
- (b) The indemnified party shall notify the Contractor within a reasonable time after receiving notice of an intellectual property claim. Even if the indemnified party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor was prejudiced in defending the intellectual property claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any intellectual property claim, it shall have no control over the defense and settlement of it. However, the indemnified party must consent in writing for any money damages or obligations for which it may be responsible. The indemnified party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the intellectual property claim, the indemnified party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the indemnified party in the pursuit of the intellectual property claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

14.4 THIRD-PARTY CLAIMS; INDEMNITY: NASPO. Contractor's indemnity obligations set forth above shall extend to an obligation to defend, indemnify, and hold harmless, NASPO and NASPO ValuePoint) to the same extent as Enterprise Services and any Purchasing Entity.

15. **DISPUTE RESOLUTION.** The parties shall cooperate to resolve any dispute pertaining to this Master Agreement efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior manager of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute. For the avoidance of doubt, this Section 15 shall not apply to disputed transactions, which shall be governed by Exhibit G Section 16.

**16. DEFAULTS AND REMEDIES.**

16.1 **SUSPENSION & TERMINATION FOR DEFAULT BY CONTRACTOR.** Enterprise Services may suspend Contractor's operations under this Master Agreement immediately by written cure notice of any default. Suspension shall continue until the default is remedied to Enterprise Services' reasonable satisfaction; *Provided*, however, that, if after thirty (30) days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor's rights under this Master Agreement. In such event, except as otherwise set forth herein, each of the parties' obligations to each other survive termination of this Master Agreement, until such obligations have been fulfilled.

16.2 **DEFAULT BY CONTRACTOR.** Each of the following events shall constitute default of this Master Agreement by Contractor:

- (a) Contractor materially fails to perform or comply with any of the terms or conditions of this Master Agreement;
- (b) Contractor breaches any representation or warranty provided herein; or

- (c) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.

16.3 REMEDIES FOR DEFAULT BY CONTRACTOR.

- (a) Enterprise Services' rights to suspend and terminate Contractor's rights under this Master Agreement are in addition to all other available remedies.
- (b) In the event of termination for default, Enterprise Services may exercise any remedy provided by law including, without limitation, the right to procure replacement goods and/or services. In such event, Contractor shall be liable to Enterprise Services for damages as set forth in this Master Agreement.

16.4 LIMITATION ON DAMAGES.

- (a) Notwithstanding any provision to the contrary, the parties agree that in no event shall Contractor be liable to Enterprise Services or any Participating Entity for special, consequential, exemplary or punitive damages. Except as otherwise required under applicable law, Contractor makes no warranty with respect to goods, products, merchantability, or services purchased with a card or the account, or through Contractor. Contractor is not responsible for any failure of a merchant to accept a card issued by Contractor hereunder.
- (b) Contractor's liability with respect to each Participating Entity under this Master Agreement for actual damages shall not exceed three times the sum of: (a) all fees paid by such Participating Entity to Contractor under this Agreement in the twelve (12) month period prior to the date when any claim is made against Contractor; plus (b) all other revenue earned by Contractor for all of Enterprise Services' transactions made in the twelve (12) months prior to the date of any claim made against Contractor; provided, however, that in the case of claims (as such term is defined and limited pursuant to and in accordance with Sections 14.2 and 14.3) directly resulting from a data breach (i.e., any access, destruction, loss, theft, use or disclosure of Enterprise Services' Data by an unauthorized party), Contractor's liability with respect to each Participating Entity under this Master Agreement for such damages shall not exceed six times the sum of: (a) all fees paid by such Participating Entity to Contractor under this Agreement in the twelve (12) month period prior to the date when any claim is made against Contractor; plus (b) all other revenue earned by Contractor for all of Enterprise Services' transactions made in the twelve (12) months prior to the date of any claim made against Contractor.

16.5 GOVERNMENTAL TERMINATION.

- (a) Termination for Withdrawal of Authority. Enterprise Services may suspend or terminate this Master Agreement if, during the term hereof, Enterprise Services' procurement authority is withdrawn, reduced, or limited such that Enterprise Services, in its judgment, would lack authority to enter into this Master Agreement; *Provided*, however, that such suspension or termination for withdrawal of authority shall only be effective upon twenty (20) days prior written notice; and *Provided further*, that such suspension or termination for withdrawal of authority shall not relieve any Participating Entity or Purchasing Entity from payment for purchases on account (and any related fees or other amounts owed to Contractor) as of the effective date of such notice. Except as stated in this provision, in the event of such suspension or termination for withdrawal of authority, neither Enterprise Services nor any Participating Entity or Purchasing Entity shall have any obligation or liability to Contractor.

(b) Termination for Public Convenience. Enterprise Services, for public convenience, may terminate this Master Agreement; *Provided*, however, that such termination for public convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for public convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for public convenience shall not relieve any Participating Entity or Purchasing Entity from payment for purchases on account (and any related fees or other amounts owed to Contractor) as of the effective date of such notice. Except as stated in this provision, in the event of such termination for public convenience, neither Enterprise Services nor any Participating Entity or Purchasing Entity shall have any obligation or liability to Contractor.

16.6 TERMINATION PROCEDURE. Regardless of basis, in the event of suspension or termination (in full or in part), the PARTIES shall cooperate to ensure an orderly and efficient suspension or termination. Unless directed by Enterprise Services to the contrary, Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.

16.7 IF A PURCHASING ENTITY DEFAULTS: (i) it will not have any further right to borrow under the relevant PARTICIPATING Addendum; (ii) all outstanding amounts under the account shall be immediately due and payable; (iii) Contractor may terminate the relevant Purchasing Entity Cardholder Agreement; and (iv) Contractor will have the right to bring suit and exercise all rights and remedies available under applicable law. Alternatively, Contractor MAY, in its sole discretion: (i) suspend all services and obligations; (ii) shorten the billing cycle; or (iii) change the payment terms. The suspension of services and/or obligations will not be deemed a waiver of any right to terminate the Purchasing Entity Cardholder Agreement, whether as a result of the default to which such suspension of services or obligations relates or otherwise. For purposes of this Section 16.7, "default" means if: (a) Purchasing Entity fails to perform any obligation hereunder or, as applicable, the Purchasing Entity Cardholder Agreement; (b) a representation or warranty by Purchasing Entity in connection with this Master Agreement or, as applicable, the Participating Addendum, was incorrect or misleading when made; (c) any petition in bankruptcy, insolvency, receivership, or reorganization or proceeding pursuant to any other debtor relief law is filed by or against Purchasing Entity; (d) any order is entered appointing a receiver, custodian, trustee, liquidator, or any other person with similar authority over the assets of Purchasing Entity; (e) there is an insolvency, dissolution, reorganization, or assignment for the benefit of creditors with respect to Purchasing Entity, or any other material adverse change in the financial condition of Purchasing Entity; or (f) any adverse judgment, order or award is entered against Purchasing Entity that has a material adverse impact on the financial condition of Purchasing Entity or a detrimental effect on the ability of Purchasing Entity to perform its obligations to Contractor.

## 17. GENERAL PROVISIONS.

17.1 TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Master Agreement.

17.2 FORCE MAJEURE. Neither party to this Master Agreement shall be held responsible for delay or default caused by any unforeseeable acts of God including, but not limited to, fire, riot, unusually severe weather, epidemics or pandemics, or war which are beyond that party's reasonable control which said party provides written notice within three (3) calendar days to the other specifying such force majeure event and their detailed plan to resume normal operations; *Provided*, however, that, in the event Contractor declares force majeure, Enterprise Services shall have the right to terminate this Master Agreement if such force majeure event interferes, in Enterprise Services' judgment, with the successful performance of Contractor's obligations under this Master Agreement for more than thirty (30) days; *Provided further*, that this Section 17.2 shall not apply to Enterprise Services' or any

Participating Entity's obligation to pay the balance on its account under this Master Agreement or, as applicable, any Participating Addendum.

- 17.3 COMPLIANCE WITH LAW. Each of the parties shall comply with all applicable law.
- 17.4 INTEGRATED AGREEMENT. This Master Agreement (including all exhibits, schedules and attachments hereto) constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 17.5 AMENDMENT OR MODIFICATION. Except as set forth herein, this Master Agreement may not be amended or modified except in writing and signed by a duly authorized representative of each party hereto.
- 17.6 AUTHORITY. Each party to this Master Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Master Agreement and that its execution, delivery, and performance of this Master Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 17.7 NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Master Agreement. Neither party is an agent of the other party nor authorized to obligate it.
- 17.8 ASSIGNMENT. Neither party may assign its rights under this Master Agreement without the other party's prior written consent and any attempted assignment without such consent to be void.
- 17.9 BINDING EFFECT; SUCCESSORS & ASSIGNS. This Master Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.
- 17.10 ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS/SERVICES. Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any goods and/or services provided in Washington for the purpose of carrying out the Contractor's obligations under this Master Agreement, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action. Contractor irrevocably assigns to a state Participating Entity outside the State of Washington any claim for relief or cause of action as described in this subsection, and the same right to control such litigation, in connection with any goods and/or services provided in the Participating Entity's state.
- 17.11 SEVERABILITY. If any provision of this Master Agreement is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Master Agreement, and to this end, the provisions of this Master Agreement are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Master Agreement.
- 17.12 WAIVER. Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Master Agreement, nor shall any purported oral modification or rescission of this Master Agreement by either party operate as a waiver of any of the terms hereof. No waiver

by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision. Similarly, failure of any party to insist upon the strict performance of any of the terms and conditions of any Participating Addendum, or failure to exercise any rights or remedies provided therein or by law, or to notify the other party in the events of breach, shall not release such party of any of its obligations under such Participating Addendum, nor shall any purported oral modification or rescission of such by either party operate as a waiver of any such terms thereof.

- 17.13 SURVIVAL. All covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Master Agreement shall survive and remain in effect following the expiration or termination of this Master Agreement, Provided, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 17.14 GOVERNING LAW. The validity, construction, performance, and enforcement of this Master Agreement shall be governed by and construed in accordance with the laws of the State of Washington, provided that 12 U.S.C. 1831d shall apply on the basis of the location of the Contractor, without regard to its choice of law rules. The validity, construction, and effect of any Participating Addendum pertaining to the Master Agreement or order placed pursuant to such Participating Addendum shall be governed by and construed in accordance with the laws of the Participating Entity or Purchasing Entity's State, provided that 12 U.S.C. 1831d shall apply on the basis of the location of the Contractor.
- 17.15 JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Master Agreement, the parties agree to submit to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington; Provided, however, that venue for any claim, dispute, or action concerning this Master Agreement or the effect of a Participating Addendum shall be in the Participating Entity's State.
- 17.16 SOVEREIGN IMMUNITY. In no event shall this Master Agreement, any Participating Addendum, or any act of the lead State, a Participating Entity, or Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court.
- 17.17 ATTORNEYS' FEES. Should any legal action or proceeding be commenced by either party in order to enforce this Master Agreement or any provision hereof, or in connection with any alleged dispute, breach, default, or misrepresentation in connection with any provision herein contained, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with such action or proceeding, including costs of pursuing or defending any legal action, including, without limitation, any appeal, discovery, or negotiation and preparation of settlement arrangements, in addition to such other relief as may be granted.
- 17.18 FAIR CONSTRUCTION & INTERPRETATION. The provisions of this Master Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Master Agreement. Each party hereto and its counsel has reviewed and revised this Master Agreement and agrees that the normal rules of construction to the effect that any ambiguities are to be

resolved against the drafting party shall not be construed in the interpretation of this Master Agreement. Each term and provision of this Master Agreement to be performed by either party shall be construed to be both a covenant and a condition.

- 17.19 FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Master Agreement, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Master Agreement including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Master Agreement.
- 17.20 EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Master Agreement in their entirety.
- 17.21 CAPTIONS & HEADINGS. The captions and headings in this Master Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Master Agreement nor the meaning of any provisions hereof.
- 17.22 ELECTRONIC SIGNATURES. A signed copy of this Master Agreement or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Master Agreement or such other ancillary agreement for all purposes.
- 17.23 COUNTERPARTS. This Master Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Master Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Master Agreement.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES

By: Corinna Cooper

Name: Corinna Cooper

Its: Statewide Enterprise Procurement Manager

WEX BANK  
A UTAH CORPORATION

By: Tim Laukka

Name: Tim Laukka

Its: President

APPROVED  
By W435075 at 11:37 am, Oct 23, 2020

## FLEET CARD PRODUCTS

This exhibit details the type of Fleet Card products and services that are within the scope of this Master Agreement. Fleet Card Types include:

- Fleet Card – Physical specialized Commercial Card used to capture fleet-related expenses (e.g., fuel, vehicle maintenance, aviation, marine, electric, repair and service).
- Cardless Account (WEXPay) – Virtual card (no plastic) account used for maintenance services.

### WEX CARD PROGRAM

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WEX is offering the Universal WEX Fleet Card, a corporate liability card that offers acceptance in all 50 states, at more than 95% of U.S. retail fueling locations, all of which provide Level III data. The card is accepted by all major oil companies and fuel retailers as well as independent merchants, in urban, rural, and remote locations.

The WEX Fleet Card is also accepted at more than 4,000 locations in Canada.

WEX customers can be billed using centralized or decentralized invoicing across agencies and departments as desired. The program supports nine levels of hierarchy, offering robust reporting and billing flexibility.

#### 1. THE WEX FLEET CARD

The WEX Fleet Card program offers best-in-class card functionality, reporting and customer service. Our technology and services include:

- Level III data capture on 99.8% of transactions, including remote sites that may only transmit Level I or II using MasterCard, for greater insight and fraud protection
- Nine levels of hierarchy for more flexible reporting and billing options
- Advanced card-to-PIN functions; ability to tie one card to one PIN, etc.
- More flexible prompting options at point of sale
- Acceptance at more than 95% of all retail fuel sites in the U.S., plus expanded acceptance through virtual MasterCard technologies
- Comprehensive Federal and State tax exemption, reporting and recovery program
- Robust online reporting tools through WEXOnline®, including ability to schedule and share custom reports
- Ability to customize data fields and add GL codes for accounts, drivers, vehicles or cards for greater financial control and visibility
- Control user access to the online system, with advanced administrative functions

#### 2. WEXPAY™

Along with the flagship Fleet card, WEX is offering **WEXPay™**, a tool that enables out-of-network purchases at an additional 398,000 merchants in the MasterCard® network by utilizing a virtual card interface. Typically used for independent or geographically remote fuel and service sites, WEXPay™ provides the control of a fleet card with the convenience of a credit card.

This out-of-network tool reduces the number of out-of-network sites where drivers would have to use an alternative form of payment.

Using WEXPay™ in conjunction with a Custom Control fleet card lets Purchasing Entity set the rules for drivers. Custom Control cards allow Purchasing Entity to set merchant, transaction, and even product type limits. WEX apply those limits to both WEX Fleet Card and WEXPay™ MasterCard transactions. Expanded coverage combined with integrated reporting and invoicing will further streamline Purchasing Entity fleet purchasing and operations.

**How WEXPay Works:** As a MasterCard issuing bank, WEX uses Single-Use Account Number technology to authorize a one-time payment to a merchant. The account number provided to the merchant by phone is fast and secure — good only for that one purchase.

When the merchant calls for authorization, WEX applies the Purchasing Entity's purchase controls and collect the same level of purchase detail, including Prompt ID and odometer. WEX integrate the purchase details into Purchasing Entity WEX Fleet Card invoice and reports. One card, one invoice, one report with the same controls and service our Purchasing Entity's expect from WEX.

*\* Purchases are subject to the MasterCard transaction processing rules and terms of use, including tax exemption rules.*

### 3. WEX SERVICE NETWORK

WEX also offers acceptance for service and maintenance needs through the **WEX Service Network**. WEX Custom Control cards can be used to purchase tires, transmissions, brakes, mufflers, oil changes, glass replacement, car washes, and other routine vehicle maintenance products and services at national brand and local service stations, including Goodyear, Sears, Jiffy Lube, Valvoline, and Bridgestone/Firestone. The WEX card is currently accepted at more than 32,000 locations that provide service.

### 4. WEX EV FLEETCHARGE

The WEX Fleet card also helps government fleets in their sustainability and greening initiatives. If a Purchasing entity is facing mandates to cut emissions, **WEX EV FleetCharge**, WEX's partnership with ChargePoint, allows a Purchasing Entity to use their WEX Fleet card to pay for charges at more than 66,000 Electric Vehicle charging sites. Purchasing Entities will also get reporting on EV charges that integrates with their traditional liquid fueling activity for a total fleet view of their fuel usage.

### 5. AVCARD PROGRAM

Purchasing Entities can manage their aircraft fueling, maintenance, and activity as easily as they manage their ground fleet with the **AVCARD program**. AVCARD — a complete purchasing solution for fuel and related aviation services — is a credit card and contract fuel program used by corporate and private flight departments at both domestic and international airport locations. In addition to the Purchasing Entity's WEX Fleet Card account, WEX can set them up with an AVCARD account, which is integrated with the Purchasing Entity's WEX account.

AVCARD cards function as both a credit card and a contract fuel card. Purchasing Entities only need one card program for purchasing fuel and services from all AVCARD acceptors and/or contract fuel suppliers.

AVCARD is the most widely accepted aviation credit card, providing fuel access at 7,500 locations in more than 190 countries. With an AVCARD account, a Purchasing Entity automatically participate in their Contract Fuel Program, which allows them to receive significant savings on jet fuel virtually everywhere in the world. AVCARD's 24/7 Fuel Dispatch team is available to find, prearrange and quote, Contract Fuel prices worldwide for all trips.

Look up accepting locations by individual IATA/ICAO codes or geographically by country, state and city at [WFSCORP.com](http://WFSCORP.com). Purchasing Entities can also:

- View and download contact information and a detailed listing of specific services provided (catering, rental cars, hangar, etc.)
- Prearrange fuel and services
- Log in to obtain contract fuel pricing
- Request a firm Price Quote by email
- Report a lost or stolen card online or use the toll-free number during business hours

Purchasing Entities can sign up and use the convenient features of the AVCARD program at no additional charge.

#### 6. MARINE FUEL

Fleets can purchase gasoline and diesel fuel at **marine fueling locations** through a combination of direct acceptance of the WEX Fleet Card at marinas with branded oil locations through electronic point of sale systems, and at any of the more than 9,500 marina locations that accept MasterCard worldwide. The WEX Fleet Card and WEXPay™ would be used at these accepting locations just like any other fueling location to purchase fuel and related services. Additional terms and conditions apply.

#### 7. ALTERNATIVE FUEL & ADDITIONAL ACCEPTANCE

Certain WEX-accepting merchants supply ethanol, natural gas (CNG, LNG), propane (LPG), hydrogen, biodiesel, methanol, and other alternative fuels. So WEX has created an **Alternative Fuel Directory** using transaction information passed to WEX by accepting merchants, and from external sources such as the Department of Energy. This directory contains more than 6,000 WEX-accepting sites that carry at least one alternative fuel type. This directory is available through a download from [WEXOnline®](#), or can be provided in hard copy for use in vehicles. WEX uniquely reports ethanol, methanol, CNG, LNG, and biodiesel.

WEX is always **increasing its acceptance coverage** for fuel, marina and service locations. Because WEX currently have acceptance at more than 95% of all U.S. fuel sites, our merchant acquisition strategy is driven by the needs of our fleet customers requiring service in remote areas or acceptance outside of domestic coverage. If a fleet customer identifies specific fueling needs, WEX will work toward signing any needed location

If the customer has merchants that they would like to be part of the WEX accepting network who do not already have direct acceptance or cannot utilize the WEXPay™ tool, WEX will request the following information from the fleet:

- Merchant name
- Merchant address
- Merchant contact person
- Phone and fax numbers
- Expected utilization/volume from a Purchasing Entities fleet
- Name and phone number of fleet employee requesting WEX card acceptance

WEX will work with all interested parties toward gaining acceptance at the location. This includes either direct agreements or acceptance through our partnerships with network sales organizations and acquirers.

#### **WEX OPTIONAL PRODUCTS /SERVICES**

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1. **WEX FLEET CLEARVIEW™** is a suite of powerful, cloud-based analytic solutions that automatically organizes, interprets, and intuitively displays fleet-related information. Critical data is presented in an intentional layout of simple and informative visualizations, helping fleet managers monitor operations, understand trends, benchmark performance, investigate anomalies, and recognize cost-saving opportunities.

With an eye toward designing solutions for fleets with a wide range of needs, WEX ClearView products present complex fleet data in straight-forward and compelling graphics turning information into insights.

**ClearView Essentials.** With ClearView™ Essentials, a Purchasing Entity will enjoy actionable insights into fuel expense and driver purchasing that they have not experienced before. Purchasing Entities will quickly see a gain in time savings due to the elimination of manual manipulation and analysis of spreadsheets and identify opportunities to reduce their fuel expense. ClearView™ Essentials, the cornerstone of the ClearView™ analytics product suite, provides a comprehensive range of analysis opportunities: Within the five ClearView™ Essentials modules there are many key pieces of functionality that can be utilized to more comprehensively and accurately analyze vehicles and the employees driving those vehicles each day.

**ClearView™ Advanced.** ClearView™ Advanced gives a Purchasing Entity all the data analytics power of ClearView™ Essentials and more. It offers exceptional opportunities for fuel price optimization. In addition, ClearView™ Advanced provides an entirely new channel for communicating with drivers and/or managers, enabling the Purchasing Entity to implement, track, and evaluate the effectiveness of driver messaging campaigns.

**Identify and eliminate costly and unwanted driver purchasing behaviors:** ClearView™ Advanced helps Purchasing Entities hone in on which drivers' purchasing habits represent the greatest opportunities for savings. Quickly spot drivers who purchase unnecessary fuel grades or consistently buy from high-priced merchants. Once the drivers are identified, they can be targeted with behavior-specific messaging campaigns delivered via email or text from the ClearView™ platform. Customers using ClearView™ Advanced have experienced success in reducing unwanted driver purchasing behaviors and have realized thousands of dollars in savings. ClearView™ Advanced is add-on feature to ClearView and is optional. The fee is **\$0.25/month (.25 cents) per active card.**

**ClearView Snap.** ClearView™ Snap gives a Purchasing Entity a quick snapshot of their agency's fueling activity in easy-to-interpret charts and graphs that are delivered directly to their inbox on a monthly and/or weekly basis. No login is required. These simple, clean visuals display prior period actuals, period comparisons, and trends over time. Easily share key fueling metrics with senior leadership and the field building awareness and oversight of their fuel card program.

ClearView Snap™ includes an Alexa voice skill which offers a new delivery channel, daily updates, and limited amounts of transaction-level information. Alexa will verbally relay information about dollars spent, gallons purchased, highest-spending employees, and tracks six savings opportunity and potential misuse exceptions, such as non-regular fuel purchases, exceeding tank capacity, and weekend fueling.

## 2. TAX EXEMPTION, RECOVERY, AND REPORTING PROGRAM

**Federal Gasoline and Diesel Excise Tax-Exempt Program.** WEX will invoice a Purchasing Entity net of all Federal excise taxes on gasoline and diesel, at the transaction level, regardless of merchant participation if they are qualified as tax-exempt.

**State Sales, County and Local Taxes at Participating Merchants.** WEX currently offers eligible tax-exempt entities a comprehensive tax exemption and reporting program for applicable motor fuel transactions based on merchant participation. The program supports the following levels of tax, including:

- State Primary (Excise Tax)
- State Secondary (Sales Tax)
- State Special
- County Primary (Excise Tax)
- County Secondary (Sales Tax)
- County Special
- City Primary (Excise Tax)
- City Secondary (Sales Tax)
- City Special

Tax-exempt reporting through WEXOnline<sup>®</sup>, WEXLink<sup>™</sup> 300, and the paper PAR (Purchase Activity Report) shows:

- Exempted Tax, at the transaction level
- Reported Tax, at the transaction level
- Summary of tax types by product for both exempted and reported transactions (available on the paper PAR only)

**State Sales Tax and County Tax at Non-Participating Merchants.** For fueling transactions with those fuel marketers that do not participate in the WEX tax-exempt program, but for which the fleet is eligible to receive tax exemption, WEX reports applicable taxes as "Reported Tax." "Reported Tax" transactions list transactions and tax amounts that WEX does not exempt so the fleet can file for exemption. Many fleets use their WEXLink<sup>™</sup> data file to aid in the recovery of taxes that could not be excluded through the tax-exempt program. Reporting shows:

- Exempted tax, by transaction
- Reported tax, by transaction
- Summary of tax types by product for both exempted and reported transactions

**Tax Exemption for Non-Fuel Purchases.** For non-fuel transactions, merchants may provide transactional data to WEX net of tax on a fleet-by-fleet basis at the merchants' discretion. Drivers must supply the merchant with proper documentation of the organizations tax-exempt status at the point of sale. The merchant will send the transaction to WEX, net of tax, for billing.

**Qualification.** Any fleet participating in this contract will be required to complete a certification process affirming its qualification to receive the tax exemption based upon the rules and criteria set by the appropriate taxing jurisdiction.

**Required Data.** Tax Exemption processing requires that the merchant provide electronically to WEX the following data points:

- Account Number

- Account Name
- Type of Fuel
- Gallons
- Price per gallon
- Total gross sale

Not all transactions may have exemptions applied to them. WEX is not able to exempt applicable fuel taxes on transactions that are provided with certain data elements that are missing and may be autocorrected. Taxing jurisdictions require documentation from the party providing the exemption of the type of fuel, gallons purchased, and price per gallon. There are occasions where the merchant is unable to provide all the required documentation, therefore these transactions will not go through our tax processing. However, if a Purchasing Entity provides WEX with a copy of the sales receipt, WEX can repost these transactions and apply the applicable exemptions.

### 3. PRIVATE SITE AND BULK FUEL SOLUTIONS

For fleets with private site and bulk fueling needs, WEX offers secure, live authorizations and integrated reporting for onsite bulk fueling transactions. A Purchasing Entity can select one of two options.

**Private Site Program.** WEX's private site program allows a Purchasing Entity to use the WEX Fleet Card to activate pumps at their onsite bulk fuel tanks, allowing for increased security and asset-level fuel usage reporting on their bulk fuel. WEX captures Driver ID and odometer information, authorizes the card swipe, and provides integrated reporting of the private site transactions with the Purchasing Entities retail transactions while excluding onsite fuel transactions from their invoice.

**Private Site Reporting.** Private Site Reporting consolidates tracking of onsite and retail fuel transactions into one comprehensive report and allows the Purchasing Entity to monitor private transactions for abuse through purchase controls at the point of sale using their WEX card.

This program provides in-depth reporting of onsite fuel transactions at the vehicle level, integrated with retail fuel purchases. Onsite fuel transactions are excluded from the Purchasing Entity's invoice while providing consolidated comprehensive vehicle level paper and electronic reporting along with their retail transactions.

Once installed, a Purchasing Entity's card readers will be required to retain reportable information so they don't have to. Just like a retail transaction, the driver initiates the data capture by entering the Driver ID and odometer. The card reader will provide the fuel type, gallons, PPG as programmed in the card reader, and total sale. Upon receipt, WEX integrates this key information into the Purchasing Entity's fleet's usage reporting. Card security features help mitigate fuel theft, and comprehensive tracking of usage and consumption will help them better control costs.

Using private site card readers with the WEX Fleet Card Program quickly gets Purchasing Entities on track to minimize time, effort and cost of administering fuel usage.

Transactions that occur at a private site location, utilizing a local (non-networked/non-WEX) authorization, carry no additional costs from WEX. If a site owner were to network their transactions from their owned private site locations to WEX (run each transaction through a network to WEX for authorization), there is a **\$0.15/transaction** (.15 cent) cost. This is a pass-through cost of using a network.

**4. WEX EMERGENCY FUEL PROGRAM**

WEX Emergency Fuel is an optional service may be offered, negotiated and mutually agreed in Participating Addendum.

High Level Overview of program: For public safety and public works vehicles that require 100 percent uptime, guaranteed, **WEX Emergency Fuel** provides peace of mind to public fleet administrators who cannot be caught without fuel in an emergency. Sign up for WEX Emergency Fuel and when weather or a disaster disrupts a Purchasing Entities fuel supply, WEX will connect them with one of our approved partners to get their fleet back on the road with the fuel they need. Guaranteed. Because WEX partners with the leading providers of emergency fueling services, WEX has the necessary supply sources and logistical network to guarantee 100% uptime, including fuel dispensing equipment, mobile fueling trailers, military-grade rapid deployment equipment, high-water fueling vehicles, mini-mobile fueling stations, diesel and gasoline generators and more.

### FLEET CARD REBATE/INCENTIVE SHARE

This Exhibit includes the Rebate/Incentive Share components for Fleet Card Services.

Rebate amounts will be based on total spend less write-offs, returns, and fraudulent charges.

A single payment combining Incentive Share Components 1 and 2 will be paid directly to the Participating State/Purchasing Entity on a quarterly basis as determined in the Participating Addendum. Incentive Share Payments can be made via account credit, mailed check, ACH or EFT payment (standard or non-standard format) as determined in the Participating Addendum. Incentive Share Payments must be received no later than the 60th day following the end of each calendar quarter.

Incentive Share Component 3 will be paid to the Participating State on an annual basis. Incentive Share Payment can be made via mailed check, ACH, or EFT as determined in the Participating Addendum. Incentive Share Payment must be received no later than the 60th day following the end of each calendar year.

Delivery of the rebate may be adjusted in any Participating Entity's Participating Addendum.

1 Basis Point = .0001 or .01%

#### INCENTIVE SHARE COMPONENTS

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##### 1. INCENTIVE SHARE #1 – STANDARD VOLUME INCENTIVE

Each Participating Entity will receive a basis point (percentage) of their quarterly standard sales volume. The formula for calculating the Standard Volume Incentive is:

Quarterly Total Volume x basis points = Quarterly Standard Volume Incentive.

**Basis Points Offered: 170 basis points (1.70%)**

**Conditions.** The Rebate set forth herein is expressly conditioned on the following: (1) monthly billing; (2) payment in full within 45 calendar days of the billing date appearing on the Purchasing Entity's invoice; (3) credit approval.

Quarterly Total Volume spend by all Purchasing Entities for all card liability products in a Quarter. "Quarterly Total Volume" includes the total amount of all purchases made using Cards at retail locations that appear on invoices provided to the Purchasing Entity in three calendar months. Quarterly Total Volume shall not include: (i) those amounts representing credits, disputed items, fees, late fees or charges posted to their accounts (such as returned check fees, collection costs, administrative fees and reporting fees), (ii) fuel purchased at Tier 1 Truck Stop locations\* (currently Flying J, Loves, TA, Petro, and Pilot), or (iii) any amounts posted to an account with respect to which a Card has been reported lost or stolen. *\*Purchasing Entities will be charged the posted cash price at Tier 1 truck stops.*

##### 2. INCENTIVE SHARE #2 – PROMPT PAYMENT INCENTIVE

Each Participating Entity will receive a basis point (percentage) of their Quarterly Total Volume based on the entity's average speed of pay. The formula for calculating the Prompt Payment Incentive is:

Quarterly Total Volume x Basis Points for Entity average file turn days = Quarterly Prompt Payment Incentive.

**Note: The payment terms for the Master Agreement is forty-five (45) days.**

**Conditions.** The Prompt Payment Incentive set forth herein is expressly conditioned on the following: (1) electronic reporting (i.e. no paper reports); and (2) our receipt of payment in full in accordance with one of the Average File Turn Days in the Prompt Payment Table.

**Basis Points Offered:**

Avg File Turn Days	Basis Point	Avg File Turn Days	Basis Point	Avg File Turn Days	Basis Point
1	20	21	7.375	41	1.25
2	19	22	7	42	1
3	18	23	6.625	43	0.75
4	17	24	6.25	44	0.5
5	16	25	5.875	45	0.25
6	15	26	5.5	46	0
7	14	27	5.125	47	0
8	13.5	28	4.75	48	0
9	13	29	4.375	49	0
10	12.5	30	4	50	0
11	12	31	3.75	51	0
12	11.5	32	3.5	52	0
13	11	33	3.25	53	0
14	10.5	34	3	54	0
15	10	35	2.75	55	0
16	9.5	36	2.5	56	0
17	9	37	2.25	57	0
18	8.5	38	2	58	0
19	8.125	39	1.75	59	0

20	7.75
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40	1.5
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60	0
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### 3. INCENTIVE SHARE #3 – NATIONAL ANNUAL VOLUME INCENTIVE

Each Participating State will receive an incentive based on the total National Annual Volume (total annual sales for all Participating States/Participating Entities). The formula for calculating the National Annual Sales Volume Incentive is:

National Annual Volume (for all Fleet products) x basis points = National Annual Sales Volume Incentive.

**Conditions.** The Rebate set forth herein is expressly conditioned on the following: (1) monthly billing; (2) payment in full within 45 calendar days of the billing date appearing on the Purchasing Entity's invoice; (3) credit approval.

Total annual volume spend by all Participating States/Purchasing Entities for all card products in a calendar year. "National Annual Volume" includes the total amount of all purchases made using Cards at retail locations that appear on invoices provided to the Purchasing Entity in a calendar year. National Annual Volume shall not include: (i) those amounts representing credits, disputed items, fees, late fees or charges posted to their accounts (such as returned check fees, collection costs, administrative fees and reporting fees), (ii) fuel purchased at Tier 1 Truck Stop locations\* (currently Flying J, Loves, TA, Petro, and Pilot), or (iii) any amounts posted to an account with respect to which a Card has been reported lost or stolen. \*Purchasing Entities will be charged the posted cash price at Tier 1 truck stops.

#### Basis Points Offered:

Total Annual Spend	Basis Points
\$50,000,000 – \$100,000,000	10
\$100,000,001– \$200,000,000	15
\$200,000,001– \$300,000,000	20
\$300,000,001– \$400,000,000	25
\$400,000,001+	30

#### FEES

Below is a list of fees allowed under this Master Agreement.

Fee Type	Fee Amount
Foreign Transaction Fee	1.5% of the total transaction value
Overnight Delivery Fee	\$15.00 per occurrence

### INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Master Agreement, Contractor obtain and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
  - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial General Liability Insurance (and, if necessary, commercial umbrella liability insurance) covering Bodily Injury and Property Damage on an 'occurrence form' in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include Contractual Liability insurance for the indemnity provided under this Master Agreement.
  - b. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** 'Symbol 1' Commercial Automobile Liability coverage (and, if necessary, commercial umbrella liability insurance) included coverage for all owned, hired, and non-owned vehicles. The combined limit per occurrence shall not be less than \$1,000,000.
  - c. **WORKERS' COMPENSATION INSURANCE & EMPLOYER'S LIABILITY (STOP GAP).** Contractor shall comply with applicable Workers' Compensation or Industrial Accident Insurance providing benefits as required by law, including Employer's or Stop-Gap Liability with a minimum limit of \$1,000,000 per accident.
  - d. **PROFESSIONAL LIABILITY (ERRORS & OMISSIONS) INSURANCE.** Professional Liability insurance in the amount of not less than \$2,000,000 combined single limit per occurrence, \$4,000,000 general annual aggregate for malpractice or errors and omissions coverage against liability for damages because of personal injury, bodily injury, death, or damage to property, including the loss of use thereof, and damages because of negligent acts, errors, and omissions in any way related to this Master Agreement.
  - e. **CRIME INSURANCE/EMPLOYEE DISHONESTY.** Employee Dishonesty and (when applicable) Inside/Outside Money and Securities coverage for State of Washington and/or purchaser owned property in the care, custody, and control of Contractor, including computer fraud. Coverage limits shall not be less than \$2,000,000.
  - f. **CYBER RISK LIABILITY INSURANCE.** Cyber Risk Insurance, on an occurrence form. This coverage shall include Contractual Liability Insurance for the indemnity provided under this Master Agreement. Limits are \$8,000,000 per claim/annual aggregate.

The limits of all insurance required to be provided by Contractor shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits.

A cross-liability clause or separation of insured condition shall be included in all general liability, professional liability, and errors and omissions policies required by this Master Agreement.

2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed reasonably acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reasonably reject all or any insurance carrier(s) with an unacceptable financial rating.

- 3. ADDITIONAL INSURED.** Except for Workers' Compensation, Professional Liability, and Commercial Automobile Liability, all required insurance shall include the State of Washington and all authorized Purchasers (and their agents, officers, and employees) as an Additional Insureds evidenced by copy of the Additional Insured Endorsement, including blanket Additional Insured Endorsements, attached to the Certificate of Insurance on such insurance policies.
- 4. CERTIFICATE OF INSURANCE.** Upon request by Enterprise Services, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Master Agreement, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been secured. A renewal certificate shall be delivered to Enterprise Services within 10 business days of the renewal of any required insurance. Failure to provide proof of insurance, as required, and upon 10 business days prior written notice to Contractor's Risk Manager, could result in contract cancellation. All policies and certificates of insurance shall include the Master Agreement number stated on the cover of this Master Agreement.
- 5. PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchaser; but only to the extent an indemnity is owed pursuant to this Agreement. All insurance or self-insurance of the State of Washington and/or Purchasers shall be excess of any insurance provided by Contractor; but only to the extent an indemnity is owed by Contractor pursuant to this Agreement.
- 6. SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.
- 7. WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any Purchaser for the recovery of damages; but only to the extent Contractor is legally liable to indemnify the State of Washington and any Purchaser under this Agreement.
- 8. NOTICE OF CANCELLATION.** Contractor or its insurer representative shall use best efforts to provide 30 days prior written notice of cancellation of any policy required under this Agreement.

**EXHIBIT D****ESTABLISHING A CARD ACCOUNT AGREEMENT****INTRODUCTION**

This exhibit explains the process and documentation for establishing an account for an individual Purchasing Entity. Participating States may edit this via the Participating Addendum process.

**NEW ACCOUNT & CARD SET-UP: STATE AGENCY ACCOUNTS**

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In the initial implementation phase, a universal credit line will be established for a Participating Entity based on the Participating Entity's needs and spend requirements. WEX has the ability to place protection against credit lines to ensure a Participating Entity does not experience any service interruptions due to sudden increased spending that can be caused by seasonal, emergency or other unexpected occurrences. This universal credit line then applies to all applicable accounts under the Participating Entity's hierarchy, allowing them to set up accounts without needing to seek a new credit line for each new card set-up.

For new accounts under a Participating Entity's hierarchy, an electronic template is completed and tax exemption information is collected, either through a blanket tax exemption for the Participating Entity, or individually by agency depending on how the Participating Entity is set up with tax identification numbers.

The information required for a new account set-up typically includes account name, DBA account name, account level within the existing Participating Entity's hierarchy, shipping address, and if there are any other further requirements specific requirements a given Participating Entity may have, like ERP integration, etc. Once the information is captured and processed by WEX, an account number is generated and provided to the Participating Entity to complete the proper tax exemption paperwork for enrollment in the WEX Tax Program, assuming it is a financially liable account.

**FLEET CARD ENROLLMENT PROCESS: EXISTING PARTICIPATING ENTITY ACCOUNTS**

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Program administrators can add cards and drivers via the Fleet Manager module of WEXOnline®, WEX's web-based account management and reporting tool, or through WEX customer service or the Participating Entity's Premium Fleet Services Account Manager. The Premium Fleet Services Account Manager is a one-to-one point of contact assigned to the Participating Entity for day-to-day operational support and account needs. The Fleet Manager module allows the fleet manager to add, edit, suspend, reactivate, and terminate cards and drivers, to add and manage card controls, and to view and download invoice details.

Purchasing Entities can also:

- Assign card to driver, vehicle or location
- Transfer cards from one account to another
- Group cards into authorization profiles to enforce their purchasing policies
- Create organizational units or departments to better organize cards, vehicles and drivers for reporting and management purposes (initially added during the implementation phase)
- Edit account information

Card orders: WEX will process requests for replacement cards for lost, damaged, or stolen cards within one business day. If notification is received by 3:30 p.m. Eastern Time, Purchasing Entities can have

cards sent that day. They can use their own shipping account number, or be charged a fee to cover the shipping costs. The WEX overnight fee, is included in Exhibit B. If a WEX card is lost or stolen, it should be reported immediately to WEX's Customer Service Department by calling the toll-free number. The Customer Service Department is available 24 hours a day, 365 days a year. The fleet can also notify WEX of the loss, theft, or unauthorized use of any card or account electronically through WEXOnline®.

**NEW ACCOUNT AND CARD SET-UP: POLITICAL SUBDIVISION ACCOUNTS**

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Eligible new accounts using this Master Agreement under a Participating Entity's Participation Addendum (i.e. cities, counties, schools, etc.) will need to complete a Credit Application that references the Master Agreement/Participating Entity's Participating Addendum and have their credit adjudicated independent of the State's line of credit. WEX will collect both the credit application and tax exemption form, both of which can be completed electronically or manually, from the interested entities prior to their account set-up.

\*See the WEX Credit Application, attached in Exhibit E, for a political subdivision participation under this Master Agreement.

*Note: This Credit Application can be customized and can be discussed with each Participating State during the discussion of their Participation Addendum. A Credit Application will be made for each Participating State to account for the Master Agreement and that state's individual Participation Addendum to the Master Agreement.*

**EXHIBIT E**

**WEX FORMS AND SPECIFIC TERMS & CONDITIONS**

This exhibit includes form templates and specific terms and conditions for certain WEX products and services.

**Required Forms for Fleet Card Products and Services**

- Addendum to the Fuel Card Services Agreement (Credit Application)
- WEXOnline Click through Terms & Conditions

**Optional Products and Services Forms**

- Tax Exemption and Reporting Program
- WEX ClearView Enrollment Packet
- Private Site Enrollment Packet
- WEXPay Enrollment Packet

**ADDENDUM TO THE FUEL CARD SERVICES AGREEMENT BETWEEN  
WEX BANK AND THE STATE OF (the "STATE")**

CREDIT INFORMATION					
Participating Entity agrees that in the event the account is not paid as agreed, WEX Bank may report the undersigned's liability for and the status of the account to credit bureaus and others who may lawfully receive such information.					
Participating Entity			Phone #	Fax#	
Headquarters Name and Physical Address (Do not include PO Box)				Applicant's Taxpayer ID # (TIN, FEIN or SSN)	
In Business Since (yyyy)	Year of Incorporation	Number of Veh	Avg Monthly Fuel Expenditure \$	Avg Monthly Service Expenditure \$	
ACCOUNT SETUP INFORMATION					
Write Participating Entity name as it should appear on cards. Limit of 20 characters & spaces. Unless specified, no Purchasing Entity name will appear on cards.					
<input type="text"/>					
Billing Contact		Billing Address		City	State Zip+4
Designate the Fleet Contact authorized to receive all charge cards, reports, and other such information WEX provides from time to time and to take actions with respect to your account and account access. This is also the person designated by the Purchasing Entity to provide all fleet vehicles, driver and other information WEX may request.					
Authorized Fleet Contact Name		Title	Phone #	Fax #	
Mailing Address (if different from billing address)			City	State	Zip+4
Email address (required to take advantage of product type card controls)					
<b>Card Controls:</b> To help WEX estimate the Purchasing Entity's credit needs, indicate the types of cards they anticipate using. If the Purchasing Entity provides a valid email address above, they can select from these product type options: <input type="checkbox"/> All Products <input type="checkbox"/> Fuel & Service <input type="checkbox"/> Fuel & Fluids with Roadside Assistance <input type="checkbox"/> Fuel with Roadside Assistance <input type="checkbox"/> Mix of card types <input type="checkbox"/> Check here if business is exempt from motor fuels tax					
TERMS					

**DEFINITIONS:**

"Agreement" means: Contract No. XXXX effective \_\_\_\_\_ for Fuel Cards and Fuel Management Services (the "Agreement") between the (State of XXXX and NASPO Value Point and WEX Bank.

"Participating Entity" shall mean the Participating Entity as defined in the Agreement permitted to purchase services under the Agreement, as specified in the Credit Information above.

All other capitalized terms used in this Addendum without definition have the meanings set forth in the Agreement.

**AGREEMENTS OF WEX BANK AND PARTICIPATING ENTITY:**

1. This Addendum is to allow the Participating Entity to participate under the Agreement between WEX BANK and the State. It does not modify, amend or change the Agreement in any way. The parties agree to comply with the terms and conditions of Contract No. XXXX which is referenced and made a part of this transaction.
2. Participating Entity represents that it is authorized or allowed by the laws of its home state to enter into this Addendum and to participate under the Agreement.
3. Participating Entity hereby requests the services of WEX BANK described in the Agreement and agrees to perform all duties of a Participating Entity under the Agreement, including, without limitation, payment of all charges on its account(s) within the time periods provided under the Agreement, payment of any fees provided in the Agreement, and cooperation with respect to providing all necessary information for the administration of the Agreement. Participating Entity agrees to be bound by the terms and conditions of the Agreement, including, without limitation, rules for authorized and unauthorized use of cards, disputes of charges, reporting lost and stolen cards, and all other rules and provisions relating to use of Participating Entity's account.
4. Participating Entity acknowledges that its failure to make timely payment in accordance with the terms of the Agreement and/or the Addendum may result in suspension or cancellation of the account(s). The undersigned represents and warrants that he/she is duly authorized to execute this Addendum on behalf of the Participating Entity and this Addendum is the valid and binding obligation of the Participating Entity, enforceable in accordance with its terms.

**INFORMATION SHARING DISCLOSURE:** Information regarding Purchasing Entity's transactions may be provided to accepting merchants or their service providers to facilitate discounts or other promotional campaigns of interest to them.

**COMPLIANCE WITH FEDERAL LAW:** WEX Bank complies with federal law which requires all financial institutions to obtain, verify, and record information that identifies each company or person who opens an account. Issuer may ask for name, address, date of birth, and other applicable information to identify the Company and/or Account Users.

**DISCLAIMER: THIS IS AN APPLICATION FOR SERVICES AND SHALL NOT BE BINDING UPON WEX BANK UNTIL FINAL CREDIT APPROVAL HAS BEEN GRANTED BY WEX BANK.**

**CONTRACTING AGENCY AUTHORIZED SIGNATURE REQUIRED**

Any person signing on behalf of the Participating Entity has been duly authorized by all necessary action of Applicant's governing body, and that the undersigned is authorized to make this application on behalf of the Participating Entity.

Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Complete and sign addendum. Fax to 1-207-253-1328.**

FOR OFFICE USE ONLY	Oppty Number	Sales Code	Plastic Type	Coupon Code YBA	Account Number 04
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## **WEX ONLINE CLICK-THROUGH TERMS AND CONDITIONS**

### **1. General**

WEX Inc., the parent company of Contractor ("WEX") provides this web site subject to the following terms of use ("Terms"). WEX owns and operates this site. Any Purchasing Entity's continued use of this website constitutes its acceptance of these Terms.

### **2. Purpose of the Website**

The goal of the web site is to provide Any Purchasing Entity with access to information about WEX products and services, and certain functionality with respect to the Business Charge Accounts under or any Purchasing Entity's program. Continued use of the site constitutes the Purchasing Entity's acceptance of these terms and conditions.

### **3. Trademarks, Service Marks and Copyrighted Materials**

WEX controls and operates the website. All content on the website, including, but not limited to, text, photographs, images, illustrations, audio clips, and video clips, is protected by copyrights, trademarks, service marks, and/or other intellectual property rights (which are governed by United States and worldwide copyright laws and treaty provisions, privacy and publicity laws, and communication regulations and statutes). The content is owned and controlled by WEX, its affiliates, or by third party content providers, merchants, sponsors and licensors (collectively the "Providers") that have licensed their content or the right to market their products and/or services to users of this site using this site. Purchasing Entity agrees to abide by all additional copyright notices, information, or restrictions contained in any content that is presented on this site.

Purchasing Entity's may not use any registered or unregistered trademarks, service marks or copyrighted materials appearing on the website, including but not limited to any logos or characters, without the express written consent of the owner of the mark or copyright. Purchasing Entity may not frame, deep link, or otherwise incorporate into another website any of the content or other materials on this website without WEX's express prior written consent.

Violation of trademark and copyright laws may result in significant civil liability or criminal penalties under United States and/or worldwide copyright and trademark laws. Purchasing Entity recognizes that any reproduction or use of content, except as authorized by these Terms, is considered intentional infringement.

### **4. Use of the Site**

Purchasing Entity is are accessing this site using the Internet and Purchasing Entity's Internet service provider. Security cannot be guaranteed. WEX hereby disclaims all liability for any security breaches of online communications or for any electronic, computer or other system failures. WEX shall not be liable to any person for loss, liability or damages, including consequential or special damages, arising as a result of any security breaches or system failures or any other defect of the electronic online communication procedures, including, without limitation, loss due to data modification or destruction.

Purchasing Entity agrees not to use this site for any purpose except (a) access to descriptions of WEX products and services and (b) to the extent agreed with WEX, certain specified functionality with respect to the Business Charge Accounts under Purchasing Entity's program. In using this site Purchasing Entity' agrees not to disrupt or interfere with the site, its services, system resources, nor to upload, post or otherwise transmit any viruses or other harmful, disruptive, inappropriate, illegal or destructive files. Purchasing Entity' also agrees not to use, attempt to use, or access other accounts,

or create or use a false identity on the site.

For the avoidance of doubt, the indemnification provisions set forth above are in addition to those set forth in (i) for Fleet Customers, their Business Charge Account agreement(s) and/or terms and conditions and (ii) for Partners, their Program Agreement(s).

WEX reserves the right to terminate or suspend access to wexinc.com, in whole or in part, at any time, without notice.

This site and the information provided on this site is provided "AS IS" without any representation or warranty, express or implied, of any kind, including, but not limited to, warranties of merchantability, noninfringement, or fitness for a particular purpose. WEX, its subsidiaries and affiliates, make no warranty that use of the site or the materials will be uninterrupted, timely, secure, or error free or that defects, if any will be corrected and WEX assumes no responsibility for any damages that may be suffered by any Purchasing Entity, including, but not limited to, losses from delays, nondelivery of content or any communications, errors, system down time, network or system outages, file corruption or service interruptions.

#### **5. Governing Law**

WEX Inc. operates this website (excluding linked sites) from our offices within the state of Maine. The website can be accessed from all 50 states, as well as from other countries around the world. These Terms and Purchasing Entity's use of the web site shall be governed by the laws of the State of Washington, without regard to conflict of laws provisions and shall not be governed by the United Nations Convention on the International Sale of Goods. WEX makes no representation that materials on this web site are appropriate or available for use in other locations, and accessing them from territories where the content is illegal is prohibited. Customers who choose to access this web site from other locations do so at their own risk and are responsible for compliance with local laws, including laws regarding the transmission of technical data exported from the United States or the country in which the user resides.

#### **6. Questions**

For questions concerning these terms or the products described online please call the following number: 1-800-492-0669, or send inquiries to: WEX Inc., P.O. Box 639, Portland, ME 04104.

### TAX EXEMPTION AND REPORTING PROGRAM

The WEX Tax Exemption and Reporting Program can significantly reduce accounting and administrative time for qualified fleets exempt from motor fuel excise taxes or certain sales taxes — at Federal, state, county or local levels.

Benefits include:

- Net billing of federal excise tax on applicable fuel purchases at any location.
- Net billing of state, local, county and special tax on applicable fuel purchases at participating merchant brands based on local tax laws.
- Detailed reporting of the purchase data and tax exemption.

Exemptions are dependent upon several factors, such as the Purchasing Entity's tax-exempt status for fuel purchases, the taxing jurisdiction's laws, regulations and requirements, and for most state, county and local taxes, require merchant participation. In the event that a transaction cannot be billed "net of tax", a Purchasing Entity will receive detailed reporting showing the full purchase price and the tax paid.

**Before WEX can start billing a Purchasing Entity net of applicable taxes on fuel transactions based upon their eligibility, they will need to complete the following required documentation:**

1. Tax Exemption and Reporting Program Enrollment form (enclosed)
2. Certificate of Buyer of Taxable Fuel form for federal exemptions (enclosed)
3. Any required State forms – obtain these from the appropriate state governing body.

Please review the enclosed Frequently Asked Questions sheet for helpful information on the program.

**IMPORTANT: Purchasing Entities must fill out all forms completely and accurately in order to avoid delays in their program enrollment, so please follow the instructions on the enrollment form carefully.**

IRS regulations require that WEX Inc. obtain from a Purchasing Entity, their certification that they are eligible to receive exemptions from federal excise taxes. For all other taxing jurisdictions (state, county, local) a Purchasing Entity may need to submit similar certifications as required by the different taxing jurisdictions. The state certifications may, in most cases, be obtained from the appropriate state's tax department. WEX must have all applicable documents on file prior to providing a Purchasing Entity with exemptions. It is the customer's responsibility to make sure WEX has all of the necessary current forms properly filled out in order to be billed "net of tax".

If a Purchasing Entity has any questions about the program or the enclosed materials, please call WEX at **1-866-841-3542**.

## TAX EXEMPTION & REPORTING PROGRAM FREQUENTLY ASKED QUESTIONS

**Q: If my fleet begins fueling before I have provided all necessary tax exemption paperwork, what will occur?**

WEX will not be able to bill a Purchasing Entity net of taxes or report tax exemptions until WEX has received all necessary forms and completed the qualification and setup process.

**Q: When will taxes begin to be exempted?**

Once WEX receive all the properly completed forms, WEX will complete the tax exemption setup in approximately 3 business days. WEX will then begin calculating applicable exemptions. It is a Purchasing Entity's responsibility to notify WEX of any errors or omissions that they feel may have occurred. If a Purchasing Entity notices any problems, contact the WEX tax department at 1-866-841-3542.

**Q: How can a Purchasing Entity determine their fleet's tax-exempt status for fuel, as well as what type of forms they need?**

Purchasing Entities should contact their local Department of Revenue for free help and answers regarding their tax-exempt status for fuel and necessary forms. This agency can best assist a Purchasing Entity with questions of this nature.

**Q: Will a Purchasing Entity's fleet be exempted from federal fuels excise taxes?**

Yes, if the Purchasing Entity is a qualified entity. Federal law effective January 1, 2006 allows a card issuer to invoice qualified fleets net of federal gasoline and federal diesel excise tax for transactions that occur wherever cards are accepted in all 50 states. In order to be exempted from federal fuels excise taxes, a Purchasing Entity will need to complete a Certificate of Buyer of Taxable Fuel in the name of the card issuer.

**Q: Does Purchasing Entity's tax-exempt status apply in all states and localities?**

The local Department of Revenue, in each state that a Purchasing Entity's fleet will be fueling, will be able to help determine exemption eligibility for each state and locality respectively.

**Q: Will a Purchasing Entity receive state and local exemptions anywhere they can fuel with the card?**

Not necessarily. Merchant brand participation in the WEX tax program is optional in most states. Merchant participation is not necessary in the following states: Maine, Georgia, Michigan, North Carolina, Alabama, New York and New Jersey.

**Q: What should a Purchasing Entity do if their tax-exempt status changes?**

The Purchasing Entity should immediately notify WEX by calling the WEX Inc. Tax Exempt Department at 1-866-841-3542.

**Q: Do any of these forms expire and if so will a Purchasing Entity be notified prior to the expiration?**

Yes. Federal forms expire every 24 months and certain state forms expire as well. Starting at 120 days prior to the expiration of a Purchasing Entity's tax exemption form(s), WEX will send the Purchasing Entity three monthly reminders that renewed forms are required. If WEX has not received renewed tax exemption forms by the expiration date, the tax exemption process will cease until WEX receives the necessary paperwork and no credits will be given.

**Q: Will a Purchasing Entity's fleet be exempted from taxes on non-fuel products?**

The Tax Exemption Program provides applicable tax exemption and reporting for **motor fuel taxes only**; however, merchants may provide WEX with non-fuel transaction data net of tax on a fleet-by-fleet basis at their discretion. The fleet will need to supply the merchant with proper documentation of their tax-exempt status at the point of sale for this to occur.

**Q: What if a Purchasing Entity's fleet is entitled to a refund for motor fuel taxes that cannot be exempted up front through the WEX program?**

In these instances, the "non-exemptible" tax is reported (not exempted) on the Purchasing Entity's fleet report. These reported taxes appear at the transaction level and at a summary level, providing them with supporting documentation, which can help them when filing for a refund of the non-exempted taxes.

**Q: What types of tax information reporting will a Purchasing Entity receive?**

At the transaction level, a fleet report will provide Gross Cost, Exempted Amount, Net Cost and Reported Taxes (for non-applicable taxes). Additionally, a Tax Exemption Summary will provide a detailed list of all taxes exempted, sorted by state and by tax type. Finally, a Tax Reported Summary will provide a detailed list of all taxes reported, sorted by state and by tax type.

**Q: How does a Purchasing Entity know how many forms to send in?**

If a Purchasing Entity qualifies for Federal exemptions, they need to send in one form per account or one form with a letter certifying all accounts belong to the same FEIN. If a new account is added in the future, a new form or amended certification letter will need to be sent. For state exemptions, each state is different and will be addressed on an individual basis.

**Q: What if a Purchasing Entity believes there is an error with their exemptions?**

The Purchasing Entity must notify WEX in writing within sixty (60) days of the billing date of the alleged error. WEX requests that the customer provide as many details regarding the error as possible including, but not limited to: transaction date and time, dollar amount and reason for alleging an error.

**CERTIFICATE OF BUYER OF TAXABLE FUEL FOR USE BY A STATE OR NONPROFIT EDUCATIONAL ORGANIZATION**

(To support credit card issuer's claim for a credit, refund, or payment under § 6416(a) (4) (B) or § 6427(l) (6) (D) of the Internal Revenue Code.)

**WEX Account Number (if known):**

**Federal Tax Identification Number:**

**Certification:**

The undersigned hereby certifies under penalties of perjury that I am the (Title of Officer):

\_\_\_\_\_

Of (Certifying Entity): \_\_\_\_\_

Entity Physical Address: \_\_\_\_\_

Entity Phone Number: \_\_\_\_\_

And that I am authorized to execute this certificate and that all purchases, are, or will be, purchased using a credit card issued by

(Credit Card Issuer): WEX BANK  
7090 Union Park Center, Suite 350  
Midvale, UT 84047

Buyer will use the taxable fuel to which this certificate relates for the exclusive use of: (check one)

- State government
- Local government
- Public nonprofit educational organization
- Private nonprofit educational organization
- American Red Cross or Blood Collection Center
- Indian Tribe
- Volunteer Fire/Rescue
- Foreign Diplomat (they must provide a copy of their PID Card)

and it applies to all exempt purchases of gasoline and diesel fuel, if eligible, using charge cards issued by the Credit Card Issuer named above. Information including the nature and quantity of each purchase of gasoline and diesel fuel (the subject of this Certificate) are evidenced by periodic reports provided by WEX BANK, the above- named Credit Card Issuer.

Certification will be valid for twenty-four consecutive calendar months commencing upon completion and remittance of this Certificate. WEX Inc. may extend the certificate period upon its discretion for an additional period not to exceed four months.

I understand that by signing this certificate, I, as an authorized representative of the entity named above, give up our right to claim a credit or payment for the taxable fuel purchased with the credit card to which this Certificate relates. I understand that the exemption from tax, in this case of sales of articles under the exemption Certificate, is limited to the sale of articles purchased for our exclusive use. I understand that the fraudulent use of this Certificate for the purpose of securing this exemption will subject us, and all parties making such fraudulent use of this Certificate, to fines or imprisonment, or both, together with the costs of prosecution.

The parties agree that a signed transmission shall be considered valid for purposes of this certification and that the parties hereby waive any claim that a transmission does not satisfy the requirements of a signature or writing under applicable law.

Authorized Signature

Printed Signature

Title

Date

**Email or FAX completed forms to [TaxExemptForms@WEXINC.Com](mailto:TaxExemptForms@WEXINC.Com) or 1-207-523-7104**

<b>INTERNAL USE ONLY</b>	Sales Representative:	
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**TAX EXEMPTION & REPORTING ENROLLMENT FORM****Instructions:**

1. Complete part A and sign form at the bottom.
2. Attach FEDERAL Certificate of Buyer and STATE forms (see details below).
3. For questions on signing up for tax exemption and reporting, please call 1-866-841-3542 or email [GovTaxServices@WEXInc.com](mailto:GovTaxServices@WEXInc.com).
4. E mail completed forms to [TaxExemptForms@WEXInc.com](mailto:TaxExemptForms@WEXInc.com), fax to 1-207-5237104, or mail to Fleet Services, Tax Exempt Department, P.O. Box 639, Portland, ME 04104.
5. Retain the terms on page 2 for your records.

A. ACCOUNT INFORMATION	
Fleet Name:	WEX Account Number (if known):
Authorized Fleet Contact:	Phone No.:
Fleet Contact email:	Fax No.:
Federal Taxpayer ID Number:	
<p><b>IMPORTANT:</b> Eligibility may be limited based on applicable federal, state and local laws. Participating Entities must fill out these forms completely and accurately in order to avoid delays in their program enrollment, so please follow the instructions carefully.</p>	
B. MOTOR FUEL TAX	
<ul style="list-style-type: none"> <li>• Tax regulations require the Contractor to maintain current copies of the following <u>applicable forms</u>, based on the Participating Entity's eligibility:               <ol style="list-style-type: none"> <li>1. <b>Federal</b> — A Certificate of Buyer of Taxable Fuel in the name of WEX BANK (Included with this form.)</li> <li>2. <b>State</b> — Applicable state forms. <u>(Obtain these from the appropriate state governing body.)</u></li> </ol> </li> <li>• <b>Once the Contractor receives all of the Participating Entity's properly completed documentation the Contractor will complete the tax exemption set up on their account within approximately three business days and start billing them net of the Applicable Taxes.</b></li> </ul>	

The parties agree that a signed transmission shall be considered valid for purposes of this enrollment form and that the parties hereby waive any claim that a transmission does not satisfy the requirements of a signature or writing under applicable law.

X Authorized Fleet Signature

Date:

**USER (INTERNAL USE ONLY):**

The information contained in this message is intended only for the use of the individual or entity named above and may contain confidential information. If the recipient of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately at 1-800-492-0669 and return the original message to the attention of the sender at 97 Darling Avenue, South Portland, ME 04106.

## TAX EXEMPTION & REPORTING ENROLLMENT FORM

### C. TERMS AND CONDITIONS

This Tax Exemption and Reporting Enrollment Form modifies a Participating Entity's charge card agreement based on their participation in the Tax Exemption and Reporting Program ("Program"). Signature on this form and a Participating Entity's continued use of their account constitutes acceptance of these terms and conditions. All capitalized terms contained herein shall have the same meaning as in the Master Agreement with the Contractor unless otherwise expressly provided herein. Except as amended hereby, the charge card agreement governing your account remains in full force and effect.

#### TAX EXEMPTION AND REPORTING PROGRAM

- a. The tax exemption and reporting program (the "program") permits qualified tax-exempt Participating Entities to be billed net of certain "Applicable Taxes" (as defined herein and in Exhibit F). By completing this enrollment form the Participating Entity is electing to participate in the program. The Contractor will enroll a Participating Entity in the program upon receipt by Contractor of all of the Participating Entity's enrollment materials, including all required certificates, and validation of the Participating Entity's tax-exempt status. Upon completion of the Participating Entity's enrollment, their invoices will reflect the net amount due with a line item indicating total "Applicable Taxes" (as defined herein and in Exhibit F). The Participating Entity's reporting will provide a specific breakdown of Applicable Taxes deducted for each taxing authority or jurisdiction. Applicable Taxes are those federal, state, county and/or local taxes levied on the purchase of gasoline or diesel fuel for which the Participating Entity has provided the proper documentation to the Contractor showing their exempt status, and for which such documentation has been accepted by us and for which the Program provides exemption<sup>1</sup>.
- b. As the Participating Entity's credit card issuer, the Contractor has elected to provide Participating Entities with net billing of Federal excise taxes on fuel based upon the participation requirements in section (a) above. The Contractor will file a claim for refund with the Internal Revenue Service for these taxes. The Participating agrees that they may not file a claim for refund of any federal excise tax exempted by the Contractor and not billed to the Participating Entity by the Contractor.
- c. For state, county, special and local taxes, merchants have the option of electing to participate or not to participate in the Contractor's program based on their own preferences and ability to obtain refunds from state/local taxing authorities. Transactions that occur at merchant locations not participating in this program will be billed to Participating Entities with the tax included regardless of their exempt status. In these instances the Participating Entity's reporting will contain a detailed listing of their transactions and the taxes charged to them. This information may assist a Participating Entity in filing their own claims for refunds if they so desire. Participating Entities agree that they may not file a claim for refund of any state, county, special or local taxes exempted by a participating merchant and not billed to them by the Contractor.
- d. The tax certificates and other pertinent documentation on which a Participating Entity's exemption is based must be received by the Contractor from the Participating Entity in

order for the Contractor to provide the Participating Entity with net billing of any Applicable Taxes. These documents are required to be completed prior to any net billing of Applicable Taxes in order for the Contractor or a participating merchant to recover such exempted taxes from the applicable taxing jurisdiction. The Contractor shall have no responsibility to verify the correctness of the certificate supplied by a Participating Entity and shall be entitled to rely thereon in preparing the reports and tax exemptions until such time as the Contractor is notified by a Participating Entity in writing of a change in any such data. The Contractor reserve the right to terminate a Participating Entity's participation in the program, provided, however, that such termination shall not terminate the underlying Mater Agreement between the Participating Entity and the Contractor.

- e. The Contractor shall calculate tax exemptions based on Internal Revenue Service or other applicable taxing authority guidelines for transactions made by the Participating Entity. For state, county and local taxes, only those transactions agreed upon by the participating merchant shall be treated as tax exempt<sup>1</sup>. If the Contractor is obligated to reimburse a participating merchant for any actual loss incurred or rebill a Participating Entity for any taxes previously exempted (including refunds denied and assessments of previously made refunds and penalties) attributable to the provision of a tax exemption to them, they hereby agree to reimburse the Contractor for said losses incurred.
- f. For non-fuel transactions, merchants may provide transaction data to the Contractor net of tax at their sole discretion. Participating Entities would need to supply the merchant with proper documentation of their tax-exempt status at the point of sale. The merchant will send the transaction to the Contractor and the Contractor will bill the Participating Entity net of tax for those transactions. The Participating Entity will not receive reporting of taxes levied or exempted for non-fuel purchases.
- g. The Contractor shall comply with reasonable requests for information retrieval made by the Participating Entity.
- h. The Contractor cannot apply exemptions to transactions that occurred prior to the Contractor's receipt and acceptance of the Participating Entity's completed certificates.
- i. The Contractor shall use reasonable efforts to correctly calculate the amount of tax included in each account arising from a tax exempt sale. The Contractor shall recalculate taxes only in cases where the Contractor miscalculated the original taxable transaction.
- j. The Contractor disclaims all warranties in connection with tax-exempt reporting and invoicing and shall not be responsible for the accuracy or completeness of such reports. In no event shall the Contractor be responsible for loss, liability or damages, including consequential or special damages, costs and expenses, including taxes, penalties, interest and attorney's fees that arising as a result of any inaccurate or incomplete report which the Participating Entity may suffer or incur in connection with or arising out of the tax-exempt reporting/invoicing service offered hereunder.

**WEX FLEET CLEARVIEW ENROLLMENT PACKET**

1. Complete parts A and B.
2. Be sure to sign and date the form at the bottom.
3. Email to the Purchasing Entity's WEX Relationship Manager, (Fill in name and email address)

A. ACCOUNT INFORMATION	
<b>Company Name:</b>	<b>Account Number:</b>
Authorized Fleet Contact Name:	
Fleet Contact Phone Number:	Fleet Contact Fax Number:
Authorized Fleet Contact Email:	
B. SERVICE OPTIONS	
<ol style="list-style-type: none"> <li>1. Please choose the ClearView product Purchasing Entity plans to enroll in at this time:               <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>ClearView Essentials</b> — Volume &amp; Spend, Exceptions, Reports, Community, and Admin modules, Driver and Vehicle Detail, product code and odometer cleansing algorithms, and VIN decoding.</li> <li><input type="checkbox"/> <b>ClearView Advanced</b> — Includes Essentials services plus additional functionality such as Fuel Price Explorer, Cost Outliers, Driver Fuel Purchasing Analysis, Driver Messaging, and Campaign Management and Tracking.</li> </ul> </li> <li>2. ClearView Essentials and ClearView Advanced customers can elect to enroll in ClearView Snap for free by checking the box below:               <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>ClearView Snap</b> — Key purchasing information and analysis displayed in visual dashboards delivered automatically by email on a weekly and/or monthly basis. Instant voice command access and accompanying visuals using Snap's Alexa Skill.</li> </ul> </li> </ol>	
C. FEES	
<p>WEX shall charge the following fee based on the Purchasing Entity's product election above:</p> <ul style="list-style-type: none"> <li>(i) ClearView Essentials and ClearView Snap: \$0.00 per month</li> <li>(ii) ClearView Advanced: \$0.25 per active card per month.</li> </ul> <p>(Active card is defined as a card that is in active status vs. suspended or terminated status).</p> <p>WEX reserves the right to change fees with prior written notice.</p> <p>The ClearView program term will coincide with the Purchasing Entity's card program contract term.</p>	

By signing this form, the purchasing Entity agrees to the ClearView (and, if applicable, ClearView Snap) Terms of Use, which supplement the terms of the Purchasing Entity's credit agreement, included herein. The Purchasing Entity further represent that they are authorized to sign on behalf of their company.

**X Authorized Fleet Contact Signature**

Date:

Print Name:

Title:

Please read the terms on the following pages carefully before using this product.

### WEX FLEET CLEARVIEW™ TERMS OF USE

1. **General:** WEX Inc. ("we," "us" and "our") will provide the ClearView platform ("CV") to the Purchasing Entity named in this Enrollment Form (also known as "you", and "your") subject to the following terms of use (the "Terms"). These Terms supplement the general terms of use for our online products as well as your credit agreement with WEX Bank or an approved WEX Issuer and may be used by you only for the purposes set forth in these Terms. You agree to abide by the Terms which shall be applicable to you upon your completion of this Enrollment Form. If you have any questions, please call our Customer Service department at 1-800-492-0669.
2. **Purpose of WEX Fleet ClearView:** The goal of CV is to allow you to perform data analysis for your Accounts (the "Purpose") through the use of this platform. You agree not to use CV for any purpose except to perform analysis on your Account data.
3. **Link and License:** You may access CV using the user login information we provide. We grant you a non-exclusive, non-transferable, limited right to log in and access CV. You agree not to purposefully interrupt or attempt to interrupt the operation of CV, its services or system resources in any way and you may not modify CV in any way nor upload, post or otherwise transmit any viruses or other harmful, disruptive, inappropriate, illegal or destructive files.
4. **Access and Security:** You will access CV using the Internet and your Internet service provider through portals provided by WEX and subject to the terms previously agreed to under your credit agreement with WEX Bank and any online terms previously agreed to for access to our products and features via our online portals.
5. **Important Disclosures:** The availability and effectiveness of portions of CV is dependent upon product codes that the merchant transmits to us. The product codes are assigned by each merchant, and as such, we are not responsible for inappropriate product code assignment, or any claims arising or damages resulting therefrom.

ClearView includes machine learning algorithms that cleanse erroneous data we receive from third parties. WEX assumes no responsibility for any damages that may be suffered by you due to the use of CV's correction algorithms, in particular but not limited to any subsequent tax filings that you may make using reporting features on CV. WEX does not recommend that you use CV to submit for any fuel tax exemption reimbursements as revenue agencies may not accept this as evidence of your purchase and may still require actual sales receipts. Machine learning algorithms delivered in CV are not integrated with any other WEX systems or reporting.

On occasion, we will make new products, modules, and functionality available to customers during a free trial, pilot, or beta test. We make no warranty that this new functionality will be error free or that defects, if any will be corrected, and we assume no responsibility for any damages that may be suffered by you due to the use of this functionality. Further, we reserve the right to alter and/or discontinue any new products, modules, and functionality that are offered as part of a free trial, pilot, or beta test.

CV works best with more current versions of internet browsers, such as Chrome and Firefox. Use of older browsers, more specifically Internet Explorer (IE), is not recommended and should not be used to access and use CV. We assume no responsibility for sub-optimal CV use that may result by using a non-recommended browser.

We will make an attempt to port in data from other programs and systems, such as customer-generated or third party data. We make no warranty that we will be able to successfully import non-WEX originated data into CV or that if successful this data will be error-free or that defects, if any, will

be corrected, and we assume no responsibility for any damages that may be suffered by you due to the use of this data.

Data, such as transactional data from a card swipe, could take up to 24-48 hours to load into CV.

6. **Modifications:** We reserve the right to modify, change or discontinue any aspect of CV and the products and services accessed via CV at any time upon 15 days prior written notice. We may also impose limits on certain features and services or restrict your access to parts or all of CV without liability.
7. **Versions: New Versions:** We may publish revised and/or new versions of both modules and documentation, such as the CV Quick Start Guides, from time to time ("New Version" or "New Versions").

**Effect of New Versions:** When a New Version is published and/or revised, we may modify the Terms applicable to the New Version. You may commence using the New Version once published and/or revised at your election. You will be required to agree to any additional terms of use for a New Version prior to using any New Versions.

**Retirement of Versions:** We may make CV product obsolescence and retirement decisions that maximize customer and marketplace benefits. We will notify you of such planned obsolescence and retirement decisions.

8. **Representations and Warranties:** CV is provided "AS IS" without any representation or warranty, express or implied, of any kind, including, but not limited to, warranties of merchantability, or fitness for a particular purpose. Notwithstanding the foregoing, we represent and warrant that to the best of our knowledge and belief: (i) the content developed by us available through CV: (a) does not and will not infringe any copyright, trademarks or trade secrets of any third party; and (b) does not and will not constitute a defamation or invasion of the rights of privacy or publicity of any kind of any third party, and (ii) CV does not violate the laws, statutes or regulations of any jurisdiction.
9. **Assignment:** You may not sell, assign, transfer or otherwise convey any of your rights or delegate any of your duties under these Terms without our prior written consent.
10. **Independent Parties:** Nothing in these Terms shall be deemed to constitute, create, give effect to, or otherwise recognize a partnership, joint venture or formal business entity of any kind or create a fiduciary or similar relationship between the parties not in existence prior to the effective date of these Terms; and the rights and obligations of the parties shall be limited to those expressly set forth herein.
11. **Questions:** For questions concerning these Terms, please call the following number: 1-800-492-0669, or send inquiries to: WEX Inc., 97 Darling Avenue, South Portland, ME 04106. Be sure to include your account number with all inquiries. For questions concerning CV, please email WEX at [support@wexclearview.com](mailto:support@wexclearview.com).

## ADDITIONAL CLEARVIEW™ PRIVACY ISSUES

### 1. Consumer Privacy Rules

The objective of this Privacy Policy is to provide you with a clear, concise and accurate statement of how WEX handles customer information. Please note that our products and services are intended to be used only for commercial and business purposes. As our products and services are not intended to be used for personal, family or household purposes, consumer privacy protection laws and regulations do not apply to our information handling practices for these programs. This Privacy Policy is not a statement of intent to be bound by or comply with such laws and regulations.

### 2. Security

WEX recognizes the importance of secure online interaction, and we utilize a number of methods to safeguard your transmissions. Our Website is hosted on secure servers with firewall protection. WEX uses Secure Socket Layer (SSL) encryption technology on our Website and information that is gathered is stored within secure databases protected by multiple firewalls. As effective as current encryption technology is, however, no security system is impenetrable. We cannot guarantee the security of our databases, nor can we guarantee that the information provided via our Website will not be intercepted while being transmitted to WEX over the Internet.

### 3. Children

WEX provides only business services and does not intend to collect or knowingly collect any information from or about children. It is possible that a child may impersonate a company representative and attempt to access or use this Website and, in so doing, provide the child's name, address, phone number, fax number, email address and other identifying information. When such information is received and WEX is aware that the individual providing the information is a child, the information is used only to reject the child's application and is immediately deleted by WEX. Such information is never shared with third parties. WEX cannot always determine if a visitor to its Website or the sender of an email is a child.

### 4. Cookies

Our Website makes use of a standard feature of browser software called a "cookie" to assign each visitor a unique, random number. A cookie is a file that identifies a computer as a unique user. Cookies may be used to facilitate your use of our Website, to maintain site security and to improve our Website. Most browsers are initially set up to accept cookies. You may be able to reset your browser to refuse all cookies or to indicate when a cookie is being sent. If cookies are disabled, however, our Website (and other Websites) may be harder to use. A cookie cannot read data stored on the hard drive of a computer.

### 5. Links to Other Websites

Our Website contains links to other sites whose information practices may be different than ours. If you click on a banner or other hyperlink, you may be transferred off of this Website. Our inclusion of hyperlinks to these websites does not imply any endorsement of the material on such web sites or associations with the operators of the websites. Our Privacy Policy does not extend to these sites or the internet. You should consult the other sites' privacy notices as WEX has no control over information that is submitted to, or collected by, these third parties and how that information is used.

**6. Security of your Data in Cloud-Based Storage**

ClearView uses cloud-based databases and employs a sophisticated firewall that protects from hackers and intruders attempting to gain access to your fleet data. As a protective measure, ClearView does NOT store full card numbers.

**7. Security of Your Data across the Internet**

A third layer of security is data encryption, or SSL, between the web server and your browser. Encryption helps prevent technically sophisticated individuals who have the desire, tools, and opportunity from intercepting your data as it travels over the Internet.

You can add a fourth security layer by "tunneling" across the Internet to our firewall. Tunneling requires installation of additional software and a fixed IP address, which may be acquired from your local systems

Technical questions and concerns relating to security should be directed to the WEX Inc. Webmaster at [webadmin@wexinc.com](mailto:webadmin@wexinc.com). For questions relating to usage, please email [support@wexclearview.com](mailto:support@wexclearview.com).