

**PARTICIPATING ADDENDUM**  
**to NASPO ValuePoint**  
**Fleet Card Services**  
**Administered by the State of Washington**  
**with WEX Bank**  
**Master Agreement No. 00819**  
**And**  
**The State of Colorado**  
**Contract # 163711**

**1. PARTIES AND SCOPE**

This Participating Addendum, including all of its attached exhibits and other documents incorporated by reference (the “Participating Addendum”), is entered into by and between **WEX Bank** (the “Contractor”), and the State of Colorado (the “State”). This Participating Addendum covers participation in the **Fleet Card Services** Master Agreement led by the State of **Washington** (the “Master Agreement”), for use by State agencies and other entities located in Colorado which are authorized by law to utilize State contracts with the prior approval of the State Purchasing Director. The specific Goods and Services provided under the Master Agreement are listed in **Exhibit B Fleet Card Products** of this agreement. Please note that items copied from the Master Agreement No. 00819 are as last amended in this Participating Addendum.

**2. PARTICIPATION**

Agencies, political subdivisions and other entities (including cooperatives) authorized by the State’s statutes to use State contracts may make purchases under this Participating Addendum as of its Effective Date. Issues of interpretation and eligibility for participation are solely within the authority of the Chief Procurement Officer.

**3. STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY**

- A. To the extent not modified by this Participating Addendum and all its exhibits, the Master Agreement and all its terms and conditions shall apply to this Participating Addendum. If any term of this Participating Addendum conflicts with the Master Agreement, then this Participating Addendum shall control for all transactions between the State and the Contractor under this Participating Addendum. All terms defined in the Master Agreement shall have the meaning given to them in the Master Agreement, except for those terms specifically defined differently in this **PARTICIPATING ADDENDUM**.
- B. Master Agreement §14.2 Claims shall be modified as follows:

“THIRD-PARTY CLAIMS; INDEMNITY. Contractor shall defend, indemnify, and hold harmless the State and any Purchasing Entity and their employees and agents from and against all claims, demands, judgements, assessments, damages, penalties, fines, costs, liabilities, or losses including, without limitation, sums paid in settlement of claims, reasonable attorneys’

fees, consultant fees, and expert fees (collectively “claims”) arising from any negligent act or omission, or willful misconduct, of Contractor or its agents and subcontractors under this Participating Addendum, except claims caused solely by the State or any Purchasing Entity’s negligence. Contractor shall take all steps needed to keep Purchasing Entity’s property free of liens arising from Contractor’s activities, and promptly obtain or bond the release of any such liens that may be filed.

C. Master Agreement §14.3 shall be modified as follows:

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

- a. The Contractor’s obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
  - i. Provided by the Contractor or the Contractor’s subsidiaries or affiliates;
  - ii. Specified by the Contractor to work with the Product; or
  - iii. Reasonably required, in order to use the product in its intended manner, and in the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
  - iv. It would be reasonably expected to use the Product in combination with such product, system or method.
- b. The indemnified party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property or PII claim. Even if the indemnified party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor was prejudiced in defending the intellectual property claim or the PII claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any

intellectual property or PII claim, it shall have no control over the defense and settlement of it. However, the indemnified party must consent in writing for any money damages or obligations for which it may be responsible. The indemnified party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the intellectual property or PII claim, the indemnified party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the indemnified party in the pursuit of the intellectual property or PII claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Participating Addendum or in any other document executed in conjunction with this Participating Addendum.

- D. Master Agreement §16.4(a) Limitation on Damages shall be modified as follows: Except as otherwise required under applicable law, Contractor makes no warranty with respect to goods, products, merchantability, or services purchased with a card or the account, or through Contractor. Contractor is not responsible for any failure of a merchant to accept a card issued by Contractor hereunder.
- E. Master Agreement 16.4(b) shall be modified as follows: The liability of (Contractor), its Subcontractors, and their respective personnel to the State for any claims, liabilities, or damages relating to this Contract shall be limited to direct losses, consequential, special, indirect, incidental, punitive or exemplary loss, loss of State Records or unauthorized disclosure of State Confidential Information, not to exceed three (3) times the annual maximum amount payable by the State under this Contract; provided, however, that in the case of claims directly resulting from a data breach (i.e., any access, destruction, loss, theft, use or disclosure of State Confidential Information by an unauthorized party), Contractor's liability for such damages shall not exceed six (6) times the annual maximum amount payable by the State under this Contract (such amount, in each case, the "Cap").

No limitation on Contractor & subcontractor liability to the State under this Section shall limit or affect:

- i. Contractor's indemnification obligations to the State under this Contract; (provided, however, that indemnification obligations shall be subject to the Cap set forth in subsection E above);
- ii. Any claims, losses, or damages for which coverage is available under any insurance required under this Participating Addendum;
- iii. Claims or damages arising out of bodily injury, including death, or damage to tangible property of the State; or
- iv. Claims or damages resulting from the recklessness, bad faith, or intentional misconduct or Contractor its Subcontractors.

- F. Master Agreement §6.2 (a) shall be deleted in its entirety and replaced with Exhibit A §6Ai.
- G. Master Agreement §6.2 (g) shall be deleted in its entirety.
- H. Master Agreement §6.2 (f) shall be deleted in its entirety.
- I. Master Agreement §16.4 shall be deleted in its entirety.
- J. Master Agreement §17.8 shall be deleted in its entirety.

#### **4. RESERVED**

#### **5. PRIMARY CONTACTS AND PERSONNEL RESPONSIBILITIES**

The primary contacts for this Participating Addendum are the individuals named in this section. Either Party may change its primary contacts or primary contacts contact information by notice submitted to the other party in writing no later than 5 days following the date on which the change occurs, without a formal amendment to this Participating Addendum. The Contractor's primary contact shall be ultimately responsible for ensuring that all Goods are delivered and all Services are completed in accordance with this Participating Addendum.

##### **Primary Contact for the State:**

Amy Risley  
 Colorado State Purchasing & Contracts Office  
 1525 Sherman Street, 3<sup>rd</sup> Floor  
 Denver, CO 80203  
 303-866-5663  
 Amy.risley@state.co.us

##### **Primary Contact for the Contractor:**

Denise Baumgart  
 97 Darling Ave  
 South Portland, ME 04106  
 913-393-3208  
 Denise.baumgart@wexinc.com

Each individual identified in this §5 of the Participating Addendum shall be the primary contact of the designating Party. All notices required or permitted to be given under this Participating Addendum shall be in writing and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's primary contact at the address set forth above or **(C)** as an email with read receipt requested to the primary contact at the email address, if any, set forth

above. If a Party delivers a notice to another through email and the email is undeliverable then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's primary contact at the address set forth above. Unless otherwise provided in this Participating Addendum, notices shall be effective upon delivery of the written notice.

In addition to the primary contact in this section, the Contractor shall also provide an individual who is ultimately responsible for the creation and submission of the quarterly volume report described in **Exhibit A** of this Participating Addendum. This individual, as named in this section, shall ensure that all required quarterly volume reports are accurate and delivered by the appropriate due date for that quarterly volume report. The Contractor may change this individual or their contact information by notice submitted to the other party in writing no later than 5 days following the date on which the change occurs, without a formal amendment to this Participating Addendum.

**Individual Responsible for Quarterly Volume Report Creation and Submission:**

Denise Baumgart  
97 Darling Ave  
South Portland, ME 04106

913-393-3208  
Denise.baumbart@wexinc.com

## **6. SUBCONTRACTORS**

The Contractor may only use Subcontractors, as defined in **Exhibit A. §4**, under this Participating Addendum if the State has provided written approval for the Contractor to use that Subcontractor. All such approved Subcontractors authorized in the State of Colorado, as shown on the dedicated Contractor website, are approved to provide sales and service support to the State and any Purchasing Entity in the State. The Contractor's Subcontractor's participation shall be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum, as appropriate.

## **7. PURCHASES**

Any charge made by a Cardholder in the State of Colorado for a Transaction available under this Participating Addendum shall be deemed to be a sale using an Account (and governed by the prices and other terms and conditions) under the Master Agreement and this Participating Addendum unless the parties agree in writing that another Agreement applies to the use of the Card.

## **8. ORDER OF PRECEDENCE AND ATTACHED EXHIBITS**

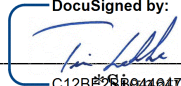
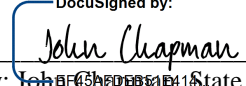
All of the exhibits listed in this section are attached to this Participating Addendum and are incorporated herein by reference. In the event of a conflict or inconsistency between this Participating Addendum and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:


- A. Colorado Special Provisions in **§20** of **Exhibit A**, State Specific Terms
- B. **Exhibit D** Information Technology Provisions
- C. The provisions of this Participating Addendum
- D. All other sections of **Exhibit A**, State Specific Terms

- E. **Exhibit B** Statement of Work
- F. **Exhibit C** Rebate/Incentive Share
- G. **Exhibit E** Establishing a Card Account Agreement

Notwithstanding anything to the contrary herein, the State and Purchasing Entities shall not be subject to any provision incorporated in any terms and conditions appearing on Contractor's or Subcontractor's website, any provision incorporated into any click-through or online agreements, or any provisions incorporated into any other document or agreement between the Parties that **(i)** requires the State to indemnify or hold harmless Contractor or any other party, **(ii)** is in violation of State law as, regulations, rules, fiscal rules, policies, or other State requirements as deemed solely by the State or **(iii)** is contrary to any of the provisions incorporated into **Exhibit A, §19** or the main body of this Participating Addendum.

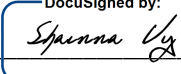
**THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM**

<p style="text-align: center;"><b>CONTRACTOR</b> WEX Bank</p> <p>By: Tim Laukka Title: President</p> <p>DocuSigned by:  C12B2828 Signature</p> <p>Date: <u>4/6/2021</u></p>	<p style="text-align: center;"><b>STATE OF COLORADO</b> <b>Jared Polis, Governor</b> Department of Personnel and Administration State Purchasing and Contracts Office Kara Veitch, Executive Director</p> <p>DocuSigned by:  By: John Chapman, State Purchasing Manager</p> <p>Date: <u>4/6/2021</u></p>
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<p style="text-align: center;"><b>CONTRACTOR</b> WEX Bank</p> <p>Initials (Gabriel Weiss) </p>	
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In accordance with §24-30-202, C.R.S., if this Contract is for a Major Information Technology Project, this Contract is not valid until signed and dated below by the Chief Information Officer or an authorized delegate.

**STATE CHIEF INFORMATION OFFICER**  
**Anthony Neal-Graves, Chief Information Officer and Executive Director**

Signed:   
1470B468A5C441B...

Printed Name: Shainna Uy

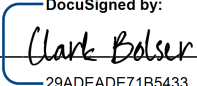
Title: Contract Administrator II

Date: 4/6/2021

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

§24-30-202, C.R.S. requires the State Controller to approve all State Contracts. This Participating Addendum is not valid until signed and dated below by the State Controller or an authorized delegate.

**STATE CONTROLLER**  
**Robert Jaros, CPA, MBA, JD**

By:   
29ADEADE71B5433...

Name: Clark Bolser  
Delegate

Effective Date: 4/6/2021

# PARTICIPATING ADDENDUM

## EXHIBIT A

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#### 1. AUTHORITY

Authority to enter into this Participating Addendum exists in the Colorado Procurement Code, §24-102-202, C.R.S. and 1 CCR 101-9 R-24-102-202-01., and its associated rules.

#### 2. PURPOSE

The Parties are entering into this Participating Addendum for the Contractor to provide **Fleet Card Services** to Purchasing Entities. The Contractor was selected as a result of **Commercial Card**



**Services Competitive Solicitation No. 00719/00819 resulting in two separate Master Agreements, this one for Fleet Card Services No. 00819.**

**3. TERM**

**A. Initial Term - Work Commencement**

The Parties' respective performances under this Participating Addendum shall commence on the Effective Date and shall be co-terminus with NASPO ValuePoint Master Agreement **00819**. Unless this Participating Addendum is terminated earlier, as described herein, or the State cancels its participation as described in the Master Agreement (the "Term"), the term of the Participating Addendum shall follow the Master Agreement initial term and will be automatically extended beyond the initial term if the Master Agreement term is extended (See Section 3.B.).

**B. Extension of Term**

If the term of NASPO ValuePoint Master Agreement is extended for any reason, the Term of this Participating Addendum shall be automatically modified to account for that extension, so long as such extension complies with the Colorado Procurement Code.

**C. RESERVED**

**D. RESERVED**

**E. Early Termination in the Public Interest**

The State is entering into this Participating Addendum to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Participating Addendum by the State for breach by Contractor, which shall be governed by §i.

**i. Method and Content**

The State shall notify Contractor of such termination in accordance with §5 of this Participating Addendum. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Participating Addendum, and shall include, to the extent practicable, the public interest justification for the termination.

**ii. Obligations and Rights**

Upon receipt of notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in §Error! Reference source not found..

**iii. Payments**

If the State terminates this Participating Addendum in the public interest, the Purchasing Entities shall pay Contractor according to their Accounts with the Contractor. The sum of any and all payments shall not exceed the maximum amount payable to Contractor under each Account.

**4. DEFINITIONS**

The following terms shall be construed and interpreted as follows:

- A. "Account"** means any Fleet Card Products provided to a Cardholder for use under this Participating Addendum.

- B. **“Affiliate”** means political subdivisions and Institutions of Higher Education within the State of Colorado that will receive their own rebate under the Program, and which are authorized by the State to participate in the Fleet Card Products program with the Contractor.
- C. **“Breach of Contract”** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- D. **“Business Day”** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- E. **“Cardholder”** means an employee, contractor, or representative of a Participant to whom a Fleet Card is issued for making designated purchase/payments on behalf of his or her organization.
- F. **“Chief Procurement Officer”** means the individual to whom the Executive Director of the Department of Personnel & Administration has delegated his or her authority pursuant to §24-102-202, C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.
- G. **“CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended, and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- H. **“Confidential Information”** means any and all information that is normally considered confidential in nature, and includes, but is not limited to, all State Records not subject to disclosure under the Colorado Open Records Act, §§24-72-200.1, et seq., C.R.S. (“CORA”).
- I. **“Contract”** means this Participating Addendum, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- J. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by a Purchasing Entity for Orders placed under this Participating Addendum.
- K. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, et. seq., C.R.S.
- L. **“Effective Date”** means the date Contract is signed by the State Controller or their designee.
- M. **“End of Term Extension”** means the time period defined in §3. C. of this Exhibit A.
- N. **“Environmentally Preferable Products”** means products that have a lesser or reduced adverse effect on human health and the environment when compared with competing products that serve the same purpose, as defined in §24-103-904, C.R.S.

- O. **“Effective Date”** means the date on which this Participating Addendum is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Participating Addendum. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
- P. **“Exhibits”** means the following exhibits attached to this Contract:
- i. **Exhibit A**, State Specific Terms.
  - ii. **Exhibit B**, Statement of Work.
  - iii. **Exhibit C**, Rebate/Incentive Share
  - iv. **Exhibit D, Information Technology Provisions**
  - v. **Exhibit E**, Establishing a Card Account Agreement
- Q. **“Extension Term”** means the time period defined in §3. B.
- R. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Participating Addendum and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- S. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation **(i)** successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; **(ii)** unwanted disruption or denial of service; **(iii)** the unauthorized use of a State system for the processing or storage of data; or **(iv)** changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- T. **“Initial Term”** means the time period defined in §3.A of this **Exhibit A**.
- U. **“Purchasing Entity Agreement”** means a Card User Agreement, or Card Account Agreement as found in Exhibit E
- V. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- W. **“Participant”** means any entity or organization that has been authorized by the State and approved by the Contractor to participate in the Fleet Card Program with the Contractor, and may include without limitation, State Agencies, government-supported institutions of higher education within the State, and political subdivisions of the State. In addition, Participant shall also have the same meaning as “Purchasing Entity”.
- X. **“Participant Agreement”** means the agreement (reference Exhibit E) entered into and between the Affiliate and the Contractor, which allows the government entity (“Participant”) to utilize the goods and services provided under this Participating Addendum and the NASPO Master Agreement. Participant Agreement shall also have the same meaning as “Card User Agreement”, as described in the Master Agreement, and shall also include any documents agreed upon by Contractor and the State to allow State Agencies to participate in the Program.
- Y. **“Purchasing Entity”** means Affiliate and State Agencies.

- Z. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- AA. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- BB. **“Rebate”** means a monetary payment based on the spend volume during a specified time period and shall be paid by the Contractor in accordance with the terms and conditions of the Participating Addendum and Master Agreement.
- CC. **“Services”** means the customer support to be performed by Contractor to support Purchasing Entities use of the fleet fuel card as listed in the Master Agreement Exhibit G Section 2 Administration of Accounts, Section 8 – Customer Service Section 9 Implementation / Transition Section 12 Training, Section 15 – Fraud Protection and Section 16 – Disputed Transactions. and shall include any services to be rendered by Contractor in connection with the Goods.
- DD. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PCI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- EE. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13) (a), C.R.S.
- FF. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- GG. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- HH. **“Subcontractor”** means third-parties, if any, engaged by Contractor pursuant to §19.B. to aid in performance of the Work. The term “Subcontractor” includes, without limitation, any dealers, distributors, partners or resellers engaged by the Contractor to perform the Work.
- II. **“Tax Information”** means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

- JJ. **“Transaction”** means the using of card to pay for authorized vehicle related expenses.
- KK. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- LL. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Participating Addendum that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

## 5. STATEMENT OF WORK

Purchasing Entities use by card pursuant to Section 7 Purchases of the Participating Addendum to complete vehicle Transactions and other vehicle related purchases. Purchasing Entities shall establish a Card User Agreement (CUA). Participating Entities payments to Contractor for that will be according to Section 6 of Exhibit A. to and uses of Contractor shall complete the Work as described in this Participating Addendum and in accordance with the provisions of Exhibits A, B, C and D, and with any Purchasing Entity’s Account. Contractor personnel shall work cooperatively with State and Purchasing Entity staff to ensure the completion of the Work.

Purchasing Entities shall establish a Card User Agreement in order to receive cards, establish access to the online system, and leverage any other Goods and Services from this Participating Addendum.

### Account Fulfillment

Contractor shall provide a complete and accurate Internal Revenue Service form W9 to the State prior to accepting an Order from any Purchasing Entity. Upon a request by a Purchasing Entity, Contractor shall provide a complete and accurate Internal Revenue Service form W9 to that Purchasing Entity.

Each Purchasing Entity may complete an Account in accordance with its own rules and policies, as available to Contractor, using the appropriate documentation for that organization to issue an Account.

Contractor shall communicate directly with each Purchasing Entity related to that Purchasing Entity’s Account.

## 6. PAYMENTS TO CONTRACTOR

### A. PAYMENTS

- i. Payment is the sole responsibility of, and will be made by, the Purchasing Entity. Payment is due in full within the earlier of (a) forty-five (45) days of statement or (b) the date required pursuant to the applicable Participating Entity's prompt pay act or similar legislation, in each case on or before the relevant cutoff time on or before the Due Date. If Purchasing Entity fails to make timely payment(s) (i.e., by the applicable Due Date) in full, such failure shall constitute a "Payment Default." "Due Date" means the date on which the repayment of the balance of the account is due as provided on a billing statement. In the event of a Payment Default, starting the 45<sup>th</sup> day, Contractor may invoice in the amount

of up to one percent (1%) per month on the amount not paid by the 45<sup>th</sup> day or a minimum of \$1 (or as otherwise agreed in the applicable Participating Addendum) (the "Interest"). The Interest payment will be applied to those invoices not paid within 45 days.

- ii. Each Purchasing Entity shall be liable for all Transactions on the account to the fullest extent permitted by applicable law, except as expressly provided in this Agreement. Purchasing Entities may pay the entire balance of the account or a portion of it, at any time prior to its Due Date without penalty.
  - iii. Payments made via paper check are posted to the account after processing and must arrive at Contractor at least three Business Days before the Due Date on the billing statement. It can take up to three Business Days to process a check from the time the envelope containing a check arrives at Contractor's facility to posting of the check amount to the account.
  - iv. For payments not made by paper check, payments on a Business Day before the cut-off time (the "Cut-off Time") will be posted on that Business Day. Payments after the Cut-off following Business Day. The Cut-off Times for payments not made by check are as follows: a payment transaction made via Contractor's online payment portal must be completed by 3:00 p.m. ET; a payment transaction made *via* IVR must be completed by 3:00 p.m. ET; and a payment transaction made via ACH must arrive to Contractor by 3:00 p.m. ET.
  - v. Regardless of payment method, each Purchasing Entity must ensure that Purchasing Entity's account number is provided with the payment. Failure to do so will cause processing delays in posting the payment to the account. Payments that are received at locations other than the address specified on the billing statement, or that do not otherwise comply with instructions on the billing statement or this Master Agreement, may be delayed in posting.
- B. **OVERPAYMENTS.** Contractor promptly shall refund to Purchasing Entity the full amount of any erroneous payment or overpayment. Such refunds shall occur promptly upon discovery by Contractor or within thirty (30) days of written notice to Contractor; *Provided*, however, that Purchasing Entity shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely payment(s) or issuance of such credit memos, Purchasing Entity may impose a one percent (1%) per month on the amount overdue 45 days after notice to the Contractor. (Section 6.3 Payments of Master Agreement No 00819, modified as required by Colorado law.)

C. **Payment Procedures**

i. Invoices

Refer to Exhibit A Payments §6 A i for Payment Terms.

The State shall not pay any amount to Contractor under this Participating Addendum for Purchasing Entity Cardholders statements unless State is the Purchasing Entity on that Cardholder statement.

ii. Payment Disputes

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

During dispute a temporary or permanent credit may be placed on Purchasing Entity's account. All disputed items must be submitted in writing within sixty (60) days from the billing date or they will be final and binding. Purchasing Entity may dispute an amount reflected on a billing statement if:

- The amount does not reflect the face value of the Transaction;
- The amount being disputed is a fee that is not properly accrued under this Agreement;
- Purchasing Entity does not believe it is liable for that amount,

Dispute credits and temporary credits shall be issued to a Purchasing Entity's account within the billing cycle in which the dispute is identified, reported to and processed by the Contractor. For disputes occurring within a billing cycle, the total amount due on the invoice shall be reduced by the amount in dispute. For disputes occurring after the relevant billing cycle has closed, where an invoice has been created, the permanent or temporary credit shall be reflected on the subsequent billing cycle's invoice.

Transactions made at an island card reader where the Purchasing Entity or account user did not obtain a receipt at the time of sale are eligible for dispute. However, the receipt may provide the only opposing record to the transaction information submitted by the merchant. It is also important to note that island card reader transactions require both a valid card and Driver ID (DID) to be authorized.

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

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

iv. Available Funds-Contingency-Termination of Cardholder Agreement

Purchasing Entities, except for authorized non-profit entities, are prohibited by law from making commitments beyond the term of the current Purchasing Entity's Fiscal Year. Payment to Contractor beyond the current Purchasing Entity's Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any

subsequent year (See Colorado Special Provision). If federal funds, non-State funds or funds from any other source constitute all or some of the Contract Funds, the Purchasing Entity's obligation to pay Contractor shall be contingent upon such funding continuing to be made available for payment. Usage of a card under this Participating Addendum shall be made only from Contract Funds, and the Purchasing Entity's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other Purchasing Entity funds are not appropriated, or otherwise become unavailable to fund an Order under this Participating Addendum, the Purchasing Entity may, upon written notice, terminate the Order, in whole or in part, without incurring further liability. The Purchasing Entity shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination of Order. A State Purchasing Entity Order termination shall otherwise be treated as if the Order was terminated in the public interest as described in §3. E. of this Exhibit A.

The Purchasing Entity may effect such termination by giving Contractor a written notice of termination, to the Contractor's primary contact in accordance with §5 of the Participating Addendum, and by paying to Contractor any amounts which are due and have not been paid through the last day of the Fiscal Year for which appropriated funds are available. The Purchasing Entity shall endeavor to give notice of such termination not less than 30 days prior to the day of non-availability of funds, and shall notify Contractor of any anticipated termination.

## **7. REBATE INCENTIVE**

Contractor shall follow Rebate/Incentive Share as set forth in Exhibit C.

## **8. REPORTING – NOTIFICATION**

### **A. Volume Reporting**

The State will use a centralized method of tracking volume. Contractor shall provide a quarterly volume report to the State's primary contact identified in §5 of this Participating Addendum within 60 calendar days following the end of the State Fiscal Year quarter that the report covers. The quarterly volume report shall be submitted in a form as directed by the State, which may be modified by the State from time to time. The quarterly volume report shall contain, at a minimum, all of the following:

- i. A summary volume report that includes, but is not limited to, all of the following for the quarter that the report covers:
  - a. The total spent by each type of Purchasing Entity under this Participating Addendum.
  - b. The total of the list price of all items purchased by each type of Purchasing Entity under this Participating Addendum.
  - c. The total sales of environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, for each Purchasing Entity under this Participating Addendum.
  - d. The amount of the total Rebate/Incentive share to the state as from Exhibit C of Participating Addendum.



- e. Any additional summary information as requested by the State.
- ii. A detail report that includes, but is not limited to, all of the following for each Transaction that occurred during the quarter that the report covers:
  - a. The name of the Purchasing Entity who the Transaction was made to.
  - b. The date of the Transaction.
  - c. A listing of each item purchased in the Transaction, including the name of the item, the quantity of the item, the unit price for the item, the extended price for the item calculated by multiplying the unit price by the quantity, the list price per unit for the item, the extended list price for the item calculated by multiplying the quantity by the list price, and the savings on the item calculated by subtracting the extended cost from the extended list price.
  - d. Any other detail information as requested by the State.

**B. Additional Operational Reporting**

Upon request by the State, the Contractor shall provide operational reporting that includes all detailed and summary transaction, historical or payment information related to the State or any of the Participating Entities as requested by the State. The Contractor shall provide all such additional reports within 10 Business Days following the State's request for that information, unless the State agrees to a longer period of time in writing.

**C. Environmentally Preferable Product Reporting**

Upon request by the State, the Contractor shall provide detailed reporting on environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, that are purchased or made available under this Participating Addendum. The scope and detail of such reports shall be agreed upon by the State and the Contractor. The Contractor shall provide all such additional reports within 10 Business Days following the State's request for that information, unless the State agrees to a longer period of time in writing.

**D. Litigation Reporting**

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Participating Addendum or may affect Contractor's ability to perform its obligations under this Participating Addendum, Contractor shall use commercially reasonable efforts to, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's primary contact identified in §5 of the Participating Addendum.

**E. Performance Outside the State of Colorado or the United States, §24-102-206, C.R.S.**

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State's primary contact in accordance with §5 of the Participating Addendum and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to

the State under this section shall constitute a breach of this Participating Addendum. This section shall not apply if the Participating Addendum Funds include any federal funds.

**9. RESERVED**

**10. CONFIDENTIAL INFORMATION-STATE RECORDS**

**A. Confidentiality**

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Participating Addendum, permitted by law or approved in Writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: solely to the extent applicable and relevant: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract . Contractor shall promptly forward any request or demand for State Records to the State's primary contact as identified in §5 of the Participating Addendum.

**B. Other Entity Access and Nondisclosure Agreements**

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Participating Addendum. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Participating Addendum, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

**C. Use, Security, and Retention**

Contractor shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements and upon 30 days advance written request from the State, for purposes of inspecting and monitoring access and use of State Confidential Information. Upon the expiration or termination of this Participating Addendum, Contractor shall return State Records provided to Contractor or destroy such State Records and confirm in writing to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor

warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

#### D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State promptly (and in any event within three business days) and communicate with the State regarding Contractor's recovery, remediation, and the necessity to involve law enforcement. Unless Contractor can establish that neither Contractor nor any of Contractor's agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future to the extent agreed between the State and Contractor, which may include, but is not limited to, developing and implementing a remediation plan, that is agreed between Contractor and the State at no additional cost to the State. The State may, to the extent agreed between State and Contractor and Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with evidence of Contractor's planned remediation in response to any negative findings.

#### E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

#### F. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Contractor shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

### 11. CONFLICTS OF INTEREST

#### A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Participating Addendum. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Participating Addendum.

#### B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Participating Addendum, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Participating Addendum.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Participating Addendum.

**12. INSURANCE**

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Participating Addendum and until all orders for goods or Services or both have been delivered and accepted, regardless of whether this Participating Addendum has expired or has been terminated. All insurance policies required by this Participating Addendum shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

Workers' Compensation insurance as required by state statute, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment. Insurance must stay in place and in effect even if the contract terms expires, until all product or terms of the contract are completed and satisfied up to 180 days after contract term expires.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$2,000,000 each occurrence;
- ii. \$4,000,000 general aggregate; and
- iii. \$1,000,000 products and completed operations aggregate;

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Technology Errors & Omissions (Including Professional and Cyber Liability)

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- i. \$8,000,000 each occurrence; and
- ii. \$8,000,000 general aggregate.

E. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$2,000,000 each occurrence; and

ii. \$2,000,000 general aggregate.

F. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.

G. Primacy of Coverage

Coverage required of Contractor and each Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.

H. Cancellation

WEX or its insurer representative will endeavor to provide 30 days advance written notice to the State of cancellation of any policy required under this Participating Addendum.

I. Subrogation Waiver

Except with respect to loss or damage caused solely by the State, Contractor's automobile liability, general liability and any applicable umbrella or excess liability policy shall include a waiver of subrogation in favor of the State, its agencies, institutions, organizations, officers, agents, employees and volunteers.

J. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Participating Addendum such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintain at all times during the terms of this Participating Addendum, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

K. Certificates

Prior to the start of services under this Participating Addendum and upon the renewal of any required insurance under this Participating Addendum, Contractor shall provide to the State certificates evidencing said coverage. At any other time during the term of this Participating Addendum, upon request by the State, Contractor shall supply to the State evidence satisfactory to the State as soon as practicable.

### 13. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 of this Exhibit A, for that Party. Notwithstanding any provision of this Participating Addendum to the contrary, the State, in its discretion in order to protect the public interest of the State, need not provide notice or a cure period and may immediately terminate this Participating Addendum in whole or in part or institute any other remedy in this Participating Addendum; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate

this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

#### 14. REMEDIES

##### A. State's Remedies

With the exception of §7 and §10 of this Exhibit A, if Contractor is in material breach under any provision of this Participating Addendum and fails to cure such breach, the State, following the notice and cure period set forth in §13 of this Exhibit A, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Participating Addendum or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

##### i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Participating Addendum or any part of this Participating Addendum. Contractor shall continue performance of this Participating Addendum to the extent not terminated, if any.

If after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Participating Addendum had been terminated in the public interest under §3. E.

##### ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

##### a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and neither the State nor any Purchasing Entity shall be liable for costs incurred by Contractor after the suspension of performance.

##### b. Removal

Demand immediate removal of any of Contractor's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Participating Addendum is deemed by the State to be contrary to the public interest or the State's best interest.

##### c. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, at the option of and as approved by the State or Purchasing Entity (i) secure that right to use such Work for the State, Purchasing Entity and Contractor; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any

infringing Work and refund the amount paid for such Work to the Purchasing Entity.

**B. Contractor's Remedies**

If the State is in breach of any provision of this Participating Addendum and does not cure such breach, Contractor, following the notice and cure period in §13 of this Exhibit A, and the dispute resolution process in §15 of this Exhibit A, shall in addition to all remedies set forth in the Master Agreement or this Participating Addendum, have all remedies available at law and equity. If a Participant is in breach of a provision of a Participant Agreement, Contractor shall have all remedies available to it under that Participant Agreement and this Participating Addendum and available at law and equity.

**C. Participant's Remedies**

- i. If Contractor is in breach under any provision of the Master Agreement, Participating Addendum, or Participant Agreement, the Participant shall have all of the remedies listed in §14. A. ii above, all remedies listed here in §14.C and all other remedies available by law or equity. The Participant may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.
- ii. If a Participant gives Contractor notice of breach or terminates a Participant Agreement because of Contractor's breach of that Participant Agreement, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.
- iii. **Payments and Damages**
  - a. Notwithstanding anything to the contrary, Participants shall pay Contractor for all obligations incurred by Participant up to and including the date of the termination or last charges made on cards issued to Participants hereunder, whichever is later.
  - b. Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State or appropriate Participant for any damages sustained by the State or Participant in connection with any breach by Contractor.

**15. DISPUTE RESOLUTION**

**A. Disputes, Termination and Resolution**

- i. If a dispute related to a Participant Agreement arises between Contractor and a Participant, Contractor shall meet with the Participant to attempt to resolve the issue. If Contractor is unable to resolve the issue with the Participant, then Contractor may request assistance from the State by submitting a request in writing, which includes the pertinent information about the dispute and the assistance sought by Contractor, in accordance with §5 of the Participating Addendum. Nothing in this section shall be interpreted as limiting the rights or obligations of Contractor, the State or any Participant under this Contract.
- ii. A Participant may terminate a Participant Agreement if it determines that Contractor was in breach of that Participant Agreement and has failed to cure the breach. Termination of a Participant Agreement shall not terminate any other Participant Agreement or this Participating Addendum.
- iii. If a Participant gives Contractor notice of breach or terminates a Participant Agreement because of Contractor's breach of that Participant Agreement, Contractor shall provide

notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.

**B. Initial Resolution**

Except as herein specifically provided otherwise, disputes concerning the performance of this Participating Addendum which cannot be resolved by the designated Participating Addendum primary contacts, as identified in §5 of the Participating Addendum, or through a dispute on a Participant Agreement, shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

**C. Resolution of Controversies arising under this Participating Addendum**

If the initial resolution described in §15.B. fails to resolve the dispute within ten (10) Business Days, Contractor shall submit any alleged breach of this Participating Addendum by the State to the Procurement Official of the State Purchasing and Contracts Office as described in in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §§24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the Executive Director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

It is expressly acknowledged and agreed that this Section 15 shall not apply to disputes regarding card invoices or charges, which for the avoidance of doubt shall be governed by Exhibit A Payments §6 C ii and Exhibit G Section 16 of the Master Agreement.

**16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

**A. Work Product**

Solely to the extent relevant and applicable, Contractor assigns to the Purchasing Entity and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product under an Order. Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the Purchasing Entity to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of "works made for hire" under 17 U.S.C.S. §101, the parties intend the Work Product to be a work made for hire.

**B. Exclusive Property of the State**

Except to the extent specifically provided elsewhere in this Participating Addendum, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Contractor shall not use, willingly allow, cause or permit State Materials to be used for any purpose other than the performance of Contractor's obligations in this Participating Addendum without the prior written consent



of the State. Upon termination of this Participating Addendum for any reason, Contractor shall provide all State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: (i) entered into as exhibits to this Contract; (ii) obtained by the State from the applicable third-party vendor; or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

**17. OBLIGATIONS AND RIGHTS IN THE EVENT OF TERMINATION OF ORDER OR CONTRACT**

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to Purchasing Entities all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Participating Addendum's terms. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the appropriate Participant has an interest. At the State or Participant's request, Contractor shall return materials owned by the Participant that Contractor possesses at the time of any termination. Contractor shall deliver all completed Work Product to the appropriate Participant at the State or Participant's request.

**18. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-102-206, 24-106-103, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

**19. GENERAL PROVISIONS**

A. Assignment

The Contractor may assign its rights under the Participating Addendum, except the assignment will not be effective until the following occurs: 1) the Assignor, Assignee and the State enter into the State Consent to Assign Agreement, 2) the Assignee provides the State a W-9 and 3) the assignment shall not be effective against a Participating Entity until the Assignee provides a W-9 to the Participating Entity.

B. Subcontracts

Contractor has engaged two third party service providers, FIS and Sykes, to provide certain limited services related to and in support of the provision of the Services being provided

hereunder (respectively, physical charge card production (i.e., "cutting cards") and limited overflow customer service functions). Contractor hereby represents and warrants that it will be fully responsible and liable to the State for any claims or damages that are indemnifiable hereunder, to the extent caused by either of such entities. The parties further agree and acknowledge that, notwithstanding anything set forth herein to the contrary, references to this agreement to "Subcontractor" (except for those set forth in Section 19. B) shall be deemed not to apply or to have any effect between the Parties. Contractor shall not enter into any new subcontract in connection with its obligations under this Contract without providing notice to the State. The State may reject any such subcontract, and Contractor shall terminate any subcontract that is rejected by the State and shall not allow any Subcontractor to perform any work after the Subcontractor's subcontract has been rejected by the State. Contractor shall submit to the State a copy of each subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Participating Addendum shall comply with all applicable federal and state laws and regulations

C. . Binding Effect

Except as otherwise provided in **§19.A.**, all provisions of this Participating Addendum, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Participating Addendum and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Participating Addendum are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Participating Addendum to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Participating Addendum may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Participating Addendum represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Participating Addendum. Prior or contemporaneous additions, deletions, or other changes to this Participating Addendum shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use

digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. Modification

Except as otherwise provided in this Participating Addendum, any modification to this Participating Addendum shall only be effective if agreed to in a formal amendment to this Participating Addendum, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Participating Addendum, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Participating Addendum to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Participating Addendum.

K. Severability

The invalidity or unenforceability of any provision of this Participating Addendum shall not affect the validity or enforceability of any other provision of this Participating Addendum, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Participating Addendum in accordance with the intent of this Participating Addendum.

L. Survival of Certain Contract Terms

Any provision of this Participating Addendum that imposes an obligation on the Contractor or a Participant after termination or expiration of this Participating Addendum shall survive the termination or expiration of this Participating Addendum and shall be enforceable by the other Party.

M. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Participating Addendum. Contractor shall honor any tax exemption that any Purchasing Entity has, and shall not charge any Purchasing Entity any excise, sales, or use taxes from which that Purchasing Entity is exempt.

N. Third Party Beneficiaries

Except for a Purchasing Entity and/or the Parties' respective successors and assigns described in §19.A, this Participating Addendum does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Participating Addendum and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Participating Addendum are incidental to this Participating Addendum, and do not create any rights for such third parties.

O. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Participating Addendum, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

P. CORA Disclosure

To the extent not prohibited by federal law, this Participating Addendum and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

Q. Standard and Manner of Performance

Contractor shall perform its obligations under this Participating Addendum in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

R. Licenses, Permits, and Other Authorizations.

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Participating Addendum, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Participating Addendum, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Participating Addendum.

**20. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

These Special Provisions apply to all contracts except where noted in italics.

A. **STATUTORY APPROVAL. §24-30-202(1), C.R.S.**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. **FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. **GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. **INDEPENDENT CONTRACTOR**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes, income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

**E. COMPLIANCE WITH LAW.**

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**F. CHOICE OF LAW, JURISDICTION, AND VENUE.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**G. PROHIBITED TERMS.**

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

**H. SOFTWARE PIRACY PROHIBITION.**

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.**

*[Not applicable to intergovernmental agreements]* Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

**K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.**

*[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]* Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency,

institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

**L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.**

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

## EXHIBIT B STATEMENT OF WORK

1. WEX will not be providing Work Product in this contract.

### 2. GOODS AND/OR SERVICES

3. Contractor will follow Exhibit A as last amended in Master Agreement Exhibit B.

For a description of what the Participating Addendum will provide, see Exhibit B, C, D, and E of Participating Addendum or as last amended Section 5 of Master Agreement Exhibit A (Fleet Card Products), Exhibit E (Establishing a Card Account Agreement), Exhibit E (Wex Forms, Fuel Card Services Agreement) and Exhibit G (Fleet Card Service Requirements) of the Master Agreement #00819, "Description of Products, Price, and Services"

i. Fleet Card Products information from Exhibit A Master Agreement):

A. Fleet Card – Physical specialized Commercial Card used to capture fleet- related expenses (e.g., fuel, vehicle maintenance, aviation, marine, electric, repair and service).

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

B. Cardless Account (WEXPay) – Virtual card (no plastic) account used for maintenance services.

- i. Enables out-of-network purchases 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.
- ii. Using WEXPay™ in conjunction with a Custom Control fleet card lets Purchasing Entity set the rules for drivers. Custom Control cards allow Purchasing Entity to set merchant, transaction, and even product type limits. The limits apply to both WEX Fleet Card and WEXPay™ MasterCard Transactions. Expanded coverage combined with integrated reporting and invoicing will further streamline Purchasing Entity fleet purchasing and operations.
- iii. WEXPay worked as a MasterCard issuing bank, WEX uses Single-Use Account Number technology to authorize a one-time payment to a merchant. The account



number provided to the merchant by phone is fast and secure-good for only that one purchase. When the merchant calls for authorization, WEX applies the Purchasing Entity's purchase controls and collects the same level of purchase detail, including Prompt ID and odometer. WEX integrates the purchase details into Purchasing Entity WEX Fleet Card invoice and reports. Once card, one invoice, one report with the same controls and service.

C. WEX Service Network

- i. WEX Service Network offers acceptance for service and maintenance needs. WEX Custom Control cards can be used to purchase tires, transmissions, brakes, mufflers, oil changes, glass replacement, car washes, and other routine vehicle maintenance products and services at national brand and local service stations, including Goodyear, Sears, Jiffy Lube, Valvoline, and Bridgestone/Firestone.

D. WEX EV Fleet Charge

- i. Allows a Purchasing Entity to use their WEX Fleet card to pay for charges at Electric Vehicle charging sites. Purchasing Entities will also get reporting on EV charges that integrates with their traditional liquid fueling activity for a total fleet view of their fuel usage.

E. AVCARD Program

- i. Purchasing Entities can manage their aircraft fueling, maintenance, and activity. AVCARD cards function as both a credit card and a contract fuel card. Purchasing Entities can sign up and use the AVCARD program at no additional charge.

F. Marine Fuel

- i. Cardholders can purchase gasoline and diesel fuel at marine fueling locations the WEX Fleet Card and WEXPay™ would be used at the accepting locations just like any other fueling location to purchase fuel and related services. Additional terms and conditions apply.

G. Alternative Fuel & Additional Acceptance

- i. Certain WEX-accepting merchants supply ethanol, natural gas (CNG, LNG), propane (LPG), hydrogen, biodiesel, methanol, and other alternative fuels. WEX uniquely reports ethanol, methanol, CNG, LNG, and biodiesel.

H. Additional Merchants

- i. Purchasing Entities may request additional merchants to be a part of the WEX accepting network who do not already have direct acceptance or cannot utilize the WEXPay™ tool, WEX will request the following information from the Purchasing Entity:
  - A. Merchant name
  - B. Merchant address
  - C. Merchant contact person
  - D. Phone and fax numbers
  - E. Expected utilization/volume from a Purchasing Entities fleet

- F. Name and phone number of Cardholder requesting WEX card acceptance
- I. WEX Optional Products/Services
- i. WEX Fleet ClearView™ is a cloud-based analytic solution that automatically organizes, interprets, and intuitively displays fleet-related information. WEX ClearView products present complex fleet data in straight-forward and compelling graphics. Please go to Master Agreement Exhibit A for additional details and costs of the Optional Products/Services.
- J. Tax Exemption, Recovery, and Reporting Program
- i. Federal Gasoline and Diesel Excise Tax-Exempt Program is currently offered by WEX for eligible tax-exempt Purchasing Entities. The program has reporting and is based on merchant participation. The program supports the following levels of tax, including:
- A. State Primary (Excise Tax)
  - B. State Secondary (Sales Tax)
  - C. State Special
  - D. County Primary (Excise Tax)
  - E. County Secondary (Sales Tax)
  - F. County Special
  - G. City Primary (Excise Tax)
  - H. City Secondary (Sales Tax)
  - I. City Special
- ii. Additional details on the program including information on Non-Participating Merchants can be found in the Master Agreement Exhibit A.
- K. Private Site and Bulk Fuel Solutions
- i. For Purchasing Entities with private site and bulk fueling needs WEX provides secure, live authorizations and integrated reporting for onsite bulk fueling transactions.

## EXHIBIT C FUEL CARD REBATE/INCENTIVE SHARE

1. Contractor will follow Exhibit B as last amended in Master Agreement Exhibit B.
2. Rebate Amounts will be based on total spend less write-offs, returns, and fraudulent charges.
3. A single payment combining Incentive Share Components 1 and 2 will be paid directly to the Purchasing Entity on a quarterly basis. Incentive Share Payments can be made via account credit, mailed check, ACH or EFT payment. Incentive Share Payments must be received no later than the 60th day following the end of each calendar quarter.
4. Incentive Share Components Incentive Share #1 – Standard Volume Incentive
5. Each Purchasing Entity will receive a basis point (percentage) of their quarterly standard sales volume. The formula for calculating the Standard Volume Incentive is:
  6. Quarterly Total Volume x basis points = Quarterly Standard Volume Incentive
  7. Basis Points: 170 basis points (1.70%)
  8. Conditions: The Rebate set forth herein is expressly conditioned on the following: (1) monthly billing; (2) payment in full within 45 calendar days of the billing date appearing on the Purchasing Entity's invoice; (3) credit approval
  9. Quarterly Total Volume spend by all Cardholders for all card liability products in a quarter. Quarterly Total Volume includes the total amount of all purchases made using cards at retail locations that appear on invoices provided to the Purchasing Entity in three calendar months. Quarterly Total Volume shall not include: (i) those amounts representing credits, disputed items, fees, late fees or charges posted to their accounts (such as returned check fees, collection costs, administrative fees and reporting fees), (ii) fuel purchased at Tier 1 Truck Stop locations\* (currently Flying J, Loves, TA, Petro, and Pilot), or (iii) any amounts posted to an account with respect to which card has been reported lost or stolen. \*Purchasing Entities will be charged the posted cash price at Tier 1 truck stops.
10. Incentive Share #2 – Prompt Payment Incentive
11. Each Purchasing Entity will receive a basis point (percentage) of their quarterly total volume based on the Purchasing Entity's average speed of pay. The formula for calculating the Prompt Payment Incentive is:
  12. Quarterly Total Volume x Basis Points for Entity average file turn days = Quarterly Prompt Payment Incentive.
  13. Conditions: The Prompt Payment Incentive set forth herein is expressly conditioned on the following: (1) electronic reporting (i.e. no paper reports); and (2) Contractor receipt of payment in full in accordance with one of the Average File Turn Days in the Prompt Payment Table

Avg File Turn Days	Basis Point	Avg File Turn Days	Basis Point	Avg File Turn Days	Basis Point
1	20	21	7.375	41	1.25
2	19	22	7	42	1
3	18	23	6.625	43	0.75

4	17	24	6.25	44	0.5
5	16	25	5.875	45	0.25
6	15	26	5.5	46	0
7	14	27	5.125	47	0
8	13.5	28	4.75		
9	13	29	4.375		
10	12.5	30	4		
11	12	31	3.75		
12	11.5	32	3.5		
13	11	33	3.25		
14	10.5	34	3		
15	10	35	2.75		
16	9.5	36	2.5		
17	9	37	2.25		
18	8.5	38	2		
19	8.125	39	1.75		
20	7.75	40	1.5		

**14. Incentive Share #3 –National Annual Volume Incentive**

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

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

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

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

Basis Points:

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

\$400,000,001 +	30
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### Fees

Below is a list of fees allowed under this Participating Addendum:

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

## EXHIBIT D, INFORMATION TECHNOLOGY PROVISIONS

This Exhibit regarding **Information Technology Provisions** (the “Exhibit”) is an essential part of the agreement between the State and Contractor as described in the Contract to which this Exhibit is attached. Unless the context clearly requires a distinction between the Contract and this Exhibit, all references to “Contract” shall include this Exhibit.

### 1. PROTECTION OF SYSTEM DATA

Master Agreement No. 00819, Exhibit G Section 7

### 2. DATA HANDLING

- A. Contractor may not maintain or forward these State Records to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery purposes, without the prior written consent of the State. Contractor may not maintain State Records in any data center or other storage location outside the United States for any purpose without the prior express written consent of OIS.
- A. Contractor shall not allow remote access to State Records from outside the United States, including access by Contractor’s employees or agents, without the prior express written consent of OIS. Contractor shall communicate any request regarding non-U.S. access to State Records to the Security and Compliance Representative for the State. The State shall have sole discretion to grant or deny any such request.
- B. Within the document retention period set forth in this Participating Addendum, upon request by the State made any time prior to 60 days following the termination of this Contract for any reason, whether or not the Contract is expiring or terminating, Contractor shall make reasonable efforts to make available to the State a complete download file of all State data as follows:
  - i. This download file shall be made available to the State within 10 Business Days of the State’s request, shall be encrypted and appropriately authenticated, and shall contain, without limitation, all State Records, Work Product, and the schema pursuant to which Contractor provides the data file, or delimited text files with documents, detailed schema definitions along with attachments in its native format.
  - i. Upon the termination of Contractor’s provision of data processing services, Contractor shall, as directed by the State, return all State Records provided by the State to Contractor, and the copies thereof, to the State or destroy all such State Records and certify to the State that it has done so. If any legal obligation imposed upon Contractor or data backup system prevents it from returning or destroying all or part of the State Records provided by the State to Contractor, Contractor shall guarantee the confidentiality of all State Records provided by the State to Contractor and will not actively process such data anymore. Contractor shall not interrupt or obstruct the State’s ability to access and retrieve State Records stored by Contractor, to the extent possible.

### 3. DELIVERY AND ACCEPTANCE

Master Agreement No. 00819 Section 5.9

**4. WARRANTY**

Master Agreement No. 00819 Section 16.4(a).

**5. COMPLIANCE**

- A. In addition to the compliance obligations imposed by the main body of the Contract, Contractor shall comply with:
  - i. All applicable Colorado Office of Information Security (OIS) policies and procedures which OIS has issued pursuant to §§24-37.5-401 through 406, C.R.S. and 8 CCR §1501-5 and posted at <http://oit.state.co.us/ois>
  - i. As applicable to this Agreement, Contractor shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, et seq., C.R.S. Contractor shall comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards and available at <https://www.w3.org/TR/WCAG21/>.
- B. Contractor shall allow the State reasonable access and shall provide the State with information reasonably required to assess Contractor's compliance. Such access and information shall include copies of Contractor's annual SOC1 Type II and PCI reports.
- C. Master Agreement No. 00819, Exhibit G Section 7.

**6. TRANSITION OF SERVICES**

Master Agreement No. 00819 Section 4.14.

**7. LICENSE OR USE AUDIT RIGHTS**

- D. Master Agreement No. 00819 Section 11.

## **EXHIBIT E, ESTABLISHING A CARD ACCOUNT AGREEMENT**

### Introduction

This exhibit explains the process and documentation for establishing an account for an individual Purchasing Entity.

### New Account & Card Set-Up State Agency Accounts:

- A. In the initial implementation phase, a universal credit line will be established for a State Agency based on the State Agency's needs and spend requirements. Contractor has the ability to place protection against credit lines to ensure a State Agency does not experience any service interruptions due to sudden increased spending that can be caused by seasonal, emergency or other unexpected occurrences. This universal credit line then applies to all applicable accounts under the State Agency's hierarchy, allowing them to set up accounts without needing to seek a new credit line for each new card set-up.
- B. For new accounts under a State Agency hierarchy, an electronic template is completed and tax exemption information is collected, either through a blanket tax exemption for the State Agency, or individually by agency depending on how the State Agency is set up with tax identification numbers.
- C. The information required for a new account set-up includes account name, DBA account name, account level with the existing State Agency's hierarchy, shipping address, and if there are any other further requirements specific to a State Agency. Once in the information is captured and processed by Contractor, an account number is generated and provided to the State Agency to complete the proper tax exemption paperwork for enrollment in the Contractor tax program.

### Fleet Card Enrollment Process: Existing Participating Entity Accounts:

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

Purchasing Entities can also:

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

Card orders: Contractor will process requests for replacement cards for lost, damaged, or stolen cards within



one business day. If notification is received by 3:30 p.m. Eastern Time, Purchasing Entities can have cards sent that day. Purchasing Entities can use their own shipping account number or be changed a fee as listed in Exhibit C. If a Cardholder's card is lost or stolen, it should be reported immediately to Contractor's Customer service.

New Account & Card Set-Up Political Subdivision Accounts:

Political Subdivisions will need to complete a Credit Application that references Master Agreement Number 00819 and Participating Addendum Number 163711.

WEX Forms and Specific Terms & Conditions – see attached Exhibit E