

STATE OF VERMONT  
CONTRACT AMENDMENT

It is hereby agreed by and between the State of Vermont, Office of Purchasing and Contracting (the "State") and Wright Express Inc, with a principal place of business in Salt Lake City, UT (the "Contractor") that the contract between them originally dated as of September 1, 2018, Contract # 36354, as amended to date, (the "Contract") is hereby amended as follows:

- I. **Contract Term.** Contract Term. The Contract end date, wherever such reference appears in the Contract, shall be changed from August 31, 2022 to August 31, 2024. The Contract Term may be renewed for two additional two-year periods at the discretion of the State.

**Taxes Due to the State.** Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

**Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs).** Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

**Certification Regarding Suspension or Debarment.** Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Contractor further certifies under pains and penalties of perjury that, as of the date this contract amendment is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing-contracting/debarment>

This document consists of 2 pages. Except as modified by this Amendment No. 2, all provisions of the Contract remain in full force and effect.

*[Remainder of Page Intentionally Left Blank]*

The signatures of the undersigned indicate that each has read and agrees to be bound by this Amendment to the Contract.

**STATE OF VERMONT**

**WRIGHT EXPRESS INC**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** Jennifer M.V. Fitch

**Name:** \_\_\_\_\_

**Title:** BGS Commissioner

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

STATE OF VERMONT  
CONTRACT AMENDMENT

It is hereby agreed by and between the State of Vermont, Office of Purchasing and Contracting (the "State") and WEX Bank f/k/a/, with a principal place of business in Salt Lake City, UT (the "Contractor") that the contract between them originally dated as of September 1, 2018, Contract # 36354, as amended to date, (the "Contract") is hereby amended as follows:

- I. **Attachment I - STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Non-Construction)** – Attachment I is hereby incorporated in its entirety into contract 36354

Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs). Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

Certification Regarding Suspension or Debarment. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Contractor further certifies under pains and penalties of perjury that, as of the date this contract amendment is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing-contracting/debarment>

State and Federal Terms for Products and Services related the 2020 Covid-19 Pandemic. Contractor agrees that "STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Non-Construction) for all Contracts and Purchases of Products and Services Connected with 2020 Pandemic," which is attached as Attachment \_\_\_ to this amendment, applies to any products or services provided to the State, at any time, in connection with the 2020 Pandemic.

This document consists of 1 page. Except as modified by this Amendment No. 1, all provisions of the Contract remain in full force and effect.

The signatures of the undersigned indicate that each has read and agrees to be bound by this Amendment to the Contract.

**STATE OF VERMONT**

**WEX bank f/k/a/**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

# **Attachment I**

## **STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Non-Construction)**

### **for all Contracts and Purchases<sup>1</sup>** **of Products and Services Connected with 2020 Pandemic**

#### **BYRD ANTI-LOBBYING AMENDMENT**

Contractors who apply or bid for an award of \$100,000 or more certify that each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the recipient who in turn will forward the certification(s) to the awarding agency

#### **PROCUREMENT OF RECOVERED MATERIALS**

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated Items unless the products cannot be acquired-

1. Competitively within a time frame providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price

Information about this requirement, along with the list of EPA-designated items, is available at the EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of section 6002 of the Solid Waste Disposal Act.

#### **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
4. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
5. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
6. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA. **a.** Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

#### **CONTRACTOR BREACH, ERRORS AND OMISSIONS**

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<sup>1</sup> These terms, developed by the Vermont Attorney General's Office, are to be included, without any changes, in all contracts, and any amendments to contracts, intended or expected to be used in connection with the State of Vermont's response to the 2020 Pandemic. THESE TERMS ARE ALSO TO BE USED AND ADDED FOR **ANY TRANSACTIONS**, SUCH AS BUT NOT ONLY PURCHASE ORDERS, TAKING PLACE UNDER AN EXISTING CONTRACT, IF THE PURCHASE IS FOR THE PANDEMIC AND IF THERE IS ANY POTENTIAL DOUBT AS TO WHETHER THE OVERLYING CONTRACT HAS THESE TERMS. These terms and conditions shall also be added in instances in which a purchase without formal contract is otherwise duly authorized.

1. Any breach of the terms of this contract, or material errors and omissions in the work product of the contractor must be corrected by the contractor at no cost to the State, and a contractor may be liable for the State's costs and other damages resulting from errors or deficiencies in its performance.
2. Neither the States' review, approval or acceptance of nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract.
3. The rights and remedies of the State provided for under this contract are in addition to any other rights and remedies provided by law or elsewhere in the contract.

## **TERMINATION FOR CONVENIENCE**

### **1. General**

- a. Any termination for convenience shall be effected by delivery to the Contractor an Order of Termination specifying the termination is for the convenience of the Agency, the extent to which performance of work under the Contract is terminated, and the effective date of the termination, which date shall be at least thirty (30) days from the date of the Order of Termination in accordance with Section 7 of the Contract.
- b. In the event such termination occurs, without fault and for reasons beyond the control of the Contractor, all completed or partially completed items of work as of the date of termination will be paid for in accordance with the contract payment terms.
- c. No compensation will be allowed for items eliminated from the Contract.
- d. Termination of the Contract, or portion thereof, shall not relieve the Contractor of its contractual responsibilities for work completed and shall not relieve the Contractor's Surety of its obligation for and concerning any just claim arising out of the work performed.
- e. For the avoidance of doubt and notwithstanding the provisions of this Attachment I, the State remains subject to the terms of Attachment B – Payment Provisions.

### **2. Contractor Obligations**

After receipt of the Notice of Termination and except as otherwise directed by the State, the Contractor shall as soon as reasonably practical proceed to:

- a. To the extent specified in the Notice of Termination, stop work under the Contract on the date specified.
- b. Place no further orders or subcontracts for materials, services, and/or facilities except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
- c. Terminate and cancel any orders or subcontracts for related to the services, except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
- d. Transfer to the State all completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the State.
- e. Take other action as may be necessary or as directed by the State for the protection and preservation of the property related to the contract which is in the possession of the contractor and in which the State has or may acquire any interest.
- f. Make available to the State all cost and other records relevant to a determination of an equitable settlement.

### **3. Claim by Contractor**

After receipt of the Notice of Termination from the state, the Contractor shall submit any claim for additional costs not covered herein or elsewhere in the Contract within 60 days of the effective termination date, and not thereafter. Should the Contractor fail to submit a claim within the 60-day period, the State may, at its sole discretion, based on information available to it, determine what, if any, compensation is due the Contractor and pay the Contractor the determined amount.

#### 4. Negotiation

Negotiation to settle a timely claim shall be for the sole purpose of reaching a settlement equitable to both the Contractor and the State. Settlement shall be based on actual costs incurred by the Contractor, as reflected by the contract rates. Consequential damages, loss of overhead, loss of overhead contribution of any kind, and/or loss of anticipated profits on work not performed shall not be included in the Contractor's claim and will not be considered, allowed, or included as part of any settlement.

**STANDARD CONTRACT FOR SERVICES**

1. **Parties.** This is a contract for services between the **State of Vermont, Office of Purchasing & Contracting** (hereinafter called "State"), and **WEX Bank**, a corporation with a principal place of business in Midvale, UT 84047, (hereinafter called "Contractor") and WEX Inc., a corporation with a principle place of business in Midvale, UT. WEX Bank and WEX Inc. are jointly referred to herein as "Contractor Parties". It is the responsibility of each of the Contractor Parties to contact the Vermont Department of Taxes to determine if, by law, Contractor Parties are required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of Universal Fuel Card services. Detailed services and products to be provided by Contractor Parties are described in Attachment A. Contractor Parties acknowledge and agree that each is bound by the terms of Attachment C and Attachment D included in this Contract.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor Parties, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$42,000,000.00.

4. **Contract Term.** The period of Contractor Parties' performance shall begin on **September 1, 2018** and end on **August 31, 2022**, with the State having up to three renewal options and each such renewal may extend the Term for an additional two years.

5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor Parties.

7. **Termination for Convenience.** This Contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this Contract for all services provided to and accepted by the State prior to the effective date of termination.

8. **Attachments.** This Contract consists of 47 pages including the following attachments which are incorporated herein:

Attachment A - Statement of Work

Attachment B - Payment Provisions

Attachment C – "Standard State Provisions for Contracts and Grants" a preprinted form (revision date 12/15/2017)

Attachment D - Information Technology System Implementation Terms & Conditions

Attachment E: WEX Fleet Card Terms and Conditions



Attachment F: Addendum to the Fuel Card Services Agreement between WEX Bank and the State of Vermont

Attachment G: Telematics Terms and Conditions

Attachment H: Clearview enrollment form and terms and conditions

9. ***Order of Precedence.*** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment D - Information Technology System Implementation Terms & Conditions
- (3) Attachment C (Standard State Provisions for Contracts and Grants)
- (4) Attachment A Statement of Work
- (5) Attachment B Payment Provisions
- (6) Attachment E WEX Fleet Card Terms and Conditions
- (7) Attachment F Addendum to the Fuel Card Services Agreement between WEX Bank and the State of Vermont
- (8) Attachment G Telematics Terms and Conditions
- (9) Attachment H Clearview enrollment form and terms and conditions

**WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT**

By the State of Vermont:

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

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

By WEX Bank:

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

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

By WEX Inc.:

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

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

**ATTACHMENT A – STATEMENT OF WORK**

WEX Bank, referred to hereafter in this Attachment A as Contractor shall provide a universal fleet card service and card management system to State of Vermont Agencies and Political Subdivisions located within Vermont.

Vermont state colleges: this contract is also available for use by the University of Vermont and the Vermont State Colleges Inc., a separate corporation, having under its jurisdiction Castleton State College, Johnson State College, Lyndon State College, Community College of Vermont, and the Vermont Technical College.

Towns and schools of the state of Vermont: at the Contractor's election, Political Subdivisions and Independent Colleges of the State may participate in State contracts at the same prices, terms and conditions. Items furnished to Political Subdivisions and Independent Colleges will be billed directly to and paid for by the Political Subdivisions or Independent Colleges and neither the State nor its Commissioner of Buildings and General Services personally or officially assumes any responsibility for these payments.

**Definitions:**

WEX Fleet Card – Universal fleet credit card

WEX Telematics: premium GPS tracking solution powered by GPS Insight devices

WEXOnline: Web based fleet manager portal used for card specific reporting purposes

WEXLink: an electronic file that provides customers with transaction data on a daily, weekly or monthly basis via the internet (i.e. FTP).

Virtual Purchase Log: web-based interface that allows fleet-designated staff to securely log in to WEX's MasterCard® settlement website and enter pertinent Level III data associated with a transaction (or invoice). Used to facilitate payments to merchants that accept MasterCard.

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

WEX Roadside: a free benefit of the WEX Fleet Card; there are no sign-up or membership fees. WEX account users pay for WEX Roadside on a per-use basis for access to essential services such as towing, winching, tire change and repair, fluid delivery, jumpstarts, and lockout service.

WEX Fleet Clearview: data visualization and analytics tool.

Basis Point (bps): one hundredth of one percent

Monthly Gallons: all gallons of fuel purchased using Cards at retail locations that appear on invoices provided to customer during a calendar month. Fuel purchased at Tier 1 Truck Stop locations (currently Flying J, Loves, TA, Petro, and Pilot) are excluded from the Monthly Gallon amount.

Monthly Retail Transactions: the total amount of all purchases made using Cards at retail locations that appear on invoices provided to customer in a calendar month. Monthly Retail Transactions shall not include: (i) those amounts representing credits, disputed items, fees, late fees or charges posted to your 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.

**1. DETAILED REQUIREMENTS/OUTCOMES:****1.1. Card Services**

Contractor shall provide a secure, universal fuel card honored nationwide and in Canada, including a sufficient number of retailers located within Vermont, while meeting the transactional data capture/reporting requirements detailed below.

**1.2. Accounts**

Contractor must create a master account for the State with a minimum of five (5) sub-accounts for each subordinate department, division, subdivision, or location-specific hierarchical organization for viewing, reporting, invoicing, and administration as designated by the State.

Contractor must create dynamic application filtering between hierarchical organizations and robust user administration to ensure user roles or application permissions can be adjusted by State designees.

Contractor shall upon request, create a separate account for cards that have limited access and is outside of the other state account, used by confidential positions.

**1.3. Data Integration**

Contractor's Universal Fuel Card shall fully integrate with State of Vermont's fleet management program (Currently Assetworks M5 Version 17.0.1) for daily meter updates, billing processes, lifecycle maintenance reporting, and vehicle odometer reporting.

Contractor's Universal Fuel Card must fully integrate with the WEX Telematics systems.

**1.4. Fuel Card Assignments and Delivery**

Contractor shall furnish a secure fuel card for each vehicle, ancillary equipment, or in some cases to an assigned location or individual driver.

Cards shall accommodate client-defined data fields to include a combination of vehicle/equipment type, location, assigned unit, etc. as designated by the State.

Contractor shall provide color-differentiated plastic card stocks to easily separate vehicle from equipment cards, and a nondescript card for use by confidential positions.

Cards shall be valid for a minimum of two years from date of issuance with all cards set to expire concurrently at the hierarchical organization level.

Contractor shall deliver secure, fuel credit cards on contract within 5 business days after receipt of order. Contractor shall provide the option for overnight shipping to an alternate address provided by an authorized State designee at designee's expense. Charge shall vary depending on delivery location.

Contractor shall replace expired cards with new cards, to be delivered at least 90 days prior to their date of expiration.

**1.5. Personal Identification Number (PIN)**

Contractor shall administer personal identification numbers (PIN) for each driver which allows the State to assign a unique 6-digit PIN or, if the State elects, the Contractor shall assign each driver a random, unique 6-digit PIN. The PIN must be captured at the point of sale and validated by the Contractor as an authorized entry (valid and active) prior to authorizing the sale. Contractor shall perform mass updates to disable access of terminated drivers and enable access for new hires within 24 hours of receiving the Microsoft Excel file from the State (typically on a weekly basis). Contractor shall also allow the State to perform on-line updates to driver statuses including adding and terminating drivers.

**1.6. Fuel Card Program Management and Reporting System**

Contractor shall provide their own Web-Based Fuel Card Program Management and Reporting System (WEXOnline) for real-time transaction reporting that allows State designees to conduct fuel card management and data query activities. This includes accessing real-time card authorizations and declines including the reason for decline; reporting lost or stolen fuel cards; ordering new or replacement fuel cards; information updating and reporting; adding, reassigning and terminating drivers/PINs, adding, modifying and removing vehicle information, and fuel cards.

Contractor shall provide at a minimum but not limited to; real-time exception reporting based on user-selected criteria such as but not limited to odometer, transactional, fuel quantity, fuel expenditure, and fuel type or grade thresholds or selections.

Contractor shall provide at a minimum but not limited to; standardized and customizable reports, accessible by State authorized users based on role-based permissions 24/7 with minimal downtime (99.9% uptime), through the contractor's Web-Based Fuel Card Program Management and Reporting System as a Software as a Service (SaaS).

Contractor shall submit quarterly transaction reports to the Purchasing Agent pursuant to the schedule below. Each report must contain the following information: contract number; using department's address, contact name, and telephone number; product ordered; quantity ordered; quantity shipped; and price charged, with totals for each product for each reporting period. State reserves the right to request additional information or to modify the reporting periods.

Reporting periods: quarterly reports must be submitted in accordance with the following schedule:

Reporting period: July 1 to September 30 - report due October 15

Reporting period: October 1 to December 31 - report due January 15

Reporting period: January 1 to March 31 - report due April 15

Reporting period: April 1, to June 30 - report due July 15

**1.7. Web browser/portal**

Contractor shall only require internet browser software for user access to the Solution. All web sites developed for customers such as the State of Vermont to access their information via the online solution shall be developed using technology that is compatible with all popular, modern Web browsers.

- a) Popularity of browsers must be tracked via Web server logs, or some other utility, to identify browser and platform trends.
- b) New Web designs must be tested for multiple browsers, operating systems, and versions (including backward compatibility) based on intended audience.
- c) The solution must, at a minimum, also be compatible with computers that utilize Microsoft Windows 7 and up and the latest MAC Operating System.
- d) Complete fuel card management, detailed and customized reporting services, and personalized profiles that puts customer in control of fuel cost. Contractor shall provide these features, easily accessible from any Web browser and shall not require any additional software to be installed on state's computer.
- e) Transactional data reports shall include: account number, account name, card number, amount of the expenditure, the identity of the driver or operator with last name and assigned PIN, the vehicle identity including license plate and unit number, the odometer or hour meter, fuel type (unleaded, diesel, ethanol/E-85), fuel grade or composition (regular unleaded, mid-grade unleaded, premium unleaded, biodiesel B-5, and biodiesel B-20), quantity dispensed in gallons, transaction date and

time, product or service type and description with quantity purchased (non-fuel products), and identity of the fuel provider including physical address.

- f) Contractor shall identify potential bad odometer entries (unexpected mileage based on past entries and fuel purchases).
- g) Contractor shall provide reports that are mathematically correct to six decimal places. Rounding individual costs and/or other totals are not acceptable.
- h) Contractor shall provide a mobile-friendly online application for drivers that identifies the name, physical address, telephone number, and hours of operations for each participating fuel card program authorized retailer within a reasonable travel radius. The application must be searchable by single or multiple data points, e.g. city and state, zip code, or distance from a zip code input.
- i) All reports must be exportable into PDF, XLS, CSV and DAT file formats.

#### **1.8. Virtual Card Payments**

Contractor shall provide a virtual payment product (Purchase Log) that randomly generates a Mastercard credit card number with the ability for the authorized State designee to establish a maximum charge limit and set the card to expire in one (1) day to up to ninety (90) calendar days. Contractor shall provide a Web-Based Payment Processing and Reporting System that provides standard and customizable user-defined fields.

#### **1.9. WEXPay**

Contractor's solution shall include 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.

#### **1.10. WEX Fleet Clearview**

Contractor's solution shall include use of WEX Fleet Clearview in accordance with the terms set forth in Attachment H to this Contract. WEX Fleet Clearview is a cloud-based analytics solution that automatically organizes, interprets and intuitively displays fleet related information on fuel card use.

#### **1.11. WEX Roadside**

Contractor shall provide national roadside assistance that is available 24 hours a day, 7 days a week via a toll-free number. The roadside assistance provider shall have an authentication process that requires a valid driver PIN. The cost of the service shall be billed to the applicable fuel card, with no out-of-pocket expense for the driver.

Roadside assistance: 1-866-329-3471 toll free

#### **1.12. Training and Support**

Contractor shall provide on-site user training in Vermont, free of charge as required to demonstrate a functional understanding of the Web-Based Fuel Card Program Management and Reporting System to new users including, but not limited to, utilization of reports, data analysis of operating costs, and cost trends, at no additional cost. No more than four (4) half-day visits shall be required annually.

Contractor shall participate upon request, with 30-days advanced notice, at training events located in Vermont to educate drivers on program requirements at no additional cost to the state. No more than two full-day visits shall be required annually.

Contractor shall maintain a toll-free customer support telephone number, staffed 24/7, 365 days a year. Toll-free telephone number shall be printed on the fuel credit card and accessible to all drivers assigned a valid PIN. At minimum, the customer service line shall provide instruction regarding: card usage, information regarding location of a fuel site, fraudulent usage reporting, and reporting lost or stolen cards.

Contractor shall provide a dedicated Customer Relations Manager with a minimum of two (2) years of current experience in managing large card programs and must have management responsibility for program quality and meeting time frames. The Customer Relations Manager must maintain current knowledge of the program's status, be accessible to State program management, and have sufficient authority to act independently to resolve quality related issues at the program level.

Contractor shall provide a customer service representative that is expected to provide day-to-day operations and interactions that may occur between the State and the Contractor. Areas of knowledge should include billing, card issuance, card controls, denials disputes, and reporting. The customer service representative must be available in person, online or by phone during normal business hours of 8:00 AM – 4:30 PM EST.

### **1.13. Fraud Controls and Monitoring**

Contractor agrees that State and Participating Entities shall only be liable for the use of their cards on purchases that are authorized transactions. Authorized transactions are defined as purchases which meet the following requirements:

Where the State and Participating Entity authorized the employee as a card user;

Within cardholder setup limits and restrictions specified by the State and Participating Entity and such controls functioned in accordance with the specifications and limitations provided in writing to the State and Participating Entity;

The State and Participating Entity receives the product, commodity, service, etc.

The use of the purchase card outside of this definition is defined as an unauthorized transaction and is outside the scope of State and Participating Entity liability.

State and Participating Entities shall report lost or stolen cards and stolen cardholder account numbers immediately by calling **1-800-492-0669**. The Contractor shall report to the Cardholder and the Agency Program Administrator reported fraud transactions and the resulting credit issuance or payment due determinations through immediate system generated letters and within monthly management information reporting.

### **1.14. Security and Confidentiality**

Contractor shall provide and maintain an appropriate information security program to prevent the unauthorized disclosure, misuse, alteration, or destruction of confidential information including, but not limited to:

- a) Cards
- b) Account numbers
- c) Passwords
- d) Personal Identification numbers

### **1.15. Transactions**

Contractor shall provide fraud protection/program screening coverage for the following types of occurrences including, but not limited to:

- a) Lost/Stolen Cards
- b) Counterfeit Cards
- c) Skimmed Cards



- d) Unauthorized Internet Transactions
- e) Merchant Disputes
- f) Fraud Patterns
- g) Communication with cardholder/program administrators

#### **1.16. Disputed Transactions**

Contractor transaction dispute process is outlined below:

1. A customer must notify Contractor in writing of a disputed transaction within sixty (60) days of the billing date of said transaction. Contractor requests the customer to provide as many details regarding the transaction and the reason for dispute as possible, including, but not limited to the following: card number, driver identification number used, transaction date and time, transaction dollar amount, and reason for dispute. Additional information may be requested as necessary to facilitate the investigation.
2. The customer's written dispute is then forwarded to the applicable department for follow up and investigation. If the dispute involves an allegation of abuse or fraud, the dispute shall be handled by Contractor's Fraud Department and the dispute process may vary from the standards as outlined below depending on the nature and validity of the claim.
3. If the disputed transaction occurred inside the fueling location and required a signature from the cardholder, Contractor may request a copy of the sales draft from the merchant. As a result of the ticket request, the fleet customer shall receive a memo on their invoice noting that a transaction is in dispute.
4. Once the applicable merchant provides a copy of the sales draft, it shall be reviewed for compliance with the fleet program. If Contractor determines that the sale is valid in accordance with the program, the disputed charge balance shall be carried forward for payment and shall be subject to applicable late fees. Payment is expected during the next billing cycle. Copies of the sale draft are then forwarded to the customer for review.
5. If the transaction in question is determined to be a duplicate transaction, it is not necessary for Contractor to request a copy of the ticket from the merchant. After receiving the fleet's dispute in writing and confirming that the transaction is a duplicate, Contractor shall permanently credit the account within five (5) business days.
6. If the disputed transaction occurred at an automated facility, a copy of the sales draft would not be available as no signature is required and swipe of the card into the card reader establishes that the card was present at the time of sale. Unless evidence that the particular transaction is the result of a skimmed or compromised card, use of a Card and DIN and entry of the applicable sales data into the card system shall be considered evidence of the cardholder's agreement to pay for such purchases.
7. If a technical error occurred at an automated facility, Contractor shall perform an investigation into the dispute sale.
8. Upon conclusion of the investigation, Contractor shall communicate the outcome of the investigation to the fleet customer. If a credit for a disputed transaction is warranted, it shall be applied against the current billing period.

#### **1.17 Online Dispute Process**

Customers can use WEXOnline® to request ticket copies, initiate a transaction dispute on a single or multiple transaction(s), and maintain visibility until resolution.

Current rules about what types of transactions cannot be disputed (e.g., private site, transactions, aviation transactions, island card reader, etc.) still apply. Onscreen instructional text and error messaging shall be displayed if a transaction doesn't meet the dispute criteria.

Fraud-related dispute requests can be initiated within WEXOnline®, but due to their urgent nature, these disputes are immediately routed to the Contractor's Fraud Department for analysis and review. Given their sensitive disposition and circumstance, information about fraud-related disputes, including their status, shall not appear in WEXOnline®, and instead shall follow existing customer communication channels.

WEXPay™ transactions cannot be disputed online and must follow the process provided. Onscreen error messaging with a hyperlink to the dispute form shall appear if this type of transaction is selected.

### **Merchant requirements**

Contractor's accepting merchants have established security procedures to safeguard card sale data and cardholder information which may include but is not limited to the following:

1. Inspect pumps daily for signs of tampering, including unusual equipment near the card reader.
2. Secure dispensers with unique locks and apply security labels as required by local laws.
3. Install adequate lighting, especially above pumps not visible by inside employees.
4. Install security systems, including cameras for monitoring employee and customer behavior.
5. Implement fuel pump shut-off limits. If needed, Contractor can advise on recommended shut-off values.
6. Notify Contractor immediately in the event of a suspected breach or compromise

### **1.18. Product Codes**

Contractor shall work directly with the State to develop effective strategies to address product code errors with merchants.

### **1.19. Data Retention**

Historical data shall be accessible through the fuel card software for a minimum of 24 months. Historical data shall be made available upon request for 7 years and subsequently transferred to the state within 90 days in the event of a contractor change.

### **1.20. Telematics - Fleet Vehicle and Fuel Monitoring System**

WEX Inc. shall provide hardware, software and installation of a vehicle and fleet monitoring system to identify vehicle activity trends which impact fuel use and refueling activities which includes on-board monitoring hardware with telematics capabilities. System shall be a web-based program that requires no software installation to state computers and shall provide continual program updates at no charge through the web without service interruption. The system shall provide the state with administrative ability to add unlimited users. The system shall also allow for unlimited grouping hierarchy, unlimited geo-fences and landmarks, and methods to group vehicles outside of the normal grouping hierarchy.

Hardware/device shall include a Driver RFID FOB to be assigned to each driver and an audible alarm to be installed within the vehicle. The Driver RFID FOB shall be required to deactivate an audible alarm within the vehicle, and the driver's identity recorded in the reporting system.

Devices shall support an optional panic button alert system which integrates with the telematics hardware that the user may push to send a text alert to up to 2 phone numbers or email addresses plus an automatic confirmation text to the driver. The panic button shall operate using the same telematics cellular service and be operable outside of the vehicle at minimum distance of 90 feet.

The WEX Telematics software system shall be web-based and compatible with Contractor's Web-Based Fuel Card Program Management and Reporting System, or a standalone web-based system, that is able to automatically mine data from both the telematics and fuel card transactions.

The telematic system is a model GPSI-3900E, appropriate for heavy-duty vehicles, with external antenna.

The Telematics system shall be able to quantify vehicle performance, identify trends, anomalies, and outliers, and provide:

- a) Vehicle and fueling metrics and analysis, including:
  - I. Real-time odometer reporting
  - II. Vehicle location
  - III. Fueling location
  - IV. Fuel tank level (when available)
  - V. Off-hour fueling
  - VI. Idling time
  - VII. Fuel economy reporting
  - VIII. Aggregated fuel volume and spend
  - IX. Per unit volume and spend
  - X. Fuel cost per gallon per transaction
  - XI. Fuel spend and consumption for a user-specified period of time
- b) Real-time detailed reporting and alerts, including:
  - I. Trips Taken
  - II. Miles Driven
  - III. Miles Per Trip
  - IV. Location of Vehicle
  - V. Geo-Fence Alerts and Reporting
  - VI. Definable Idle Time and Operating Time Thresholds
  - VII. Unit Power Loss
  - VIII. Vehicle Sensors
  - IX. Fuel Usage and MPG by Make, Model, Agency, Year
  - X. Odometer Readings and Engine Hours
  - XI. Greenhouse Gas Emissions
  - XII. Vehicle Utilization and Fuel Activity
  - XIII. Preventive Maintenance Tracking and Scheduling based on vehicle manufacturer's specifications.
- c) Active diagnostic codes, engine faults and detailed reporting and alerts, including:
  - I. Exhaust Gas Recirculation System (EGR), (when available)
  - II. Catalyst Comprehensive Component (when available)
  - III. Evaporative System (when available)
  - IV. Fuel System (when available)
  - V. Oxygen Sensors (when available)
  - VI. Secondary Air Systems (when available)
  - VII. Misfire (when available)
  - VIII. Emission Status (when available)
  - IX. Engine Speed (when available)
  - X. Coolant Temperature (when available)
  - XI. Intake Air Temperature (when available)
- d) Centralized state ownership and storage of data
- e) The ability to interface with the State of Vermont Asset Works Fleet Focus (M5) to collect/input the following data:
  - I. Daily Odometer readings
  - II. Engine fault codes
  - III. Fuel Purchases

IV. Track individual fuel performance by vehicle

f) Training and Customer Support

- g) The WEX Telematics Customer Service is available Monday through Friday, 8 am to 5 pm. For calls received prior to 8 am EST, and the SLA is 2 hours return for phone calls. For calls received after 5 pm EST, the SLA is 2 hours after start of day return for phone calls. WEX Telematics's customer service staff – all U.S.-based, fleet-trained professionals -- can be reached by phone and email.

Vendor Contact:

Janet Webb  
Government Relationship Manager  
Phone: 207-523-7332  
M: 207-749-6176  
Email: [Janet.webb@wexinc.com](mailto:Janet.webb@wexinc.com)

Dan Neuville  
Premium Fleet Services Account Manager  
Phone: 877-WEX-CARD – toll free  
Hours: 8:00 AM – 9:00 PM, EST

State of Vermont Contact:

Steve Smith  
Purchasing Agent  
Office of Purchasing & Contracting  
Phone: 802-828-4681  
Fax: 802-828-2222  
Email: [Steven.smith@Vermont.gov](mailto:Steven.smith@Vermont.gov)

**ATTACHMENT B – PAYMENT PROVISIONS**

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The Contractor Parties shall be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
  - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
  - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives invoice with all necessary and complete supporting documentation. For purposes of this Agreement, Contractor Parties shall consider the invoice received five (5) business days from the date it is generated by Contractor Parties.
3. Contractor Parties shall provide a monthly invoice to include at a minimum, all posted transactions through the last calendar day of the month. The invoice shall be issued within 7 calendar days from the billing cycle closing date. Contractor Parties shall provide the State the choice to receive invoices in paper format and mailed to the billing address on record, or electronically in PDF format and emailed to at least two designees or available to download from the Web-Based Fuel Card Program Management and Reporting System. Contractor Parties shall also submit detailed invoices itemizing all purchases posted during the invoice period, including the dates of the transaction, total transaction amount, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Contractor Parties shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted not more frequently than monthly.
5. Invoices shall be submitted to the State in accordance with the invoice address submitted by each ordering entity.
6. Payment options:

*a. Paper Check*

State can pay by check using the remit stub attached to the invoice. If customer needs to expedite payment, the overnight payment address is included on the back of the invoice.

*b. Online Payment*

State can choose to receive an email notification when its invoice is ready for online viewing and payment. Payments scheduled by 3:00 p.m. ET shall be credited to customer's account on the same day. Customers can pay from up to four different checking accounts.

*c. ACH*

Contractor Parties support customer initiated electronic payment through Automated Clearing House (ACH).

*d. Direct Debit/EFT*

The Direct Debit system is free. Customers can elect to receive a Prior Notification fax from Contractor on the morning of the scheduled debit, informing customer in advance of the amount to be initiated for debit from customer's demand deposit bank account.

**7. Sales Tax**

Where allowable by law, contractor shall invoice Participating Entity net of all Federal Excise and State and local taxes for fuel purchases.

WEX Bank shall invoice state net of all Federal excise taxes on gasoline and diesel, at the transaction level, regardless of merchant participation, if state is qualified as tax-exempt.

**8. State Sales, County and Local Taxes at Participating Merchants**

WEX Bank shall provide eligible tax-exempt entities a comprehensive 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®, WEXLink™ 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)

**9. State Sales Tax and County Tax at Non-Participating Merchants**

For fueling transactions with those fuel marketers that do not participate in the WEX Bank's tax-exempt program, but for which the fleet is eligible to receive tax exemption, WEX Bank reports applicable taxes as "reported tax." "Reported tax" transactions clearly list transactions and tax amounts that WEX Bank does not exempt so the fleet can file for exemption. Many fleets use their WEXLink™ 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

**10. Tax Exemption for Non-Fuel Purchases**

For non-fuel transactions, merchants may provide transactional data to WEX Bank 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 shall send the transaction to WEX Bank, net of tax, for billing.

**11. Qualification**

Any fleet entity participating in this contract shall 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.

**12. Required Data**

Tax Exemption processing requires that the merchant provide electronically to Contractor 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 Bank 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 shall not go through WEX Bank's tax processing. However, if WEX Bank is provided with a copy of the sales receipt, Contractor can repost the transactions and apply the applicable exemptions.

**13. One-time Authorization for Electronic Payment**

If customer needs to expedite payment on the same day, but have not chosen to make online payments, customer can request a one-time debit from your bank account for the outstanding balance on their account. (Processing fee may apply.)

**14. FEE SCHEDULES****WEX Universal Fleet Card Fee Schedule**

Set-up Fee	WAIVED
Monthly Card Charge	WAIVED
Replacement Card	WAIVED
International Currency Conversion Fee	2% of the total transaction value
Reproduced Reports	\$25.00 per request
General Research Fee	\$15.00 per hour
Expedited Shipping Fees	Cost varies, dependent upon delivery location
Returned Payment Fee	\$50.00 per occurrence
Over Credit Limit Fee	\$5.00 per transaction (max monthly fee of \$50.00)
Reactivation Fee	\$50.00 per occurrence (max monthly fee of \$50.00)
Truck Stop Fee	\$3.00 per card swipe at a diesel pump
Program Maintenance Charge	WAIVED
Paper Delivery Fee	\$10.00 per month for paper invoicing and reporting
Clearview Reporting Program	\$0.25 cents monthly per active card
No Show Fee for Telematics Installation	\$50.00 per vehicle per missed appointment. <sup>1</sup>

<sup>1</sup>This fee applies to WEX Inc.'s telematics product and is billed on your fleet card invoice.

**16. Telematics****1. Telematics - Fleet Vehicle and Fuel Monitoring System**

Mfr: GPS Insight model 3900E

Warranty: 3 Years

- a. Hardware charge for light-duty vehicles, including diagnostics, external antenna, and AT&T cellular service: \$ 296.47 /each
  - i. 2-minute refresh option: \$ 17.95 /each
  - ii. 30-second refresh option: \$ 29.95 /each
- b. Hardware charge for heavy-duty vehicles, including diagnostics, external antenna, and AT&T cellular service: \$ 296.47 /each

Mfr: GPS Insight model 3900E

- i. 2-minute refresh option: \$ 17.95 /each
- c. 30-second refresh option: \$ 29.95 /each
- d. Remote Panic Button: \$ 35.00 /each
- e. Driver ID Kit, including reader, two FOBS, and an audible alert when reader does not detect FOB: \$ 35.00 /each
- f. Hardware installation charges (hard-wired without power), per unit: \$ 85.00 /each
- g. Hardware installation charges (hard-wired with power), per unit: \$ 85.00 /each
- h. Hardware installation charges for Driver ID, per unit: \$ 25.00 /each
- i. Hardware installation charges for Remote Panic Alert Button, per unit: \$ 25.00 /each



- j. Training, instructor on-site at one or more Vermont locations, per day including all expenses: \$ 1,000 /each

## 17. REBATES FOR WEX UNIVERSAL FLEET CARD

In this section, all references to Contractor shall refer only to WEX Bank.

Contractor shall provide the State of Vermont with rebates in accordance with the information below. Contractor shall provide a larger monthly rebate payment for combined gallons, providing quicker financial incentives to the State and participating entities rather than a smaller monthly rebate with an annual kicker. State may qualify for all, some, or none of the incentives.

### Volume Rebate

Subject to the express conditions below, Contractor shall issue a monthly rebate, paid one month in arrears, in accordance with the below Rebate Table, off all State's Monthly Retail Transactions based on the tier established in the table below (the "Rebate").

**Rebate Table**

<b>Monthly Gallons</b>	<b>Basis Points (Rebate Percentage)</b>
<b>0-199,999</b>	<b>140 (1.40%)</b>
<b>200,000-349,999</b>	<b>145 (1.45%)</b>
<b>350,000+</b>	<b>150 (1.50%)</b>

### Conditions

The Rebate set forth herein is expressly conditioned on the following: (1) monthly billing; (2) payment in full within 30 calendar days of the billing date appearing on State's invoice; (3) Monthly Gallons of at least the minimum described in the Rebate Table; (4) credit approval; and (5) signing a four-year contract.

### Calculation

Contractor shall commence calculating the Volume Rebate as of the closing of the first billing cycle after an agreement becomes effective. The Rebate shall be calculated by determining the Monthly Gallons to establish the applicable Rebate Percentage. The Rebate Percentage is multiplied by the total dollar amount of Monthly Retail Transactions to determine the Volume Rebate.

### 18. Payment

Rebates for international transactions shall be paid at a rate of 50% of the applicable Rebate Percentage. Rebates shall be paid to State monthly in arrears.

### Payment Timing Rebate

Subject to the express conditions below, Contractor shall issue a monthly rebate in accordance with the below Payment Timing Table off all Monthly Retail Transactions charged to State's accounts (the "Payment Timing Rebate").

Bill Presentment	Payment Timing Options	Basis Points (Rebate Percentage)
Monthly	Payment received and posted to account in full by the 10th calendar day of the month for the prior month's invoice.	6 basis points (0.06%)
Monthly	Payment received and posted to account in full by the 5th day calendar day of the month for the prior month's invoice.	9 basis points (0.09%)

### Conditions

The Payment Timing Rebate set forth herein is expressly conditioned on the following: (1) Contractor's receipt of payment in full in accordance with one of the Payment Timing Options in the Payment Timing Table.

### Calculation

Contractor shall commence calculating the Rebate as of the closing of the first billing cycle after an agreement becomes effective. The Rebate shall be calculated by determining the Payment Timing and the applicable Rebate Percentage, then by multiplying the Rebate Percentage by the total dollar amount of Monthly Retail Transactions.

### Payment

Payment Timing Rebates for international transactions shall be paid at 50% of the applicable Rebate Percentage. Payment Timing Rebates shall be paid to State monthly in arrears.

### 19. Signing and Renewal Bonus

In addition to the Financial Incentives set forth above, Contractor shall pay to the State of Vermont a Signing Bonus of **Twenty-five Thousand Dollars (\$25,000.00)** no later than **thirty (30) days** from the date this Agreement is executed. In the event that the State of Vermont terminates this Agreement without cause prior to the end of the Initial Term, then the State of Vermont shall refund to WEX the amount of the signing incentive that was paid but not earned. Payment shall be made by the State of Vermont no later than thirty days from the effective date of the termination.

Contractor shall also pay a Renewal Bonus of **Ten Thousand Dollars (\$10,000.00)** per year for each additional year beyond the initial four-year term that the State of Vermont extends its Agreement with Contractor.

"Annual Gallons" shall mean the total amount of "Monthly Gallons" in each 12-month period.

### 20. Merchant Discounts

The following Vermont distributors shall continue to offer merchant discounts at their locations. These discounts are provided by the individual distributors. They are not guaranteed by Contractor and are subject to change at any time.

- R L Vallee Inc. -- \$0.03/gallon
- Champlain Farms -- \$0.02/gallon

### 21. Cycle Swaps

Contractor's billing and payment system provides for various billing cycle and payment timing options. In the event customer desire to change billing cycles, customer must make a request to Contractors Fleet Receivables for a billing cycle change. Upon receipt of the request it shall be a minimum of thirty (30) business days to change the billing cycle. In addition, any changes to billing cycles shall not take effect until after the current cycle has closed. Cycle changes cannot be made mid-month or mid-week from monthly to weekly billing cycles and cycle changes cannot be made mid-week or mid-month from weekly to monthly billing cycles. Cycle changes can only be made once per calendar year for each billing entity.

## **22. Other Discounts**

State agrees that the only financial incentive it is entitled to for the use of accounts shall be the Financial Incentives described in this Agreement. Specifically, State hereby waive the right to receive the discounts provided within the Contractor's Electronic Fleet Payment System Authorization Agreement other than what is described herein.

## **23. Billing and Payment (applicable to Contractor Parties)**

Purchases are due and payable in full within 30 days of the date appearing on your invoice. **Contractor Parties understand that you may be governed by a separate Prompt Payment Act and shall comply with any act or law upon review of such act or law. Please provide Contractor Parties the evidence of the Prompt Pay Act as it specifically relates to your entity. However, Volume Rebates are conditioned on payment in full within 30 days.**

Invoices include transactions that have posted to Contractor Party's system in State's billing cycle and shall not include all transactions that have been made in the billing cycle. State's account is delinquent if the balance is not paid within 30 days of the billing date appearing on your invoice.

Upon payment default, finance charges shall be assessed at a monthly percentage rate of 6.99%. The periodic rate shall be prorated based on the company's billing cycle. Issuer shall begin to assess a finance charge on the first day following the date a payment is due and is not posted to the account. The finance charge shall be calculated by determining the total balance due on the date the account becomes delinquent. The total balance due includes any additional charges and credits posted to the account since the last billing cycle through the payment due date and then subtracting any payments and/or credits entered during that period for Company reported disputes or otherwise. The total balance due shall be multiplied by the periodic rate to determine the account's finance charge. In the event that the calculated finance charge is less than seventy-five dollars (\$75.00), a minimum finance charge of seventy-five dollars (\$75.00) shall be assessed. If a payment is not received by the payment due date and the balance due is less than ten dollars (\$10), a finance charge shall not be assessed, and the balance shall carry forward to the following billing cycle. If additional charges are posted to the account, including other fees, and the new balance exceeds ten dollars (\$10), a finance charge shall be assessed on the new balance upon payment default.

**ATTACHMENT C: STANDARD STATE PROVISIONS  
FOR CONTRACTS AND GRANTS  
REVISED DECEMBER 15, 2017**

- 1. Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.
- 2. Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.
- 4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.
- 5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
- 6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.
- 7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.  
  
After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.  
  
The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.  
  
Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.
- 8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed

herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

*Workers Compensation:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

*General Liability and Property Damage:* With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

**9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

**13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or

acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

**15. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

**16. Taxes Due to the State:**

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

**19. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and

Americans with Disabilities Act”); Section 16 (“Taxes Due the State”); Section 18 (“Child Support”); Section 20 (“No Gifts or Gratuities”); Section 22 (“Certification Regarding Debarment”); Section 30 (“State Facilities”); and Section 32.A (“Certification Regarding Use of State Funds”).

**20. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

**21. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

**22. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party’s principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State’s debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**23. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**24. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

**25. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) (“Force Majeure”). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

**26. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**27. Termination:**

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**28. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**29. No Implied Waiver of Remedies:** Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

**30. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

**31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements:** If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required. For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.
- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

**32. Requirements Pertaining Only to State-Funded Grants:**

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)



ATTACHMENT D  
INFORMATION TECHNOLOGY SYSTEM IMPLEMENTATION  
TERMS AND CONDITIONS (rev. 4/27/17)

**1. MODIFICATIONS TO CONTRACTOR DOCUMENTS**

The parties specifically agree that the Contractor Documents are hereby modified and superseded by Attachment C and this Attachment D.

“Contractor Documents” shall mean one or more document, agreement or other instrument required by Contractor in connection with the performance of the products and services being purchased by the State, regardless of format, including the license agreement, end user license agreement or similar document, any hyperlinks to documents contained in the Contractor Documents, agreement or other instrument and any other paper or “shrinkwrap,” “clickwrap,” “browsewrap” or other electronic version thereof.

**2. NO SUBSEQUENT, UNILATERAL MODIFICATION OF TERMS BY CONTRACTOR**

Notwithstanding any other provision or other unilateral license terms which may be issued by Contractor during the Term of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for the products and services being purchased by the State, as applicable, the components of which are licensed under the Contractor Documents, or the fact that such other agreement may be affixed to or accompany the products and services being purchased by the State, as applicable, upon delivery, the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

**3. TERM OF CONTRACTOR’S DOCUMENTS; PAYMENT TERMS**

Contractor acknowledges and agrees that, to the extent a Contractor Document provides for alternate term or termination provisions, including automatic renewals, such sections shall be waived and shall have no force and effect. All Contractor Documents shall run concurrently with the term of this Contract; provided, however, to the extent the State has purchased a perpetual license to use the Contractor’s software, hardware or other services, such license shall remain in place unless expressly terminated in accordance with the terms of this Contract. Contractor acknowledges and agrees that, to the extent a Contractor Document provides for payment terms which differ from the payment terms set forth in Attachment B, such sections shall be waived and shall have no force and effect and the terms in Attachment B shall govern.

**4. OWNERSHIP AND LICENSE IN DELIVERABLES**

**4.1 Contractor Intellectual Property.**

As between the parties, and subject to the terms and conditions of this Contract, Contractor and its third-party suppliers will retain ownership of all intellectual property rights in their systems, and any and all derivative works made to their systems or any part thereof, as well as all Work Product provided to the State (“**Contractor Proprietary Technology**”). The State acquires no rights to Contractor Proprietary Technology except for the licensed interests granted under this Contract. The term “**Work Product**” means all other materials, reports,

manuals, visual aids, documentation, ideas, concepts, techniques, inventions, processes, or works of authorship developed, provided or created by Contractor or its employees or contractors during the course of performing work for the State (excluding any State Data or derivative works thereof and excluding any output from the systems generated by the State's use of the system, including without limitation, reports, graphs, charts and modified State Data, but expressly including any form templates of such reports, graphs or charts by themselves that do not include the State Data).

Title, ownership rights, and all Intellectual Property Rights in and to the systems will remain the sole property of Contractor or its suppliers. The State acknowledges that the source code is not covered by any license hereunder and will not be provided by Contractor. Except as set forth in this Contract, no right or implied license or right of any kind is granted to the State regarding the systems or any part thereof. Nothing in this Contract confers upon either party any right to use the other party's trade names and trademarks, except for permitted license use in accordance with this Contract. All use of such marks by either party will inure to the benefit of the owner of such marks, use of which will be subject to specifications controlled by the owner.

#### **4.2 State Intellectual Property; User Name**

The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights, tangible or intangible; and (ii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, "**State Intellectual Property**").

Contractor may not collect, access or use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property. Notwithstanding the forgoing, a record of State Intellectual Property may be retained in accordance with Contractor's record retention policy for regulatory purposes.

Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Intellectual Property for its own purposes. In no event shall the Contractor claim any security interest in State Intellectual Property.

### **5. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING**

**5.1** For purposes of this Contract, confidential information will not include information or material which (a) enters the public domain (other than as a result of a breach of this Contract); (b) was in the receiving party's possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the use of confidential information; (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (e) is not exempt from disclosure under applicable State law.

**5.2 Confidentiality of Contractor Information.** The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Contractor's attempts to prevent public disclosure of Contractor's information.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

**5.3 Confidentiality of State Information.** In performance of this Contract, and any exhibit or schedule hereunder, the Contractor acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. ("State Data").

State Data shall not be stored, accessed from, or transferred to any location outside the United States.

Unless otherwise instructed by the State, Contractor agrees to keep confidential all State Data. The Contractor agrees that (a) it will use the State Data only as may be necessary in the course of performing duties or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information; (c) it will not publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form orally or in writing to any third party unless it has received written approval from the State and that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the State's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis. The Contractor shall not retain any State Data except to the extent required to perform the services under this Contract.

Contractor shall not access State user accounts or State Data, except in the course of data center operations, response to service or technical issues, as required by the express terms of this Contract, or at State's written request.

Contractor may not share State Data with its parent company or other affiliate without State's express written consent.

The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

## **6. SECURITY OF STATE INFORMATION**

**6.1 Security Standards.** To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include, but not be limited to, encryption at rest and multiple levels of authentication; (5) dual control procedures,

segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

**6.2 Security Breach Notice and Reporting.** The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

In the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (a “Security Breach”), the Contractor shall notify the State within 24 hours of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

In accordance with Section 9 V.S.A. §2435(b)(3), the Contractor shall notify the Office of the Attorney General, or, if applicable, Vermont Department of Financial Regulation (“DFR”), within fourteen (14) business days of the Contractor’s discovery of the Security Breach. The notice shall provide a preliminary description of the breach. The foregoing notice requirement shall be included in the subcontracts of any of Contractor’s subcontractors, affiliates or agents which may be “data collectors” hereunder.

The Contractor agrees to fully cooperate with the State and assume responsibility at its own expense for the following, to be determined in the sole discretion of the State: (i) notice to affected consumers if the State determines it to be appropriate under the circumstances of any particular Security Breach, in a form recommended by the AGO; and (ii) investigation and remediation associated with a Security Breach, including but not limited to, outside investigation, forensics, counsel, crisis management and credit monitoring, in the sole determination of the State.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all applicable State and federal laws, rules or regulations) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification.

In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting

from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

**6.3 Security Policies.** To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a evidence of such policy to the State. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

**6.4 Operations Security.** To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor shall cause an SSAE 18 SOC 2 Type 2 audit report to be conducted annually. The audit results and the Contractor's plan for addressing or resolution of the audit results shall be shared with the State within sixty (60) days of the Contractor's receipt of the audit results. Further, on an annual basis, within 90 days of the end of the Contractor's fiscal year, the Contractor shall transmit its annual audited financial statements to the State.

**6.5 Redundant Back-Up.** The Contractor shall maintain procedures for system back up and business continuity. A summary of the Contractor's business continuity planning shall be made available to the State upon request. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

**6.6 Vulnerability Testing.** The Contractor shall run quarterly vulnerability assessments. Contractor shall remediate all critical issues within 90 days, all medium issues within 120 days. Low risk vulnerabilities will be assessed and addressed based on risk. . . Once remediation is complete, Contractor shall re-perform the test.

## **7. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

**7.1 General Representations and Warranties.** The Contractor represents, warrants and covenants that:

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (ii) There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.
- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- (iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the Deliverables as set forth in this Contract; (b) shall be responsible for and have full authority to license all

proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the Deliverables or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.

- (v) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (vi) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

**7.2 Contractor's Performance Warranties.** Contractor represents and warrants to the State that:

- (i) All Deliverables will be free from material errors and shall perform in accordance with the specifications therefor for a period of at least one year.
- (ii) Contractor will provide to the State commercially reasonable continuous and uninterrupted access to the Service, and will not interfere with the State's access to and use of the Service during the term of this Contract;
- (iii) The Service is compatible with and will operate successfully with any environment (including web browser and operating system) specified by the Contractor in its documentation;
- (iv) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
- (v) All Deliverables supplied by the Contractor to the State shall be transferred free and clear of any and all restrictions on the conditions of transfer, modification, licensing, sublicensing and free and clear of any and all liens, claims, mortgages, security interests, liabilities and encumbrances or any kind.
- (vi) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.
- (vii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in

enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

**7.3 Limitation on Disclaimer.** The express warranties set forth in this Contract shall be in lieu of all other warranties, express or implied.

**7.4 Effect of Breach of Warranty.** If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall, at its own expense and without limiting any other rights or remedies of the State hereunder, re-perform or replace any services that the State has determined to be unsatisfactory in its reasonable discretion. Alternatively, with State consent, the Contractor may refund of all amounts paid by State for the nonconforming deliverable or service

## **8. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE**

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of \$1,000,000 per claim, \$5,000,000 aggregate; and (b) first party Breach Notification Coverage of not less than \$5,000,000.

Before commencing work on this Contract the Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.

With respect to the first party Breach Notification Coverage, Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Contract.

## **9. LIMITATION OF LIABILITY.**

CONTRACTOR'S LIABILITY FOR DAMAGES TO THE STATE ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT SHALL NOT EXCEED THREE TIMES THE MAXIMUM AMOUNT PAYABLE UNDER THIS CONTRACT, OR \$12 MILLION DOLLARS, WHICHEVER IS GREATER. LIMITS OF LIABILITY FOR STATE CLAIMS SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE; (B) CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS TO THE STATE; (C) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; (D) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT; OR (E) VIOLATIONS OF THE STATE OF VERMONT FRAUDULENT CLAIMS ACT. IN NO EVENT SHALL THIS LIMIT OF LIABILITY BE CONSTRUED TO LIMIT CONTRACTOR'S LIABILITY FOR THIRD PARTY CLAIMS AGAINST THE CONTRACTOR WHICH MAY ARISE OUT OF CONTRACTOR'S ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY, SUCH AS LOSS OF ANTICIPATED BUSINESS,



OR LOST PROFITS, INCOME, GOODWILL, OR REVENUE IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

The provisions of this Section shall apply notwithstanding any other provisions of this Contract or any other agreement.

#### **10. TRADE SECRET, PATENT AND COPYRIGHT INFRINGEMENT**

The State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.

#### **11 REMEDIES FOR DEFAULT; NO WAIVER OF REMEDIES**

In the event either party is in default under this Contract, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such right, power or remedy, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

#### **12 NO ASSUMPTION OF COSTS**

Any requirement that the State defend or indemnify Contractor or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or license verification costs of Contractor, is hereby deleted from the Contractor Documents.

#### **13 TERMINATION**

In the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all State Materials to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Materials.

Contractor shall reasonably cooperate with other parties in connection with all services to be delivered under this Contract, including without limitation any successor provider to whom State Materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting the State Materials, in a format usable without the use of the Services and as agreed to by State, at no additional cost.

Any transition services requested by State involving additional knowledge transfer and support may be subject to a contract amendment for a fixed fee or at rates to be mutually agreed upon by the parties.

If the State determines in its sole discretion that a documented transition plan is necessary, then no later than sixty (60) days prior to termination, Contractor and the State shall mutually prepare a Transition Plan identifying transition services to be provided.

#### **14. ACCESS TO STATE DATA:**

The State may import or export State Materials in part or in whole at its sole discretion at any time (24 hours a day, seven (7) days a week, 365 days a year), during the term of this Contract or for up to [three (3) months] after the Term (so long as the State Materials remain in the Contractor's possession) without interference from the Contractor in a format usable without the Service and in an agreed-upon file format and medium at no additional cost to the State.

The Contractor must allow the State access to information such as system logs and latency statistics that affect its State Materials and or processes.

The Contractor's policies regarding the retrieval of data upon the termination of services have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

#### **15. AUDIT RIGHTS**

Contractor will maintain and cause its permitted contractors to maintain a complete audit trail of all transactions and activities, financial and non-financial, in connection with this Contract. Contractor will provide to the State, its internal or external auditors, clients, inspectors, regulators and other designated representatives, at reasonable times (and in the case of State or federal regulators, at any time required by such regulators) access to Contractor personnel and to any and all Contractor facilities or where the required information, data and records are maintained, for the purpose of performing audits and inspections (including unannounced and random audits) of Contractor and/or Contractor personnel and/or any or all of the records, data and information applicable to this Contract.

At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any laws applicable to the State or Contractor (or such higher or more rigorous standards, if any, as State or Contractor applies to its own similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of State Data and examine the systems that process, store, maintain, support and transmit that data; (iii) examine and verify Contractor's and/or its permitted contractors' operations and security procedures and controls; (iv) examine and verify Contractor's and/or its permitted contractors' disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) examine Contractor's and/or its permitted contractors' performance of the Services including audits of: (1) practices and procedures; (2) systems, communications and information technology; (3) general controls and physical and data/information security practices and procedures; (4) quality initiatives and quality assurance, (5) contingency and continuity planning, disaster recovery and back-up procedures for processes, resources and data; (6) Contractor's and/or its permitted contractors' efficiency and costs in performing Services; (7) compliance with the terms of this Contract and applicable laws, and (9) any other matters reasonably requested by the State. Contractor shall provide and cause its permitted contractors to provide full cooperation to such auditors, inspectors, regulators and representatives in connection with audit functions and with regard to examinations by regulatory authorities, including the installation and operation of audit software.

#### **16. DESTRUCTION OF STATE DATA**

At any time during the term of this Contract within (i) thirty days of the State's written request or (ii) after the retention period set forth in Attachment A section 1.20 "Data Retention", and in any event after the State has had an opportunity to export and recover the State Materials, Contractor shall at its own expense securely destroy and erase from all systems it directly or indirectly uses or controls all tangible or intangible forms of the State Materials, in whole or in part, and all copies thereof except such records as are required by law. The destruction of State Data and State Intellectual Property shall be performed according to National Institute of Standards and Technology (NIST) approved methods. Contractor shall certify in writing to the State that such State Data has been disposed of securely. To the extent that any applicable law prevents Contractor from destroying or erasing State Materials as set forth herein, Contractor shall retain, in its then current state, all such State Materials then within its right of control or possession in accordance with the confidentiality, security and other requirements of this Contract, and perform its obligations under this section as soon as such law no longer prevents it from doing so.

Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location and certify in writing to the State that such State Data has been disposed of securely. Contractor shall comply with all reasonable directions provided by the State with respect to the disposal of State Data.

#### **17 CONTRACTOR BANKRUPTCY.**

Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Contract, the State may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this Contract, including the right to obtain the State Intellectual Property.

#### **18 SOFTWARE LICENSEE COMPLIANCE REPORT.**

In lieu of any requirement that may be in a Contractor Document that the State provide the Contractor with access to its System for the purpose of determining State compliance with the terms of the Contractor Document, upon request and not more frequently than annually, the State will provide Contractor with a certified report concerning the State's use of any software licensed for State use pursuant this Contract. The parties agree that any non-compliance indicated by the report shall not constitute infringement of the licensor's intellectual property rights, and that settlement payment mutually agreeable to the parties shall be the exclusive remedy for any such non-compliance.

## ATTACHMENT E

# WEX Fleet Card Terms and Conditions

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### Additional Terms:

**1. Definitions.** The following words have the following meanings:

**“Account(s)”** means the charge card credit line extended to Company by Issuer. An Account may be evidenced by a plastic Card or an account number.

**“Account User”** means Company or any other entity or individual authorized by Company to use Account or Cards.

**“Agreement”** means this Fleet Business Charge Card Agreement.

**“Business Day”** means any day other than a Saturday, Sunday or other day on which banking institutions in Utah are generally authorized or required by law or executive order to close.

**“Card”** means a charge card provided by Issuer which is used to access Company’s Account.

**“Controls”** are a set of authorization tools designed to assist Company with managing purchases.

**“Company”** means the State or other Participating Entity that has applied for, or accepted an Account with Issuer.

**“DIN”, “DID” or “PIN”** means the identification number associated with an Account User or Card.

**“Issuer”** means WEX Bank.

**“Transaction”** means the use of a Card or Account to buy goods or services at accepting merchants.

**“Unauthorized Transaction”** means a Transaction made on a Card or Account by any person or entity other than an Account User.

### **2. Credit Limits and Accounts.**

2.1. Issuer may, in its sole discretion, extend credit, establish Accounts and/or issue Cards under this Agreement. Issuer may at any time, investigate the financial condition of Company or, as applicable, its subsidiaries and affiliates. As a part of that investigation, Issuer may require financial statements from the Company or, as applicable, its subsidiaries and affiliates.

2.2. Account Users can make purchases on the Account up to the credit limit that is assigned by Issuer. The credit limit for each billing account appears on the billing statement. Company agrees not to exceed its total credit limit. Issuer may change the credit limit of an Account User or the Company without prior notice. If Issuer permits or has previously permitted Company to exceed its credit limit, it does not mean that Issuer will permit Company to exceed its credit limit again.

2.3. Issuer 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; and/or (ii) the amount of the Transaction plus the outstanding balance (including Transactions authorized but not yet posted) exceeds the credit limit. Company 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 Agreement prevents Company or an Account User from requesting an increase or decrease of the credit limit.

2.4. Company shall designate its Account Users as well as those contacts authorized to: (i) provide Issuer 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. Company will provide notice of any change or removal of any contact or Account User either in writing, by telephoning Issuer’s customer service department or through Issuer’s online system. Company remains liable for any unauthorized use until Issuer receives notice of any change in or removal of any Account User or contact. Issuer is authorized to take instruction from any Account User or contact with apparent authority to act on Company’s behalf. Unless Company reports any errors in Account information or Cards within three (3) business days of receipt, Issuer is entitled to rely on that information for servicing the Account.

2.5. Company is responsible for notifying Issuer of any revocation of any Account User’s authority to use or access its Accounts, Cards or, as applicable, DINs and Company shall remain liable for any charges made by an Account User until notice of revocation of authority is received by Issuer. Company agrees that use of a Card and the applicable DIN is deemed authorized use of the Account. Company assumes all risk if Company chooses to leave a Card at a merchant for use by its drivers or Account Users and as such, agrees to pay for all charges made with that Card. Company 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 Company is liable for any fraudulent use that may result even if the disclosure is inadvertent or unintentional.

2.6. All Cards will be valid through the expiration date listed on the Card unless the Card has been suspended or terminated. Company will automatically receive new Cards prior to the expiration date of their current Cards unless this Agreement is terminated.

2.7. 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. Company 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. Company agrees that Company's use of Cards or Accounts is deemed acceptance by Company of this Agreement's terms. All Cards or Account numbers provided remain the property of Issuer and shall be returned to Issuer or destroyed upon our request.

2.8. Issuer is not responsible in the event a merchant does not accept or honor a Card or Account number as payment.

2.9. Company may purchase dyed special fuel using its Account or Cards. Company acknowledges that all dyed special fuel purchases will be used exclusively for off-road purposes and according to all applicable laws governing its use. Company understands that it may be subject to fines or other legal action by governmental authorities for misuse or mishandling of dyed special fuel. Issuer is not liable in any way for any misuse or mishandling by Company of any dyed special fuel. Upon request from applicable governmental authorities, Issuer may provide information regarding Company's dyed special fuel purchases without prior authorization from Company.

**3. Controls.** Company may request that Controls be applied to its Account(s).

3.1. 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 Issuer. The product codes are assigned by each merchant, and as such, Issuer is not responsible for inappropriate product code assignment. In addition, some Controls are not enforceable at island card readers.

3.2. Default Control values will be assigned by Issuer unless Company makes its own election(s) through the online product. More detailed information related to Controls and their limitations is available through the online product. Issuer is not responsible for the prudence of any particular Control level selected by Company. Issuer shall use reasonable efforts to deny requests for Transaction authorizations that fall outside the selected Control parameters. Company 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 Issuer. The existence and/or use of Controls will not affect Company's liability for Unauthorized Transactions.

3.3. 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. Issuer may, in its sole discretion, at any time, without prior notice modify Controls for the purpose of, among others, aiding in the prevention of suspected fraudulent activity. Issuer will notify Company after any modification is made. Company agrees it is responsible for reviewing fraud control data provided by Issuer for the purpose of detecting fraud that may occur within Control parameters.

**4. Reports.** Issuer provides transaction data for each Account to the Company as transmitted by merchants. Company is responsible for reconciling that data. Issuer is not liable in connection with the accuracy or completeness of any specialty reports, management reports, data services or other information services provided to Company because that data is based upon third party information. In addition, Company understands that in the event an error is identified in a report, such as incorrect product code, Company is still liable for the Transaction, but may follow the dispute process to obtain clarifying information.

5. RESERVED.

6. RESERVED.

7. **Application of Payments and Early Payments.** RESERVED

**8. Disputed Amounts.**

8.1. Company shall use its best efforts to resolve purchase disputes directly with the relevant merchant particularly such disputes arising out of quality or warranty issues.

8.2. All billed charges must be paid in full regardless of reported disputes. During dispute a temporary credit may be placed on Company'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. Company 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) Company does not believe it is liable for that amount.

8.3 Transactions made at an island card reader where the Company 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 and often are the result of employee misuse rather than true fraud as defined in this Agreement.

**9. Notice of Loss, Theft or Unauthorized Use.** In the event that Company or an Account User knows of or suspects the loss, theft or possible unauthorized use of a Card or Account or if Company would like to terminate an Account User, Issuer must be immediately notified by calling **1-800-492-0669**.

## **10. Unauthorized Use and Unauthorized Transactions.**

10.1. Except as otherwise expressly provided below, Company will be liable to Issuer for all unauthorized use or Unauthorized Transactions that occur if: (i) a Card is lost or stolen and Company does not give immediate notice to Issuer as provided in Section 9 of this Agreement; ii) such use or suspected use occurs as a result of the Company's lack of reasonable security precautions and controls surrounding the Cards or Accounts; or (iii) such use results in a benefit, directly or indirectly, to the Company or Account User. Misuse by an Account User or other employee does not constitute unauthorized use or an Unauthorized Transaction.

10.2. If Company has less than ten (10) Cards issued to it for use by Company's Account Users or employees, Company's liability for Unauthorized Transactions will be limited as provided in the Truth in Lending Act and implementing federal regulations (currently \$50.00).

## **11. Default.**

11.1. A party to this Agreement may terminate this Agreement at any time upon the default of the other party. "Default" means: the un-remedied breach by either party of this Agreement.

11.2. If Company Defaults: (i) it will not have any further right to borrow under this Agreement; (ii) all outstanding amounts under the Account are immediately due and payable; (iii) Issuer may terminate this Agreement and exercise all rights and remedies available under applicable law. Alternatively, Issuer 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 this Agreement, whether as a result of the Default to which such suspension of services or obligations relates or otherwise.

## **12. Disclaimers and Limitations.**

### **12.1. RESERVED**

12.2. Except as otherwise required under law, Issuer makes no warranty with respect to goods, products or services purchased on credit through Issuer. Issuer further disclaims all warranties with respect to goods, products and services purchased with a card, including, without limitation, the implied warranty of merchantability.

12.3. Company acknowledges and agrees that Issuer is not liable to Company for any loss, liability or damages company suffers which result from, are related to, or in any way are connected with any fraud control or purchase restriction measures Issuer elects to implement from time to time, unless such loss, liability or damage is arising from Issuer's negligence or willful misconduct in implementing fraud control or purchase restriction measures Issuer has expressly agreed in writing to undertake for Company.

**13. Notices.** Except as otherwise provided in this Agreement, all notices will be in writing and deemed effective when personally delivered or mailed, first class postage prepaid to the appropriate party at the address set forth in the application for credit or at such other address as the parties may indicate from time to time. In addition to the notice methods provided above, the parties agree that a communication: (i) by facsimile to a number identified by the recipient as appropriate for communication under this Agreement; or (ii) by e-mail to or from an address normally used by an Account User for business communications shall be considered to be a "writing" and to be "signed" by the party transmitting it for all purposes. The parties agree to waive any claim that a transmission does not satisfy any writing or signature requirements under applicable law. The parties agree that a photocopy or printed copy of a facsimile or e-mail constitutes the "best evidence" and an "original" of such a writing.

**14. Federal Law:** We comply with federal law which requires all financial institutions to obtain, verify, and record information that identifies each company or person who opens an Account. We will ask you for your name, address, date of birth, or other applicable information to identify you.

## **15. International Use of Cards/Currency Conversion.**

15.1. Cards are issued for use by Company's United States based operations, but may be used in Canada. Company 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, Company will: (i) be billed in US Dollars; (ii) receive reporting in English; and (iii) accept the currency conversion fee as reflected in Issuer's Fee Schedule.

15.2. Issuer 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 Issuer using rates available in wholesale currency markets for the date that the Transaction is posted by Issuer, which rate may vary from the rate Issuer itself receives, or the government mandated rate in effect at that time.

**16. Additional Products and Card Features.** Company may elect to enroll in or use additional products or features that are offered by Issuer or approved vendors of Issuer. Company understands that additional terms of use for such products or features, including any associated fees may apply and will be provided to Company prior to enrollment.

16.1. Online Products: Certain products and services may be accessed by Company or Account Users through the Internet. Although Issuer uses both passwords and data base security methods for our online products, security cannot be guaranteed. Issuer is not liable to Company for any data corruption, loss or unauthorized Account access, as a result of Company's access to Issuer's website through the Internet or dial-in computer, notwithstanding reasonable security measures instituted by Issuer.

16.2. Changes in Law: In the event that there is a change in applicable law deemed by Issuer to be material to the administration of the program Issuer may seek to re-negotiate the terms, including but not limited to, the financial terms, of this Agreement. The Company shall have no obligation to renegotiate such terms; provided, that if the parties cannot agree on an adjustment of such terms, then Issuer may, at its option: (i) allow this Agreement to remain in effect without any such adjustment; or (ii) terminate this Agreement upon written notice to the Company.

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

**CREDIT INFORMATION**

Participating Entity agrees that in the event the account is not paid as agreed, WEX 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 (yyyy)	Number of Vehicles	Avg Monthly Fuel Expenditures \$	Avg Monthly Service Expenditures \$

**ACCOUNT SETUP INFORMATION**

Write Participating Entity name as you wish it to appear on cards. Limit of 20 characters & spaces. Unless specified, no company name will appear on cards.

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Billing Contact	Billing Address	City	State	Zip+4
Designate the Fleet Contact authorized to receive all charge cards, reports, and other such information we provide from time to time and to take actions with respect to your account and account access. This is also the person designated by your company to provide all fleet vehicles, driver and other information we 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)				

**Card Controls:** To help us estimate your credit needs, indicate the types of cards you anticipate using.

If you provide a valid email address above, you can select from these product type options:

☐ All Products   ☐ Fuel & Service   ☐ Fuel & Fluids with Roadside Assistance   ☐ Fuel with Roadside Assistance   ☐ Mix of card types

☐ Check here if business is exempt from motor fuels tax

**TERMS**

**DEFINITIONS:**

"Agreement" means: **Contract No. 36354 effective September 1, 2018** for Fuel Cards and Fuel Management Services (the "Agreement") between the (the State 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.
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 your transactions may be provided to accepting merchants or their service providers to facilitate discounts or other promotional campaigns of interest to you.

**U.S.A. PATRIOT ACT:** WEX BANK complies with Section 326 of the USA PATRIOT Act which requires all financial institutions to obtain, verify, and record information that identifies each company or person who opens an account. What this means for you: when you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents for your business.

**DISCLAIMER:** THIS IS AN APPLICATION FOR SERVICES AND SHALL NOT BE BINDING UPON WEX 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 1-866-523-8873.**

<b>FOR OFFICE USE ONLY</b>	Oppty Number	Sales Code	Plastic Type WEX	Coupon Code VT6	Account Number 04
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## ATTACHMENT G

### CUSTOMER AGREEMENT

THIS CUSTOMER AGREEMENT ("Agreement") is made by and between WEX Inc. ("WEX"), with offices located at 97 Darling Avenue, South Portland, Maine 04106 (referred to herein as "WEX," "we," "us," and "our") and the entity identified (referred to herein as "Customer",

"you", and "your") on the Quote Sheet. In consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration the sufficiency of which is acknowledged by the parties, the parties agree as follows:

#### **1. Telematics Products; Sale and License Grant.**

1.1. WEX, as a licensed reseller of telematics devices (hereinafter referred to as "Devices") and related information management services (hereinafter referred to as "Information Management Services," and collectively, with the Devices, referred to as "Telematics Products"), will provide such Telematics Products to Customer. Such Telematics Products may, at WEX's sole discretion, be delivered by the manufacturer, our designees or subcontractors. The Telematics Products vary based upon the model and service package that you select. Such selections are identified in the Attachment B – Payment Provisions attached hereto or otherwise agreed by the parties in writing. The Telematics Products provide for the collection of specific data elements from the vehicles or equipment that the Devices are installed within. The data is collected and enables you to access diagnostic and location information from your vehicles and equipment. Such information will be accessible by you via our online systems provided to you in conjunction with the manufacturer of your Devices.

1.2. Subject to and conditional upon your compliance with this Agreement and any additional terms of use applicable to the Telematics Products, WEX (i) transfers title to the Device(s) to Customer, and (ii) grants to Customer a non-exclusive, non-transferable license and right to use the Information Management Services, as of the date(s) set forth on and as more particularly identified in the Quote Sheet attached hereto or otherwise agreed to by the parties in writing solely in connection with your normal internal business operations.

1.3 In the event Customer acquires products and/or services provided by WEX's third-party suppliers ("Third-Party Services"), such Third-Party Services may be subject to third-party terms and conditions and, if so, Customer acknowledges and expressly agrees and will acknowledge and expressly agree that such Third-Party Services are subject to applicable terms and conditions between Customer and the third-party supplier as referenced on the applicable Quote Sheet.

#### **2. Customer Responsibilities**

2.1. Customer is responsible for the installation of the Devices purchased in Customer owned or leased vehicles and equipment in accordance with the applicable installation instructions provided by the specific Device's manufacturer. Upon Customer's request, WEX may arrange for installation of Customer's Devices, provided, however, that in the event Customer does not make the vehicle(s)

available for the scheduled installation(s), and did not give at least 2 business days prior notice of appointment cancellation, WEX may charge Customer a "No Show Fee" of \$50 per vehicle as referenced in section 14 of Attachment B.

2.2. In addition, Customer is responsible for:

- a) designating an employee to become the key coordinator for the Telematics Products;
- b) making your coordinator and designated personnel available for training by WEX or our designee, as applicable; and
- c) use and operation of the Telematics Products in accordance with any instructions provided by WEX, the specific manufacturer and/or WEX's designee.

2.3. Customer further agrees that it shall not, without WEX's prior written consent:

- a) allow the Devices to become installed in, affixed to, made part of, or used with any other goods or items or real property other than in a vehicle or other approved equipment owned, leased or rented by Customer;
- b) attach to or install on any Devices any accessory, attachment, or other device that would impair the originally intended function, operation or good working order of the Telematics Products;
- c) make any adaptation, modification, or alteration to the Telematics Products; or
- d) copy, reverse engineer, decompile or disassemble the Telematics Products.

#### **3. Scope of Support Services.**

3.1. If purchased by Customer, WEX will provide the support services described in this Section 3. The fees for such support services are set forth in the Attachment B – Payment Provisions. Support services may be immediately suspended or terminated if Customer is in default under this Agreement.

3.2. Upon your request, support services may be provided directly by WEX or by our designee during normal business hours (8:00 a.m. – 5:00 p.m. ET, Monday-Friday) by calling our toll free customer service number supplied by your sales representative. Depending on the nature of the malfunction or problem, you may be referred to our designated service providers for additional support. WEX will use commercially reasonable efforts to correct errors or malfunctions to enable the Telematics Products to perform in accordance with the applicable operating manuals as soon as practicable after notification

of such error or malfunction. If the Device is diagnosed as nonfunctioning during the warranty period, we or our designee will repair or replace non-functioning components. If, in our sole determination, the Device is deemed unrepairable, then a replacement Device will be sent. We will pay the ground shipping charges to return any Devices sent to us for repair to you. Additional charges for alternative shipping methods will apply.

3.3. Support Services do not include repair, replacement or correction of any Device damage or malfunctions caused by:

- a) Failure to properly install the Devices as described in the operating manual provided to you;
- b) Accident, negligence, theft, vandalism, operator error or misuse, failure of or surges in electrical power, air conditioning or humidity control, abnormal conditions, acts of God (including lightning) or causes other than normal use;
- c) Unauthorized modifications, attachments, repairs or unauthorized parts or any other breach by Customer; or,
- d) Failure of a vehicle to be in good working condition.

The manufacturers of the Telematics Products may discontinue specific products, including related support. Services for an end-of-life product will continue to be available up to the end-of-support date. Formal notification will be made to you advising of the end-of-support dates. At that time, WEX will offer you compatible Telematics Products, if available.

**4. Confidentiality and Non-Disclosure.** "Confidential Information" means any information, whether of a scientific, technical, commercial or strategic nature, disclosed by a party or on behalf of a party to the other party in connection with this Agreement, which is designated as confidential or proprietary or should reasonably be understood by the receiving party to be confidential or proprietary. Except as required by law, neither party shall disclose Confidential Information of or about the other party to a third party nor use such Confidential Information other than for the purpose of this Agreement; provided, however, the receiving party may disclose Confidential Information to employees, agents, representatives, advisors and affiliates if and solely to the extent necessary to enable the receiving party to perform its obligations under this Agreement. Each party shall use commercially reasonable efforts to maintain the security and confidentiality of Confidential Information.

The undertakings of non-disclosure and non-use in this section shall not apply to: (i) information that at the time of disclosure or subsequently is published or otherwise generally available to the public other than through any act or omission on the part of the receiving party; (ii) information that was in the possession of the receiving party at the time of disclosure, as evidenced by the receiving party's written records; (iii) information acquired from a third party who has the lawful right to make such disclosure as evidenced by the receiving party's written records; (iv) information that is independently developed by the receiving party without reference to or use of the materials comprising, or reverse engineering involving, the Confidential Information disclosed under this Agreement as evidenced by the receiving party's written records; or (v) information that is required to be disclosed by the receiving party pursuant to a legally enforceable order, direction or other regulation but any such disclosure shall be only so far as necessary to give effect thereto.

Notwithstanding the obligations of nondisclosure set forth in this section, we may disclose Customer's Confidential Information to Customer's vendors, customers, or providers of goods or services and other third parties as authorized in writing by Customer to the extent necessary to provide the Telematics Products.

**5. Term and Termination.** (a) The term of this Telematics Agreement shall commence upon the date hereof and continue for a period of one year or such other term set forth in the Quote Sheet ("Term"). Thereafter, the Term shall automatically renew at our then-current Fees for one (1) month periods or such other periods set forth in the Quote Sheet ("Additional Term") unless either party provides written notice of non-renewal delivered to the other party no later than **thirty (30) days** prior to the expiration of the Term or any Additional Term. Either party may terminate this Agreement at any time if the other party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after written notice from the non-breaching party. If you terminate the Agreement, or if we terminate it as a result of a material breach, you will be required to pay an early termination fee, plus you shall be required to pay the equivalent of any reoccurring monthly service and device/hardware charges for the remainder of the Term agreed to in the Quote Sheet.

In addition, we may terminate this Agreement at any time if you breach any material term or condition of any other agreement between you and us (or our affiliates) and you fail to cure such breach within the applicable cure period.

**6. Fees, Payment, and Rebate.**

**6.1. Fees.** During the Term, you agree to pay WEX Bank, as WEX Inc.'s settlement agent, all applicable fees set forth in the Attachment B (the "Fees"). In the event our manufacturers or service providers change such fees or implement new charges applicable to us, or the Telematics Products, we reserve the right to change our Fees and/or implement new charges upon thirty (30) days prior written notice to you.

**6.2. Payment Terms and Late Fee.**

a) Unless otherwise set forth on the Quote Sheet, all one-time Fees (for Devices, installation services and shipping) will be applied to your account five (5) days after approval/acceptance of the Quote Sheet and monthly Fees will be invoiced upon provision/activation of the Information Management Services. You must pay any shipping costs, freight and sales and/or use taxes.

b) So long as you maintain a fleet card program with our wholly owned subsidiary, WEX Bank, you shall be billed for all Fees on your fleet card billing invoice. These Fees will appear on your invoice as an ancillary charge and will not be included in any calculation of net spend for purposes of calculating any applicable discounts or rebates. In the event that your billing cycle is less than monthly for your fleet card program with WEX Bank, then the Fees related to this agreement shall be billed in the first billing cycle of each month.

**7. Ownership of Data and Technology.**

a) Customer acknowledges and agrees that the Telematics Products are comprised of proprietary property of either WEX or our manufacturers or suppliers, which property may be protected under copyright, trademark, patent, trade secret or other intellectual property laws. WEX or our manufacturers or suppliers retain ownership of such underlying copyrights, trademarks, trade secrets or other intellectual property rights embodied in and/or related to the Telematics Products. Information related, directly or indirectly, to the Telematics Products, their development, testing and all other matters are trade secrets and may not be disclosed or used by you for any purpose except for the performance by you of your obligations under this Agreement. Title to and ownership of any intellectual property rights in the Telematics Products and any and all improvements, modifications, fixes or enhancements to the

Telematics Products and value added services that may be provided by WEX or its designee that arise hereunder, regardless of whether such items or services are created or suggested by you, will remain the property of WEX or our manufacturers and service providers, as applicable. You acknowledge such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with such ownership of these rights.

b) Customer will not copy, modify, reverse-engineer, disassemble, or decompile any Telematics Products, and will not disclose or provide access to the Telematics Products to any third party for such a purpose. Customer shall notify WEX immediately of any unauthorized use or disclosure (and the intellectual property relating thereto). In no event whatsoever shall the providing of access to the Telematics Products or any support services hereunder vest any ownership or similar rights or interests in or to the underlying intellectual property which supports the Telematics Products provided to Customer.

c) Customer shall retain all title and other proprietary rights in and to any Customer data captured based on its use of the Telematics Products. Notwithstanding the foregoing, WEX may use, in any form pursuant to its business operations all data delivered to or generated using the Telematics Products that: (i) pertains to the technical and operational functionality of the Telematics Products (ii) is necessary or useful in assisting WEX in the diagnosis or correction of the Telematics Products, preparation of billing statements, the evaluation of its software or services, or any improvements, upgrades or enhancements thereto, or the compilation of statistical or performance information.

## **8. Warranty and Limits of Liability.**

### **8.1. Limited Warranty.**

a) "Warranty Period" means the period commencing on the effective date of this Agreement and ending one year thereafter or such other period set forth in Attachment B – Payment provisions. Except as otherwise provided in this section during the Warranty Period, we warrant that:

- i. the Devices will perform the data processing functions described in the applicable operating manuals; and
- ii. the Information Management Services will be provided in a workmanlike manner.

Notwithstanding the foregoing, if any warranty provided by a Device's manufacturer is inconsistent with the foregoing, such warranty provided by the manufacturer shall apply.

b) You may only make claims under this limited warranty during the Warranty Period by promptly notifying us after you learn of the facts supporting the claim. WEX shall notify the manufacturer who will then, in its sole discretion troubleshoot, repair or replace the non-complying Device or re-perform the Information Management Services; **THESE ARE OUR ONLY OBLIGATIONS AND YOUR ONLY REMEDY FOR BREACH OF WARRANTY.** WEX does not provide warranties on items Customers acquire from others, even if acquired with our assistance. To the extent permitted by law, the limited warranties contained in this section are void if Customer is in default under this Agreement. Unless otherwise agreed in writing, service downtime is not a breach of this Agreement and will not entitle you to any refunds or credits.

### **8.2. Limitation of Liability; Disclaimer of Warranties.**

a) Neither party will be liable for consequential, special, indirect or incidental damages, including lost profits or lost data, even if that party is told those damages may occur or such damages are reasonably foreseeable.

b) WEX is not responsible for delays in delivery, installation or providing the Telematics Products selected outside of our reasonable control or resulting from Customer's breach, or the operation of items if any item was acquired from a third party.

c) Customer acknowledges that the Telematics Products are supported by a wireless device and that data cannot be collected from a Device once it travels beyond a certain range, unless satellite or "dual mode" options are purchased. In addition, the Telematics Products are dependent on the coverage areas of wireless networks owned and operated by third parties. Coverage areas are approximate and may not cover portions of North America. Actual coverage and operation of the Telematics Products depends on system availability of the wireless or internet providers (including those that provide the mapping services) that are not in WEX's control. Customer understands that WEX and any underlying carriers cannot guaranty the security of wireless transmissions and will not be liable for any lack of security or unauthorized use or disclosure of information or data relating to the use of the Telematics Products.

d) Customer acknowledges that the Telematics Products do not: (i) prevent or detect all vehicle problems; (ii) guarantee that a vehicle will not break down; or (iii) that you will not incur repair bills. Customer acknowledges that the Telematics Products should not be used in lieu of a vehicle warranty or standard maintenance. Customer further understands that the Telematics Products do not detect failures of internally lubricated parts and systems of a vehicle that are not monitored by the vehicle's computer.

e) Customer acknowledges that even if location based data or the Telematics Products are used to attempt to locate a vehicle or equipment in which a Device has been affixed, WEX provides no guaranty that the vehicle or equipment will be successfully located or recovered.

f) EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE TELEMATICS PRODUCTS ARE PROVIDED ON AN "AS IS" BASIS. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, WEX DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WEX MAKES NO WARRANTY OR GUARANTY THAT ANY DATA OR INFORMATION PROCESSED BY AND MADE AVAILABLE VIA THE TELEMATICS PRODUCTS WILL BE ACCURATE, COMPLETE OR AVAILABLE. YOU ASSUME THE ENTIRE RISK IN DOWNLOADING OR OTHERWISE ACCESSING ANY DATA, INFORMATION, FILES OR OTHER MATERIALS OBTAINED FROM THE TELEMATICS PRODUCTS OR OTHERWISE.

### **8.3. Indemnification.**

a) RESERVED.

b) WEX will defend, indemnify and hold you harmless for any third party claim that your authorized use of the Telematics Products provided by us or by our designee infringes upon the U.S. intellectual property rights of any third party.

c) Notwithstanding the foregoing, WEX's indemnification obligations under this section will not apply to the extent that any claim arises from the: (i) use of the Telematics Product in a manner not permitted by this Agreement; (ii) unauthorized modification of any Telematics Product; (iii) unauthorized combination of any Telematics Product with any other product or service in a manner that is not expressly

authorized by WEX; or (iv) any other breach by Customer hereunder.

d) Without limiting the other obligations of this section if an injunction is issued against the use of any Telematics Product by Customer, or if in WEX's judgment any Telematics Product is likely to become the subject of claim, WEX may, at its option and expense: (i) procure for Customer the right to use the applicable Telematics Product as provided in this Agreement, (ii) replace or modify the Telematics Product so it becomes non-infringing (with equivalent functionality, quality and performance), or if options (i) or (ii) cannot be achieved despite WEX's commercially reasonable efforts, (iii) terminate the license to access and use the Information Management Services granted hereunder, accept the return of all Devices in Customer's possession and refund to Customer an amount equal to the depreciated Fees paid by Customer calculated over a three (3) year life.

e) WEX's obligations under this section are contingent upon the following to the extent WEX is materially prejudiced by Customer's failure to perform: (i) Customer will notify WEX in writing of such claim upon receiving actual notice thereof; (ii) WEX will have sole control of the defense of any such action and all negotiations for its settlement or compromise; and (iii) Customer will provide reasonable cooperation to facilitate the defense and/or settlement of such claim.

#### **9. General Provisions.**

a) Customer will comply with all applicable laws, rules, regulations and orders, including privacy laws, relating to Customer's business and/or the Telematics Products. Customer shall cause all of its affiliates, employees, agents and consultants (collectively "Associates") to comply with the terms of this Agreement. Customer is responsible for any disclosures that may be required by law to employees, agents or consultants that may use vehicles or equipment with Devices installed that such use of these items may be monitored by Customer.

b) Customer agrees to remain in full compliance with applicable export and import laws, regulations orders and policies (including, but not limited to, securing all necessary clearance requirements, export

and import licenses and exemptions, and making all proper filings). We may, at our sole discretion and upon reasonable notice, require you to provide us with written certification and records relating to your compliance with applicable export and import laws or prohibit you from doing business with certain customers in order to ensure that you comply with applicable export and import laws.

c) This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, including the acquirer or transferee of the assets or business interests of a party. This Agreement shall not be assignable by Customer without the expressed prior written consent of WEX.

d) The relationship of WEX and Customer established by this Agreement is solely that of a vendor/customer relationship and independent contractors. Nothing herein shall be deemed to establish in any manner, in whole or part, a partnership, joint venture, association, or employment relationship between the parties. WEX is not to be considered the agent of Customer or any third-party provider of goods or services provided by Customer.

e) In the event that any provision of this Agreement or the application of any such provision shall be held to be prohibited or unenforceable in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, but the remaining provisions of this Agreement shall remain in full force and effect, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Further, if any restriction or limitation in this Agreement is deemed to be unenforceable because it is unreasonable, onerous or unduly restrictive, it shall not be stricken in its entirety and held totally void and unenforceable, but shall remain effective to the maximum extent permissible within the court ruling.

f) The terms and provisions of sections 2.3, 4, 7 and 8, and any other terms or provisions which by their nature are intended to survive, shall survive any termination or expiration of this Agreement.





ATTACHMENT H Clearview enrollment form and terms and conditions

A. ACCOUNT INFORMATION	
Company Name:	Account Number:
Authorized Fleet Contact Name:	
Fleet Contact Phone Number:	Fleet Contact Fax Number:
Authorized Fleet Contact Email:	
B. SERVICE OPTIONS	
Please choose the ClearView program you plan to enroll in at this time:	
<input type="checkbox"/> <b>ClearView Essentials</b> - Included for free in the contract— Volume & Spend, Exceptions, Community, and Admin modules, Driver and Vehicle Detail, product miscodes and inaccurate odometer corrections, price optimization, product miscode, and fraud algorithms, and VIN decoding.	
<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.	
<input type="checkbox"/> <b>ClearView Premium</b> — Includes ClearView Essentials and ClearView Advanced services plus additional functionality related to telematics data integration such as vehicle performance, vehicle utilization, and fleet right-sizing. (Available in 2018)	
C. FEES	
WEX shall charge the following fee(s):	
(i) Monthly fee of \$0.25 cents per active card.	
(Active card is defined as a card that is in active status vs. suspended or terminated status).	
WEX reserves the right to change fees with prior written notice.	
The ClearView program term will coincide with your card program contract term.	
By signing this form, you agree to the ClearView Terms of Use, which supplement the terms of your credit agreement, included herein. You further represent that you are authorized to sign on behalf of your company.	
<b>X Authorized Fleet Contact Signature:</b> _____ <b>Date:</b> _____	
Print Name: _____ Title: _____	

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



## CLEARVIEW™ TERMS OF USE

**1. General:** WEX, Inc. ("we," "us" and "our") will provide the ClearView platform ("CV") to the Company 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.

Two features currently deployed in a beta phase offer the ability to manually update product codes and odometer readings. Both features are intended to be expanded to use algorithms to automatically update incorrect information. However, as these features are in a beta phase, we make no warranty that use of such 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 correction functionality, 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. Product code and odometer updates that are made in CV are not integrated with any other WEX systems or reporting.

On occasion, we will make new modules and functionality available for fleets as a trial and provide feedback. 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 discontinue any features or functionality that are offered as part of a trial.

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 not less than thirty 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, following due inquiry: (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:** Neither party may sell, assign, transfer or otherwise convey any of its rights or delegate any of its duties under these Terms without the other party's 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 or CV, 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.