



**STATE OF MICHIGAN**  
**ENTERPRISE PROCUREMENT**  
 Department of Technology, Management, and Budget  
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
 P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number 2

to

Contract Number 071B7700171

<b>CONTRACTOR</b>	WEX Bank
	7090 South Union Park Center
	Midvale, UT 84047
	Ryan Kelly
	952-922-1104
	ryan.kelly@wexinc.com
	CV0065279

<b>STATE</b>	<b>Program Manager</b>	Various	SW
	<b>Contract Administrator</b>	Joshua Wilson	DTMB
		(517) 249-0444	
		wilsonj31@michigan.gov	

**CONTRACT SUMMARY**

**FUEL CARD SERVICES - STATEWIDE**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 1, 2017	September 30, 2020	3 - 1 Year	September 30, 2020
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET45 and Prompt Pay Discounts (See Schedule B)		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$30,000,000.00	\$0.00	\$30,000,000.00		

**DESCRIPTION**

Effective May 22, 2018, this Contract is hereby amended incorporating the attached Federal Provisions Addendum.

All other terms, conditions, specifications and pricing remain the same per Contractor and Agency agreement, and DTMB Procurement approval.

## Addendum – Federal Provisions

The provisions in this addendum may apply if the purchase will be paid for in whole or in part with funds obtained from the federal government. If any provision below is not required by federal law for this Contract, then it does not apply and must be disregarded. If any provision below is required to be included in this Contract by federal law, then the applicable provision applies and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

### 1. Federally Assisted Construction Contracts

If this contract is a “**federally assisted construction contract**” as defined in [41 CRF Part 60-1.3](#), and except as otherwise may be provided under [41 CRF Part 60](#), then during performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of [Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](#) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **2. Davis-Bacon Act (Prevailing Wage)**

If applicable, the Contractor (and its subcontractors) for **prime construction contracts** in excess of \$2,000 must comply with the Davis-Bacon Act ([40 USC 3141-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

## **3. Copeland "Anti-Kickback" Act**

If applicable, the Contractor must comply with the [Copeland "Anti-Kickback" Act \(40 USC 3145\)](#), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

## **4. Contract Work Hours and Safety Standards Act**

If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with [40 USC 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), as applicable.

## **5. Rights to Inventions Made Under a Contract or Agreement**

If the Contract is funded by a federal "funding agreement" as defined under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

## **6. Clean Air Act**

If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387). Violations must be reported to the federal awarding agency and the regional office of the Environmental Protection Agency.

## **7. Debarment and Suspension**

A "contract award" (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management \(SAM\)](#), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

## **8. Byrd Anti-Lobbying Amendment**

If this Contract **exceeds \$100,000**, bidders and the Contractor must file the certification required under [31 USC 1352](#).

## **9. Procurement of Recovered Materials**

Under [2 CFR 200.322](#), a non-Federal entity that is a state agency or agency of a political subdivision of a state **and its contractors** must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**Program Managers  
for  
Multi-Agency and Statewide Contracts**

<b>AGENCY</b>	<b>NAME</b>	<b>PHONE</b>	<b>EMAIL</b>
MDOT	Scott Ratterree	(517) 284-6444	ratterrees@michigan.gov
DNR	Sue Lutton	(517) 284-5953	luttons@michigan.gov
MSP	Mary Vickrey	(517) 243-7193	vickreym@michigan.gov



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 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
 P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **1**  
 to  
 Contract Number **071B7700171**

<b>CONTRACTOR</b>	WEX Bank
	7090 South Union Park Center
	Midvale, UT 84047
	Ryan Kelly
	(952) 922-1104
	ryan.kelly@wexinc.com
	*****5616

<b>STATE</b>	<b>Program Manager</b>	Joshua Wilson	SW
		(517) 284-7027	
		WilsonJ31@Michigan.gov	
	<b>Contract Administrator</b>	Joshua Wilson	DTMB
		(517) 284-7027	
		wilsonj31@michigan.gov	

**CONTRACT SUMMARY**

<b>FUEL CARD SERVICES - STATEWIDE</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW</b>
August 1, 2017	September 30, 2020	3 - 1 Year	
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
NET45 and Prompt Pay Discounts (See Schedule B)		N/A	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-Card	<input type="checkbox"/> Direct Voucher (DV)	<input checked="" type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

<b>MINIMUM DELIVERY REQUIREMENTS</b>
N/A

<b>DESCRIPTION OF CHANGE NOTICE</b>				
<b>OPTION</b>	<b>LENGTH OF OPTION</b>	<b>EXTENSION</b>	<b>LENGTH OF EXTENSION</b>	<b>REVISED EXP. DATE</b>
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	
<b>CURRENT VALUE</b>	<b>VALUE OF CHANGE NOTICE</b>	<b>ESTIMATED AGGREGATE CONTRACT VALUE</b>		
\$30,000,000.00	\$0.00	\$30,000,000.00		

**DESCRIPTION**

Effective December 28, 2017, the existing Schedule B Pricing Matrix is hereby updated per the attached Change Notice No. 1 Schedule B Pricing Matrix.

Please note that Purchase Order(s) are no longer required as an authorizing document (Schedule A, Section 5.1.) nor for invoicing (Schedule A, Section 6.1.). All references to Purchase Order(s) will hereinafter be referred to as Delivery Order(s). Schedule A, Section 5.1. is hereby updated authorizing the Payment Request Commodity (PRC) method as an alternate payment option on this Contract.

All other terms, conditions, specifications and pricing remain the same per Contractor and Agency agreement, and DTMB Procurement approval.

# STATE OF MICHIGAN

Contract No. 071B7700171  
Change Notice No. 1  
Fuel Card Services - Statewide

## SCHEDULE B PRICING MATRIX

1. Pricing must include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing). Rebates and early pay incentives applies to the State, MiDEAL members and Extended Purchasing Program customer accounts regardless of spend amounts.
2. Pricing:
  - A. Cost and Fees:

Costs & Fees Table		
Item	Unit	Price
International Currency	Per transaction	2% of the total transaction value
Reproduced Reports	Per request	\$25.00
General Research Fee	Per hour	\$15.00
Returned Payment Fee	Per occurrence	\$50.00
Over Credit Limit Fee	Per transaction of flat fee	\$5.00 per transaction or \$100.00 flat fee per month <sup>1</sup>
Reactivation Fee	Per occurrence	\$50.00 (max monthly fee of \$50.00)
Truck Stop Fee	Per card swipe	\$1.25 per card swipe at a diesel pump <sup>2</sup>
Paper Delivery Fee	Per month for paper invoicing and reporting	\$3.00

<sup>1</sup>States choice of flat fee or per transaction fee applied.

<sup>2</sup>Actual charges applied to State account will be disclosed on billing statement.

### B. Monthly Spend Rebates<sup>1</sup>:

Monthly Spend Rebate Table	
Monthly Retail Transactions at non-Speedway	Rebate %
\$0 - \$249,999.00	1.25%
\$250,000.00 - \$499,999.00	1.25%
\$500,000.00+	1.35%

<sup>1</sup>Monthly Spend Rebates are based on monthly retail transactions and will be issued monthly in arrears in accordance with the above Monthly Spend Rebate Table. Monthly Spend Rebates are subject to the following conditions: (1) monthly billing; (2) payment in full within 45 calendar days of the billing date on the invoice; (3) monthly spend of at least the minimum described in the Monthly Spend Rebate Table; and (4) credit approval.

Calculation of Monthly Spend Rebates will commence at the closing of the first billing cycle. Rebates will be calculated by determining the monthly spend to establish the applicable rebate percentage. Monthly Spend Rebates equal rebate percentage multiplied by the total dollar amount of monthly retail transactions.

Rebates for international transactions shall be paid at a rate of 50% of the applicable Rebate Percentage.

### Definitions:

Total Spend means the total amount of all fuel and non-fuel purchases made using fuel cards at retail (not bulk, aviation, mobile or private site) locations that appear on invoices in a calendar month. Total Spend shall not include: (i) those amounts representing credits, disputed items, fees, late fees or charges posted to your accounts (such as returned check fees, collection costs, administrative fees and reporting fees), or (ii) fuel purchased at Tier 1 Truck Stop locations\* (currently Flying J, Loves, Petro, Travel Center of America and Pilot), or (iii) transactions that were billed to you as a repriced transaction (either cost-plus or retail minus) at select merchants (note: fuel purchases at Speedway locations will not be included in total spend either, as those gallons are already being discounted). Due to billing cycle cut off dates and monthly calendar variances invoices may contain transactions from the previous month.

Total Spend is accumulative for the length of the Contract including MiDEAL and Extended Purchasing Program member participation.

*\*Tier 1 Truck Stop locations refer to the diesel fuel pumps out back at the aforementioned truck stop locations. Fueling of all types is still allowed at these locations and retail fuel purchased up front at these locations is treated as any other retail transaction for applicable rebates.*

C. Speedway Rebates<sup>1</sup>

Speedway Rebate Table	
Fuel Type	Discount
Diesel	\$0.10
Unleaded	\$0.06
Fuel Type	Discount (Rebate % Equivalent per above)
Diesel	3.80%
Unleaded	2.58%

<sup>1</sup>Speedway Rebates are captured upon using fuel cards at retail at Speedway locations only. The State, MiDEAL members and Extended Purchasing Program customers will pay retail price at the pump. The rebate is conditioned on your account being in good standing and is offered by Speedway and subject to change. Rebates are calculated by multiplying the retail transaction by the discount.

The percent rebate equivalent is shown as an example to compare the discount to rebate percentage and is based on the January 2017 Statewide fuel price average according to the WEXIndex fuel prices of Diesel: \$2.63/gallon, Unleaded: \$2.33/gallon and a calculation formula of: (discount/WEXIndex price per gallon = rebate percent).

D. Early Pay Incentives:

Early Pay Incentives Table		
Payment Timing	Rebate	Description
Daily Billing and Daily Payment	0.17%	Payment in full every Business Day*
Tri Monthly Billing and Payment	0.15%	Payment in full tri-monthly (10 <sup>th</sup> , 20 <sup>th</sup> and 1 <sup>st</sup> business day of the Mont next month)*
Weekly Billing/Weekly Payment	0.13%	Payment in full by the 7 <sup>th</sup> calendar day after the date on weekly invoice*
Weekly Billing/14 Day Payment	0.08%	Payment received and posted in full by 14 <sup>th</sup> calendar day after date on weekly invoice*
Monthly Payment (5 <sup>th</sup> of the month)	0.09%	Payment received and posted to account in full by the 5 <sup>th</sup> calendar day after date on weekly invoice
Monthly Payment (10 <sup>th</sup> of the month)	0.06%	Payment received and posted to account in full by the 10 <sup>th</sup> calendar day after date on weekly invoice

<sup>1</sup>Early Pay Incentives are subject to the following conditions: (1) electronic reporting; and (2) payment in full in accordance with the payment timing per the above Early Pay Incentives Table. Calculation will commence at the closing of the first billing cycle. Rebates will be calculated by determining the payment timing and applicable rebate percentage, then by multiplying the rebate percentage by the total dollar amount of monthly retail transactions. Payment Timing Rebates for international transactions shall be paid at 50% of the applicable Rebate Percentage.

\*Enrollment requires billing account eligibility and the completion of a Direct Debit form for direct debit.

E. Other Conditions:

Cycle Swaps:

Contractor will provide various billing cycle and payment timing options. In the event a billing cycle is desired, the accountholder (State, MiDEAL member or Extended Purchasing Program customer) must make a request to the Contractor. It will be a minimum of 30 business days to change the billing cycle upon receipt by the Contractor. In addition, any changes to billing cycles will not take effect until after the current billing cycle has closed. Cycle changes cannot be made mid-month or mid-week from monthly to weekly billing cycles nor from weekly to monthly billing cycles. Cycle changes can only be made once per calendar year for each billing entity/accountholder.



Billing and Payment:

At the latest, purchases are due and payable in full within 45 days of the date appearing on the invoice pre the State of Michigan's Prompt Payment Act (Public Act 279 of 1984). Invoices include transactions that have posted in the Contractor's system per each accountholder's billing cycle and will not include all transactions that been made in the billing cycle. Accounts are deemed delinquent if the balance is not paid within 45 days of the billing date appearing on the invoice. The State will not pay penalties or fees beyond those disclosed in the Payments to Private Enterprises Act 279 of 1984, MCL 17.54 Past due payment.

**Program Managers  
for  
Multi-Agency and Statewide Contracts**

<b>AGENCY</b>	<b>NAME</b>	<b>PHONE</b>	<b>EMAIL</b>
MDOT	Scott Ratterree	(517) 284-6444	ratterrees@michigan.gov
DNR	Sue Lutton	(517) 284-5953	luttons@michigan.gov
MSP	Mary Vickrey	(517) 243-7193	vickreym@michigan.gov

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# STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget  
525 W. Allegan, Lansing MI 48913  
P.O. Box 30026, Lansing, MI 48909

## NOTICE OF CONTRACT

CONTRACT NO. **071B7700171**  
between  
THE STATE OF MICHIGAN  
and

<b>CONTRACTOR</b>	WEX Bank
	7090 South Union Park Center, Suite 350
	Midvale, UT 84047
	Ryan Kelly
	(952) 922-1104
	Ryan.Kelly@wexinc.com
*****5616	

<b>STATE</b>	Program Manager	Joshua Wilson	DTMB
		(517) 284-7027	
		WilsonJ31@michigan.gov	
<b>STATE</b>	Contract Administrator	Joshua Wilson	DTMB
		(517) 284-7027	
		WilsonJ31@michigan.gov	

CONTRACT SUMMARY			
<b>DESCRIPTION:</b> Fuel Card Services - Statewide			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW</b>
August 1, 2017	September 30, 2020	3 – 1 Year	
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
NET45 and Prompt Pay Discounts (See Schedule B)		N/A	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>MINIMUM DELIVERY REQUIREMENTS</b>			
N/A			
<b>MISCELLANEOUS INFORMATION</b>			
<b>THIS IS NOT AN ORDER. This Contract Agreement is awarded on the basis of our inquiring RFP No. 007117B0009744. Orders for delivery will be issued directly by Departments through the issuance of a Purchase Order Form.</b>			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION</b>			<b>\$30,000,000.00</b>

**FOR THE CONTRACTOR:**

**WEX BANK**

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

**FOR THE STATE:**

Signature

**Tom Falik, Services Category Director**

Name & Title

**DTMB Procurement**

Agency

Date



# STATE OF MICHIGAN

## STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and **WEX Bank** (“**Contractor**”), a Utah industrial bank. This Contract is effective on August 1, 2017 (“**Effective Date**”), and unless terminated, expires on September 30, 2020. The transitional implementation period will be between August 1, 2017 and October 1, 2017. Contractor must commence performance of all services, without interruption, on October 1, 2017.

The Contract may be renewed in writing by mutual agreement of the parties. This Contract may be renewed for up to three (3) additional one (1) year periods.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Schedule A – Statement of Work** (the “**Contract Activities**”). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Schedule A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

2. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Joshua Wilson Constitution Hall, 1 <sup>st</sup> Floor, NE 525 West Allegan St. Lansing, MI 48909 <a href="mailto:WilsonJ31@michigan.gov">WilsonJ31@michigan.gov</a> (517) 284-7027	Legal Department c/o WEX Inc. 97 Darling Ave. South Portland, ME 04106 Fax: (207) 523-6377

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

<b>State:</b> Joshua Wilson Constitution Hall, 1 <sup>st</sup> Floor, NE 525 West Allegan St. Lansing, MI 48909 <a href="mailto:WilsonJ31@michigan.gov">WilsonJ31@michigan.gov</a> (517) 284-7027	<b>Contractor:</b> Ryan Kelly 97 Darling Ave. South Portland, ME 04106 <a href="mailto:Ryan.Kelly@wexinc.com">Ryan.Kelly@wexinc.com</a> (612) 213-7699 <b>Any modifications to the terms of this Contract must be signed by a WEX Bank authorized officer.</b>
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4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

<b>State:</b> Joshua Wilson Constitution Hall, 1 <sup>st</sup> Floor, NE 525 West Allegan St. Lansing, MI 48909 <a href="mailto:WilsonJ31@michigan.gov">WilsonJ31@michigan.gov</a> (517) 284-7027	<b>Contractor:</b> Ryan Kelly 97 Darling Ave. South Portland, ME 04106 <a href="mailto:Ryan.Kelly@wexinc.com">Ryan.Kelly@wexinc.com</a> (612) 213-7699
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5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor’s or a subcontractor’s performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations  <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.  Coverage must not have exclusions or limitations related to sexual abuse and molestation liability.
<b>Umbrella or Excess Liability Insurance</b>	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices,

	commissions, officers, employees, and agents" as additional insureds.
<b>Automobile Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
<b>Workers' Compensation Insurance</b>	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
<b>Privacy and Security Liability (Cyber Liability) Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that material (ie., providers of direct services to the State or performing a critical function for the State pursuant to this Contract) subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

**7. Reserved.**

- 8. Extended Purchasing Program.** This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at [www.michigan.gov/mideal](http://www.michigan.gov/mideal). Upon written agreement between the State and Contractor, this contract may also be extended to other states (including governmental subdivisions and authorized entities).

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

- 9. Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor. Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.
- 10. Subcontracting.** Contractor may not delegate any of its material obligations under the Contract without the prior written notice to the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) to the extent applicable, incorporate the terms and conditions contained in this Contract in any subcontract with a material subcontractor (ie., providers of direct services to the State or performing a critical function for the State pursuant to this Contract). Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
- 11. Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
- 12. Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. .
- 13. Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
- 14. Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control



does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.
16. **Acceptance.** Unless otherwise specified in Schedule A, the Statement of Work, Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Schedule A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.  
Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.  
If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.
17. **Delivery.** Unless otherwise specified in Schedule A, the Statement of Work, Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Schedule A. All containers and packaging becomes the State's exclusive property upon acceptance.
18. **Risk of Loss and Title.** Unless otherwise specified in Schedule A, the Statement of Work, until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
19. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Schedule A. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.
20. **Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Schedule A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are exclusive of applicable taxes for which either WEX or an accepting merchant is able to exempt and file for the refund, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract. Pursuant to MCL 207.1034, "if the purchase of motor fuel is charged to a credit card

issued to an eligible government entity, the issuer of the card shall bill the government entity without the tax and seek a refund."

The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

21. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A.
22. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
23. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

24. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
25. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform

the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

- 26. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

- 27. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
- 28. Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 29. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written

allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

**30. Reserved**

**31. State Data.**

- a. Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
- b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.
- c. Extraction of State Data. Contractor must, within five (5) business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
- d. Backup and Recovery of State Data. Unless otherwise specified in Schedule A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Schedule A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.
- e. Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within 5 calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (g) be responsible

for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and, (h) provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. This Section survives the termination of this Contract.

**32. Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received

by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

### **33. Data Privacy and Information Security.**

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- b. Audit by Contractor. No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.
- c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.
- d. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
- e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

### **34. Payment Card Industry Data Security Standard.**

- a. Undertaking by Contractor. Contractors that process, transmit, store or affect the security of credit/debit cardholder data, must adhere to the Payment Card Industry Data Security Standard (PCI DSS). The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.
- b. Cooperation to Notify of Breach. The Contractor must notify the State's Contract Administrator, within 48 hours of discovery, of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the card associations (e.g. Visa, MasterCard, and Discover) and state acquirer representative(s), or a PCI approved third party, to conduct a thorough security review. The review must validate compliance with the PCI Data Security Standard for protecting cardholder data. The Contractor must provide, at the request of the State, the results of such third party security review. At the State's sole discretion, the State may perform its own security review, either by itself or through a PCI approved third party.

Responsibilities for Costs Incurred. The Contractor is responsible for all costs incurred as the result of the breach. Costs may include, but are not limited to, fines/fees for non-compliance, card reissuance, credit monitoring, and any costs associated with a card association, PCI approved third party, or State initiated security review. Without limiting Contractor's obligations of indemnification as further described in this Contract, Contractor must indemnify, defend, and hold harmless the State for any and all claims,

including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the breach.

- c. Disposing of Cardholder Data. The Contractor must dispose of cardholder data when it is no longer needed in compliance with PCI DSS policy. The Contractor must continue to treat cardholder data as confidential upon contract termination.
- d. Audit by Contractor. The Contractor must provide the State's Contract Administrator with an annual Attestation of Compliance or a Report on Compliance showing the contractor is in compliance with the PCI Data Security Standard. The Contractor must notify the State's Contract Administrator of all failures to comply with the PCI Data Security Standard.

**35. Reserved**

- 36. Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 37. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.
- 38. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 39. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.

40. **Reserved**

41. **Reserved**

42. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

43. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

44. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

45. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

46. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

47. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

48. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

49. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

50. **Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and expressly incorporated schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A –



Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date, including the Terms for Inclusion for Government Business found at Schedule C. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

51. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
52. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
53. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
54. **Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

# STATE OF MICHIGAN

Contract No. 071B7700171  
Fuel Card Services - Statewide

## SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

### Background

This Contract is for fuel cards to be used for State of Michigan (State) agency-owned vehicles and Extended Purchasing Program customers.

Accounts will be set up for the Department of Technology, Management and Budget (DTMB), State departments and other units of government through MiDEAL Extended Purchasing Program. Currently, approximately 150 accounts and approximately 5,300 fuel cards are used by State departments.

The day-to-day management of the Contracts are managed by personnel from departments and other units of government. In other words, each of the 150 entities have their own account, they set their own limits on number of transactions and purchase amounts, they order and cancel their own fuel cards, activate and deactivate driver ID/PINs, they pay their own fuel card bills directly and they have access to the reporting systems of the Contractor.

The other units of government include colleges and universities and local units of government, such as cities and counties.

The Michigan Department of Transportation (MDOT) is currently the largest account and there are approximately 100 accounts that are related to the Department of Natural Resources (DNR) parks and facilities.

The types of vehicles fueled with the fuel cards include: light trucks, medium duty trucks and heavy duty trucks, cars, boats, motorcycles, all-terrain vehicles, loaders, lawn mowers, gators, and other vehicles that utilize unleaded gasoline (and blends), E85, diesel, biodiesel, propane, CNG and other alternative fuels, for operation.

### Requirements

#### 1. Contract Activities

**Work and Deliverable** – Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

##### A. Commercial Fuel Card

1. The Contractor must provide a complete list of fuel sites in Michigan that accepts the fuel card. This list must include Meijer and any other alternate fuel (E85, propane, CNG) providers.
2. The fuel card provided by the Contractor must be accepted in Canada.
3. There must be no charge for overnight shipment of fuel cards. Overnight shipment of fuel cards must be received the next business day (within 24 hours or less of the request).
4. The Contractor must offer on their own website a tracking number on overnight card shipments.
5. The Contractor must be able to report and differentiate between card limits on fuel, services/non-fuel, and roadside assistance.

6. The Contractor must provide commercial stations education and training on card usage and acceptance. The education and training provided must be approved by the Program Manager. The Contractor must identify how they educate and train staff on proper card usage, acceptance and timely and accurate processing of fuel charged.
7. Currently the State pays for fuel purchases once every month. Contractor must provide electronic billing.
  - a. Transaction level detailed billings must reconcile with monthly invoice.
  - b. Provide electronic notification when monthly fuel bill is ready for viewing/processing. This should be an e-mail which identifies the FTP site.
  - c. Provide the ability to track a set of billing codes for each active card in the system. This should include an interface to manage coding changes in real time. The fields should include:
    - 1) AGY
    - 2) AY
    - 3) INDEX
    - 4) PCA
    - 5) AOBJ
    - 6) PROJ
    - 7) PH
    - 8) GRANT
    - 9) PH
    - 10) Fuel type
    - 11) Region/business area
8. The Contractor must have a billing dispute resolution process.
9. The Contractor must be able to interface with the current MDOT Fleet Management System, so fuel usage data can be downloaded into the fleet database. Preferable, this would be a real time system requiring no manual download of information. Data must be a "flat" file in a specific order and format to export/import all fuel data from the fuel card vendor website to the fleet management system.
10. The Contractor must identify and provide both the fuel and non-fuel/service locations that accept the card, such as oil and lube, and towing facilities (e.g., Goodyear, Jiffy Lube, towing service, etc.).
11. The Contractor must assist the State with development, implementation, modification, or enhancement of internal rules and procedures for issuance, security and operational matters relative to the State's fuel card program.
12. The State will not be liable for charges incurred after notice to the contractor to cancel a card. As part of its procedures, the State will recover credit cards whenever possible from employees upon retirement, termination or reassignment of a vehicle.
13. The Contractor must provide procedures on how to cancel cards, and allow for cancellation by more than one individual with appropriate access.
14. The State will not be liable for charges incurred by unauthorized users, purchases outside the scope of authorized purchase limits for the specific accounts or purchases processed through a merchant whose Standard Industry Classification Code (SIC Code) is not approved for participation by the State.
15. The Contractor must deliver initial cards to the location(s) directed by the State agencies. The State will provide a list of agency-owned vehicles, individuals and equipment that include a code identifying the location each is assigned. The State will also provide information for additional vehicles, individuals and equipment when there are changes to the fleet inventory. The State currently has 3,600 issued cards with approximately 1,800 to 2,000 cards active each month (includes seasonal/temporary employees). There are approximately 1,000 locations at this time. A list of the cards, vehicles, individuals, and equipment that the cards are assigned to must be included with each group of shipped fuel cards.

16. The Contractor must provide an option for the State to select multiple fuel card designs to differentiate between equipment, individuals, leased vehicles, and agency-owned vehicles.

**B. Aviation Fuel**

1. Fuel cards must be accepted nationwide and in Canada.
2. Aircraft tail number must appear on each card.
3. Must supply up to two (2) cards per aircraft.
4. Must be no dollar limit and no gallon limit on the fuel load.
5. Card must allow the purchase of both Jet A fuel with additive and 100 Low Lead fuel.
6. The State currently has approximately 11 aircraft in the fleet.

**C. Equipment and Marine Fuel**

1. Fuel cards must work at gas stations or marinas.
2. Must be no dollar limit and no gallon limit on the fuel load.
3. Must provide 24 hour coverage for approvals from gas station or marinas.
4. Must provide a card for each boat with its own unique PIN as created by the State.
5. Equipment cards must be assigned to an individual with a six digit PIN.
6. All taxes must be removed from each billing.
7. Billing statements must have fuel usage itemized by equipment and/or individual based upon card assigned.

**D. Database Technology**

1. The Contractor must provide an internet application where the State is able to order new or replacement cards (and have them delivered to varying addresses as needed), cancel cards, change authorization limits on cards, and activate/deactivate driver ID/PINs.
2. The State must be able to request a large quantity of new cards through any electronic file.
3. The Contractor must be able to update their system with an electronic file.
4. The Contractor must maintain capabilities related to internet access (account administration and/or cardholder online access) along with security.
5. The Contract must maintain data in their system for at least 84 months (combination of online and offline).
6. The Contractor's system must maintain a station listing.
7. The Contractor's real-time, browsers-based client interface for account-specific access via any internet connection with the capability to sort by fields and the ability for an administrator to create organizational hierarchies and reassign/move cardholders. Must be able to contain, at a minimum, the following information:

Vehicle ID

License Plate  
License Plate State  
VIN  
Department  
Location Code  
Driver Last Name  
Driver First Name  
Per transaction limit  
Daily spending limit  
Daily transaction limit  
Monthly transaction limit  
Monthly spending limit  
Approved SIC or merchant codes  
Expiration date  
Card Status  
Transaction Data  
Transaction Time  
Station Brand  
Station Name  
Station Address  
Station City  
Station State and Zip Code  
Quantity purchased  
Cost per unit  
Total sale  
Taxes reduced  
Internal or pay to the pump  
Type of product purchased

8. The Contractor must retain transaction data according to industry standards.
9. The Contractor must have a back-up process, for example, a dial in number in the event the internet connection is down.

**E. Technology**

1. The Contractor must provide available technology options for smart devices to allow State drivers access to searching for gas stations in their current location, associated real time per gallon cost, and identifying gas stations that will remove gas taxes for government entities.
2. The Contractor must work with the State and other Contractors (e.g. DTMB information technology staff, systems contractors, etc.) to assist in problem resolutions including but not limited to, establishing new communications channels, downtime, testing, etc.

**F. Access Control**

The Contractor must limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems) and to the types of transactions and functions that authorized users are permitted to exercise. Access must be immediately removed when a staff changes job duties or leaves the employment.

*Authentication Process*

Authentication is the process of verifying the identity of a user. Authentication is performed by having the user enter a user name and password in order to access the system.

To help protect information from unauthorized access or disclosure, users must be identified and authenticated per the table below prior to accessing confidential or sensitive information, initiating transactions, or activating services.

Publicly available information such as the mother's maiden name, birth date, and address as the sole authenticator is not a secure means of authentication and should not be used.

Automatic information (e.g. a password or PIN) must never be disclosed to another user or shared among users.

The authentication process is limited to three unsuccessful attempts and must be reinstated by the authorized personnel (preferable the System Security Administrator). User accounts should be systematically disabled after 90 days of inactivity and must be deleted after one year of inactivity.

### **Password Requirements**

The purpose of a password is to authenticate a user accessing the system and restrict use of a User ID only to the assigned user. To the extent that the functionality is supported within the technology or product, the controls listed must be implemented.

These following controls or content rules apply at any point where a new password value is to be chosen or assigned. These rules must be enforced automatically as part of a new password content checking process:

<b>Password Property</b>
Minimum Length
Composition
Expiration Requirement (Maximum Password Age):
<b>Password Property</b>
Revocation
Temporary passwords
Change process
Login process
Encryption of passwords/PINs
Compromise of password/PIN
Forgotten password/PIN
Current user password/PIN
Audit logs
Password history
Privileged account access (e.g. supervisor or root)

### **1.1. Transition**

1. The Contractor must work with the State and/or previous contractor during implementation if applicable. The contractor must allow as many personnel as practicable to attend meetings and receive hardcopy and/or electronic files to help maintain the continuity and consistency of the services required by the Contract.
2. It is crucial to have a seamless transition for clients. Therefore, once a Contract has been awarded, the Contractor must have a written work plan and timeline in place to ensure an uninterrupted transition of Fuel Card Services clients from the current Contractor August 1, 2017, with no disruption of client services.
3. Contractor's transition plan:

Contractor's Strategic Implementation Manager (SIM) will work with the State for transitioning following the Software Development Life Cycle (SDLC) process for each phase of the project. The key SDLC phases will be:

- Initiation – Contract negotiations and pre-work (e.g. selecting card design, credendum approval and custom letters for marketing efforts).
- Discovery – Review requirements for setup, invoice cycles, data requirements, training needs and order of priority for State adoption.
- Design & Testing – Custom report joint architectural design (JAD) sessions and State interface testing.
- Implementation – Creation of accounts, adding approved contacts, creating cards and prompts in the system, online training for the users and delivery of the cards to State agencies.
- Stabilization – SIM will confirm production reporting is correct, that the State can pay from the presented invoice, that the online users are able to access Speedway Fleet Manager Online and performance maintenance, and that implementation meets expectations.

A step-by-step list of implementation activities are as follows:

<b>Task Name</b>	<b>Duration</b>	<b>Who's Responsible</b>
<b>TRANSITION/PRE-IMPLEMENTATION</b>	<b>20-30 days</b>	
Initial formal contact between WEX and fleet		Relationship Manager / Fleet
Establish contacts, addresses and areas of responsibilities between all parties		Relationship Manager / Fleet
Relationship Managers		Relationship Manager / Fleet
Fleet Manager (day to day contact(s))		Fleet
Premium Fleet Services (PFS) Account Manager		WEX
Fleet billing		Fleet
Fleet maintenance		Fleet
Fleet technical		Fleet
Determine fleet expectations		Fleet / Relationship Manager / PFS
Determine whether roll out is at once or staggered		Fleet
Finalize implementation schedule		Fleet / PFS
Establish account profiles and hierarchy requirements		Fleet / PFS
Determine needed credit line		Fleet / WEX
Determine fleet's electronic capabilities		Fleet / PFS
Determine billing requirements		Fleet / PFS
Determine reporting requirements		Fleet / PFS
Determine account maintenance (Speedway Fleet Manager Online) requirements		Fleet/PFS
Determine fleet training needs and create training plan		Fleet/PFS
Provide format for auto upload of fleet data into WEX system		PFS
Account information verified (prior to loading)		Fleet/PFS
<b>IMPLEMENTATION</b>	<b>Timeline depends upon size and complexity, but typically 60 days</b>	

4 or 6 digit personal prompt identification number?		Fleet
Prompt IDs provided by fleet or randomly generated by WEX System?		Fleet
Determine card design and embossing requirements		Fleet
Determine card types and restrictions		Fleet
Verify card information		PFS
Establish billing process and where invoices are sent for reconciliation and payment		Fleet /PFS
Establish payment terms		Fleet/WEX
Establish rebate process		Fleet/WEX
Speedway Fleet Manager Online – fleet user enrollment		Fleet/PFS
Test applicable billing files and reports		Fleet/PFS
Execute training plan		Fleet/PFS
Create Training materials and Driver guides		PFS
Establish dispute process		PFS
Establish problem resolution process		PFS
Issue and distribute new fleet cards (confirming receipt)		PFS
<b>POST-IMPLEMENTATION</b>	<b>30 days</b>	
Review first set of reports		PFS
Are reports received on time and meeting fleet's needs?		PFS
Review first set of invoices		PFS
Are invoices received on time and meeting fleet needs?		PFS
Are payments being received on time?		PFS
Survey fleet to obtain feedback on implementation		PFS

## 1.2. Training

The Contractor will provide initial training at agreed upon locations, on-going/as-needed training, and re-training as necessary through in-person training, webinar, phone conference or a combination of the aforementioned methods.

Upon the initial implementation, the SIM will train the State on how to perform card and PIN maintenance, manage authorization controls, create exception reporting and review all reporting through the Speedway Fleet Manager Online system for specific account setup. These sessions can be completed either through Contractor's WebEx platform or in person depending on State needs.

The Contractor will provide recorded training sessions that can be posted to the State's intranet site. The Contractor will also provide training on an ongoing basis as technical releases are completed. The Contractor will hold ongoing WebEx and in person training sessions as deemed fit by the State. Items included in the training are customizable depending on need, but typically consist of:

- Program Policies as dictated by the State
- Card Usage at retail and private site locations (if applicable)
- System Access
- Customer Service Support



- Updated Technology
- Best Practices
- Industry Trends

## **2. Acceptance**

### **2.1. Acceptance, Inspection and Testing**

The State will use the acceptance process defined in Standard Contract Terms, Section 16. Acceptance.

## **3. Staffing**

### **3.1. Contractor Representative**

The Contractor must appoint an Account Manager, specifically assigned to State accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the “Contractor Representative”). The Contractor must notify the Contractor Administrator at least 30 calendar days before removing or assigning a new Contractor Representative.

Contractor Representative:

Dan Neville  
97 Darling Avenue  
South Portland, ME 04106  
(207) 523-6067  
[Dan.Neville@wexinc.com](mailto:Dan.Neville@wexinc.com)

### **3.2. Customer Service Toll-Free Number**

The Contractor must specify its toll-free number for the State to make contact with the Contractor Representative. The Contractor Representative must be available for calls during the hours of 8:00 a.m. to 5:00 p.m. EST Monday – Friday at a minimum.

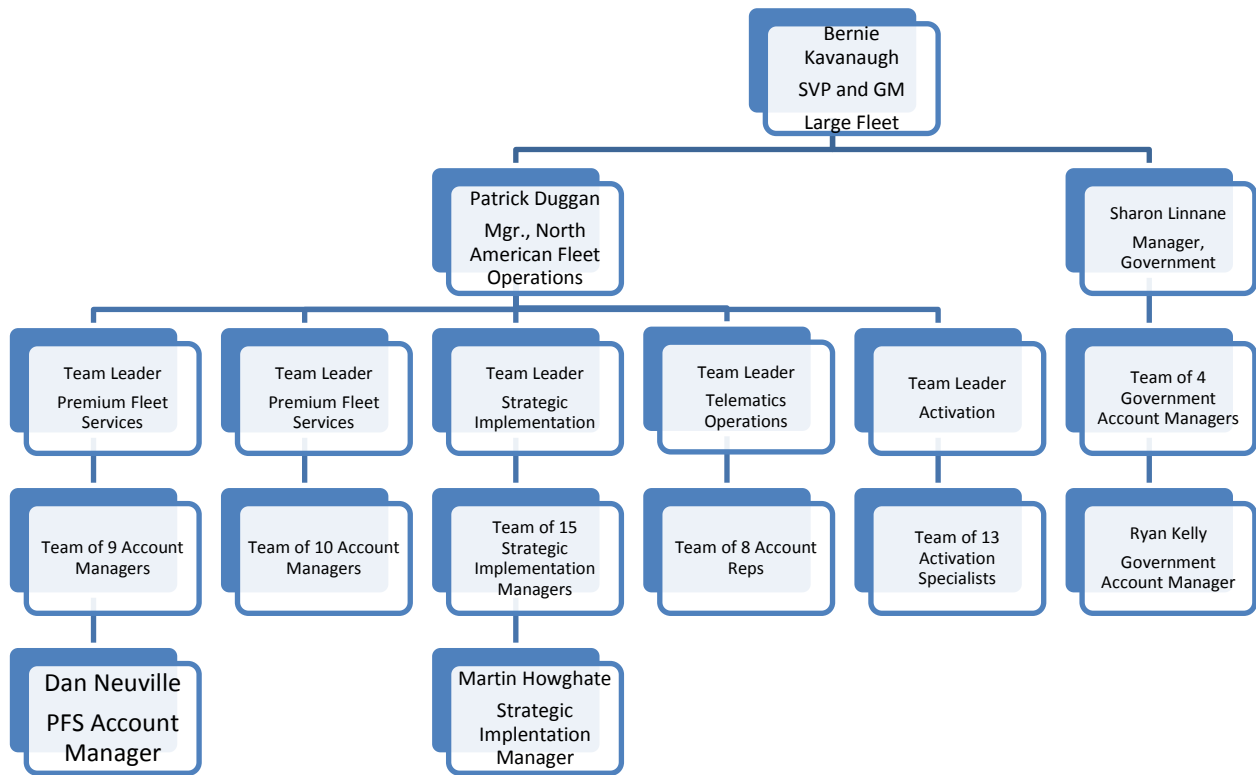
Contractor's Toll-Free Number: (877) WEX-CARD (939-2273)

### **3.3. Reserved**

### **3.4. Work Hours**

The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday 7:00 a.m. to 6:00 p.m. EST, and possible night and weekend hours depending on the requirements of the project.

### **3.5. Organizational Chart**



### 3.6. Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

1. The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
2. The relationship of the subcontractor to the Contractor.
3. Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
4. A complete description of the Contract Activities that will be performed or provided by the subcontractor.
5. Of the total Contract, the price of the subcontractor's work.

### 3.7. Security

Contractor's staff may be required to make deliveries to or enter State facilities. Contractor must ensure the security of State facilities and perform background checks. The State may require Contractor personnel to wear State issued identification badges.

## 4. Project Management

### 4.1. Project Plan

The Contractor will carry out this project under the direction and control of the Program Manager. Within 30 calendar days of the Effective Date, the Contractor must submit a project plan to the Program Manager for final approval. The plan must include: (a) the Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in accepted proposals; and (b) the project breakdown showing sub-projects, tasks, and resources required.

#### **4.2. Meetings**

The Contractor must attend quarterly meetings at a minimum, or otherwise as requested by the Program Manager.

#### **4.3. Reporting**

1. The Contractor must submit, to the Program Manager written bi-weekly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, risks or anticipated, which should be brought to the attention of the Program Manager; and notification of any significant deviation from previously agreed-upon work plans.
2. The credit card system must be capable of generating standard reports that detail cardholder transactions, cardholder listing, supplier information, accounting information at no additional costs and in a variety of formats. Contractor must have the capacity to provide access to historical fuel transaction data for at least five years prior. When requested, Contractor must be able to provide customized reports within three days. MDOT must also have access to create real time ad-hoc reports from the Contractor's site.
3. The Contractor must be able to provide standard and customized reports.
4. The Contractor must be able to capture data from fuel card transaction.
5. The Contractor must allow for ad-hoc queries.
6. The State requires accurate reporting of alternative fuel use such as E-85 and biodiesel.

#### **5. Ordering**

##### **5.1. Authorizing Document**

The appropriate authorizing document for the Contract will be a Blanket Purchase Order (BPO)/Contract, Purchase Order (PO) release(s) and/or approving entity.

#### **6. Invoice and Payment**

##### **6.1. Invoice Requirements**

All invoices submitted to the State must include: (a) date; (b) PO; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. Overtime, holiday pay, and travel expenses will not be paid.

##### **6.2. Payment Methods**

The State will make payment for Contract Activities by Electronic Funds Transfer (EFT).

#### **7. Reserved**

# STATE OF MICHIGAN

Contract No. 071B7700171  
Fuel Card Services - Statewide

## SCHEDULE B PRICING MATRIX

- Pricing must include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
- Pricing Table

Costs & Fees		
Item	Unit	Price
International Currency	Per transaction	2% of the total transaction value
Reproduced Reports	Per request	\$25.00
General Research Fee	Per hour	\$15.00
Returned Payment Fee	Per occurrence	\$50.00
Over Credit Limit Fee	Per transaction of flat fee	\$5.00 per transaction or \$100.00 flat fee per month <sup>1</sup>
Reactivation Fee	Per occurrence	\$50.00 (max monthly fee of \$50.00)
Truck Stop Fee	Per card swipe	\$1.25 per card swipe at a diesel pump <sup>2</sup>
Paper Delivery Fee	Per month for paper invoicing and reporting	\$3.00

<sup>1</sup>States choice of flat fee or per transaction fee applied.

<sup>2</sup>Actual charges applied to State account will be disclosed on billing statement.

Total Spend Rebate Table	
Accumulated Total Spend Amount	Rebate % of Gross Spend
\$0 - \$10,000,000.00	1.25%
\$10,000,000.01 - \$20,000,000.00	1.25%
\$20,000,000.01 - \$30,000,000.00	1.35%
\$30,000,000.01 - \$40,000,000.00	1.35%
\$40,000,000.01 - \$50,000,000.00	1.35%
\$50,000,000.01+	1.35%

Volume Rebate Table	
Monthly Retail Transactions at non-Speedway	Rebate %
\$100,000.00 - \$249,999.00	1.25%
\$250,000.00 - \$499,999.00	1.25%
\$500,000.00+	1.35%

Speedway Rebate Table	
Fuel Type	Discount
Diesel	\$0.10
Unleaded	\$0.06
Fuel Type	Discount (Rebate % Equivalent per above)
Diesel	3.80%
Unleaded	2.58%

<b>Early Pay Incentives</b>		
<b>Payment Timing</b>	<b>Rebate</b>	<b>Description</b>
Daily Billing and Daily Payment	0.17%	Payment in full every Business Day
Tri Monthly Billing and Payment	0.15%	Payment in full tri-monthly (10 <sup>th</sup> , 20 <sup>th</sup> and 1 <sup>st</sup> business day of the
Weekly Billing/Weekly Payment	0.13%	Payment in full by the 7 <sup>th</sup> calendar day after the date
Weekly Billing/14 Day Payment	0.08%	Payment received and posted in full by 14 <sup>th</sup> calendar day after date on weekly invoice
Monthly Payment (5 <sup>th</sup> of the month)	0.09%	Payment received and posted to account in full by the 5 <sup>th</sup> calendar day after date on weekly invoice
Monthly Payment (10 <sup>th</sup> of the month)	0.06%	Payment received and posted to account in full by the 10 <sup>th</sup> calendar day after date on weekly invoice

# STATE OF MICHIGAN

Contract No. 071B7700171  
Fuel Card Services - Statewide

## SCHEDULE C BANKING TERMS

### Additional Terms:

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

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

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

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

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

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

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

**“Company”** means the corporation, partnership, limited liability company, proprietorship or other business or governmental entity that has applied for, or accepted an Account with Issuer.

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

**“Issuer”** means WEX Bank.

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

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

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

2.1. Issuer may, in its sole discretion, extend credit, establish Accounts and/or issue Cards under this Agreement. Issuer may at any time investigate the financial condition of Company, and shall conduct this investigation using publicly available sources.

2.2. Account Users can make purchases on the Account up to the credit limit that is assigned by Issuer. The credit limit for each billing account appears on the billing statement. Company agrees not to exceed its total credit limit. Issuer may change the credit limit of an Account User or the Company without prior notice. However, modifications to the credit line shall be made in accordance with Issuer’s credit policy and applicable law and regulatory requirements. Issuer shall use best efforts to provide prior notice to Company of any reduction in the credit line prior to taking such action. If Issuer permits or has previously permitted Company to exceed its credit limit, it does not mean that Issuer will permit Company to exceed its credit limit again.

2.3. Issuer may suspend an Account or refuse to authorize any Transaction in its sole discretion and specifically in the event that: (i) any balance is past due; and/or (ii) the amount of the Transaction plus the outstanding balance (including Transactions authorized but not yet posted) exceeds the credit limit. Company shall, immediately upon request, pay the amount over the limit and any associated fees or the entire balance due on the Account. Nothing contained in this Agreement prevents Company or an Account User from requesting an increase or decrease of the credit limit.

2.4. Company shall designate its Account Users as well as those contacts authorized to: (i) provide Issuer with the information necessary to establish and maintain Account(s), Cards, and DINs; (ii) provide vehicle, driver and other information; (iii) receive all Account numbers, Cards or reports; (iv) receive other Account information; and (v) select additional products and/or services that may be offered. Company will provide notice of any change or removal of any contact or Account User either in writing, by telephoning Issuer’s customer service department or through Issuer’s online system. Company remains liable for any unauthorized use until Issuer receives notice of any change in or removal of any Account User or contact. Issuer is authorized to take instruction from only those designated by Company as Contract Administrator, Project Manager, or others designated by Company and such designation has been provided by written notification to Issuer to act on Company’s behalf; provided, however, that changes to the terms of Contract No. 071B7700171 are only binding upon the State if such modifications go through the Contract Modification process

outlined in Section 54 of Contract No. 071B7700171. Unless Company reports any errors in Account information or Cards within three (3) business days of receipt, Issuer is entitled to rely on that information for servicing the Account.

2.5. Company is responsible for notifying Issuer of any revocation of any Account User's authority to use or access its Accounts, Cards or, as applicable, DINs and Company shall remain liable for any charges made by an Account User until notice of revocation of authority is received by Issuer. Company agrees that use of a Card and the applicable DIN is deemed authorized use of the Account. Company assumes all risk if Company chooses to leave a Card at a merchant for use by its drivers or Account Users and as such, agrees to pay for all charges made with that Card. Company agrees to keep DINs confidential and to provide for its employees or Account Users to not disclose any DIN. If Account Users or other employees disclose a DIN or write a DIN on a Card, then Company is liable for any fraudulent use that may result even if the disclosure is inadvertent or unintentional.

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

2.7. Accounts and Cards will only be used for the purchase of products and services for business or commercial purposes and not for personal, family or household purposes. Company shall adopt internal policies and controls to ensure that the Accounts and Cards are used strictly for business or commercial purposes. Purchases of lottery tickets or other games of chance, gift cards, pre-paid cards or other cash equivalent charges are prohibited. Company agrees that Company's use of Cards or Accounts is deemed acceptance by Company of this Agreement's terms. All Cards or Account numbers provided remain the property of Issuer and shall be returned to Issuer or destroyed upon our request.

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

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

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

3.1. The availability and effectiveness of Controls is dependent upon each merchant's adoption of card specifications and the information, including product codes that the merchant transmits to Issuer. The product codes are assigned by each merchant, and as such, Issuer is not responsible for inappropriate product code assignment. In addition, some Controls are not enforceable at island card readers.

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

3.3. Only transactions submitted for authorization are subject to Controls and those Controls can only be enforced when the merchant provides sufficient information as part of the authorization. Issuer may, in its sole discretion, at any time, without prior notice modify Controls for the purpose of, among others, aiding in the prevention of suspected fraudulent activity. Issuer will notify Company after any modification is made. Company agrees it is responsible for reviewing fraud control data provided by Issuer for the purpose of detecting fraud that may occur within Control parameters.

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

**5. Payment Promise. (WEX understands that you may be governed by a separate Prompt Pay Act and will comply with the State law.)**

Payment shall be made in accordance with the terms of Contract No. 071B7700171.

**6. Late Fees. (WEX understands that you may be governed by a separate Prompt Pay Act and will comply with the State law.)**

Payment shall be made in accordance with the terms of Contract No. 071B7700171.

**7. Application of Payments and Early Payments.** Payments will be applied first to unpaid late fees and then to any unpaid balances. Company or an Account User, as applicable, may pay their Account balance or a portion of it, at any time prior to its due date without penalty.

**8. Disputed Amounts.**

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

8.2. All billed charges must be paid in full regardless of reported disputes. During dispute a temporary credit may be placed on Company's account. All disputed items must be submitted in writing within sixty (60) days from the billing date or they will be final and binding. Company may dispute an amount reflected on a billing statement if: (i) the amount does not reflect the face value of the Transaction; (ii) the amount being disputed is a fee that is not properly accrued under this Agreement; or (iii) Company does not believe it is liable for that amount.

8.3 Transactions made at an island card reader where the Company or Account User did not obtain a receipt at the time of sale are eligible for dispute. However, the receipt may provide the only opposing record to the transaction information submitted by the merchant. It is also important to note that island card reader transactions require both a valid card and DID to be authorized and often are the result of employee misuse rather than true fraud as defined in this Agreement.

8.4. Certain Transactions in dispute may qualify for charge back to the merchant. Issuer shall attempt to charge the Transaction back to the merchant in accordance with its procedures under its merchant acceptance agreements. Any accepted charge back will be credited to the relevant Account. The Company 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.

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

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

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

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

**11. Default.**

11.1. A party to this Agreement may terminate this Agreement at any time upon the default of the other party. "Default" means: (i) the failure of the Company to remit payment to Issuer in accordance with the terms of this Agreement; (ii) the breach by either party of this Agreement, provided the breach is not remedied within 15 days of the defaulting party's receipt of written notice from the other party specifying the breach; (iii) the representation or warranty by either party of any facts in connection with this Agreement that prove to have been materially incorrect or misleading when the representation or warranty was made; (iv) the filing by or against either party of any petition in bankruptcy, insolvency, receivership, or reorganization or pursuant to any other debtor relief law or the entry of any order appointing a receiver, custodian, trustee, liquidator, or any other person with similar authority over the assets of either party; (v) the insolvency, dissolution, reorganization, assignment for the benefit of creditors or any other material adverse change in the financial condition of either party; or (vi) the entry of any adverse judgment, order or award against either party that has a material adverse impact on the financial condition of either party or a detrimental effect on the ability of either party to perform its obligations.

11.2. If Company Defaults: (i) it will not have any further right to borrow under this Agreement; (ii) all outstanding amounts under the Account are immediately due and payable; (iii) Issuer may terminate this Agreement; and (iv) Issuer



will have the right to bring suit and exercise all rights and remedies available under applicable law. Alternatively, Issuer may, reasonable discretion, suspend all services and obligations; (ii) shorten the billing cycle; or (iii) change the payment terms. The suspension of services and/or obligations will not be deemed a waiver of any right to terminate this Agreement, whether as a result of the Default to which such suspension of services or obligations relates or otherwise.

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

12.1. Issuer is not liable for any loss sustained by any party resulting from any act, omission or failure to act by Issuer, whether with respect to the exercise or enforcement of its rights or remedies under this Agreement, or otherwise, unless the loss is caused by Issuer's gross negligence or willful misconduct. Issuer's liability under this Agreement shall be limited to actual damages incurred by Company as a direct result of Issuer's gross negligence or willful misconduct. Furthermore, Issuer's liability for actual damages shall not exceed the sum of: (i) all fees paid by Company to Issuer under this Agreement prior to the date when any claim is made against Issuer; plus (ii) all other revenue earned by Issuer for all Transactions made in the 12 months prior to the date of any claim made against Issuer. In no event will either party be liable for incidental, special, consequential or punitive damages and, any right or claim to either is expressly and unconditionally waived.

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

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

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

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

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

15.1. Cards are issued for use by Company's United States based operations, but may be used in Canada. Company may not distribute Cards to employees based in countries other than the United States. If Cards are used in any other country other than the United States, Company will: (i) be billed in US Dollars; (ii) receive reporting in English; and (iii) accept the currency conversion fee as reflected in Issuer's Fee Schedule.

15.2. Issuer will convert any purchase made in a foreign currency into a U.S. Dollar amount before the Transaction is posted to the Account. The exchange rate between the Transaction currency (the foreign currency) and the billing currency (U.S. Dollars) used for processing international Transactions is a rate selected by Issuer using rates available in wholesale currency markets for the date that the Transaction is posted by Issuer, which rate may vary from the rate Issuer itself receives, or the government mandated rate in effect at that time.

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

16.1. Online Products: Certain products and services may be accessed by Company or Account Users through the Internet. Although Issuer uses both passwords and data base security methods for our online products, security cannot be guaranteed. Issuer is not liable to Company for any data corruption, loss or unauthorized Account access,

as a result of Company's access to Issuer's website through the Internet or dial-in computer, notwithstanding reasonable security measures instituted by Issuer.

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