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# State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES

25 Capitol Street - Room 100  
Concord, New Hampshire 03301  
(603) 271-3201 | [Office@das.nh.gov](mailto:Office@das.nh.gov)

Charles M. Arlinghaus  
Commissioner

Catherine A. Keane  
Deputy Commissioner

Sheri L. Rockburn  
Assistant Commissioner

April 12, 2023

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

### REQUESTED ACTION

Authorize the Department of Administrative Services to enter into a **Sole Source Retroactive** amendment to an existing contract (Contract #8002671) with WEX Bank (VC#176090), Sandy, UT, for fuel card services by increasing the price limitation by \$141,933.57 from \$450,000.00 to \$591,933.57 and to extend the completion date from February 28, 2023 to February 28, 2024 with the option to extend the term for an additional year effective upon Governor and Council approval. The original contract (Contract #8002671) was approved by Governor and Council on February 19, 2020, item #78.

Funding shall be provided through individual agency expenditures, for the direct fuel purchases, none of which shall be permitted unless there are sufficient appropriated funds to cover the expenditure.

### EXPLANATION

As previously stated, this contract (Contract #8002671) was originally approved by Governor and Council on February 19, 2020, item #78.

This request is **Sole Source** and **Retroactive** because of the October 19, 2022 change to contract oversight requirements contained in the updated Manual of Procedures Chapter 150, subsequent internal approval procedures, and delays in obtaining necessary documentation from WEX Bank, and the requested price limitation amendment increases the contract value by a factor greater than 10%.

This is a no cost contract to the State. WEX Bank charges a 0% fee for this service, in addition to a discount for early payment. The requested price limitation of \$591,933.57 is a pass-through cost for the charges of the actual fuel being pumped by State agencies. This increased price limitation was reached by adding the original price limitation of \$450,000.00 to the monthly average usage of \$11,471.58 multiplied by twelve additional months of usage and including a thirty percent fuel increase allowance due to the current volatility of the fuel market. The thirty percent allowance was determined by using economic research data from the Federal Reserve Bank of St. Louis and taking the last three years of fuel pricing into consideration.

The Department of Administrative Services Bureau of Purchase and Property issued request for bid (RFB) 2715-23 on December 21, 2022 to obtain competitive market pricing against the incumbent, WEX Bank, and reached 74 vendors through NIGP, with an additional 8 directly sourced. The RFB closed on January 27, 2023 with one compliant response. The respondent's pricing was a 1% fixed fee showing that this requested amendment with WEX Bank, at a 0% fee, is in the best interest of the State. The incumbent, WEX Bank, chose not to respond to the RFB 2715-23 offering to extend the contract (Contract #8002671) under the same terms and conditions for an additional year.

State agencies have been surveyed and are pleased with the service of WEX Bank. The most recent survey by the National Conference of State Fleet Administrators published in 2016 shows that approximately 48% of government fleet responders utilize WEX fuel cards for their fleet as well. WEX Bank is a leader in the fuel card market that offers security, reduced consumption, card maintenance as well as real-time tracking. The fuel card program provides significant benefits for all State of New Hampshire agencies and improves the efficiency and effectiveness of processing and monitoring travel related fuel expenses.

Contract financials	
Previous price limitation	\$450,000.00
Amendment total with 30% allowance	\$178,956.66
Remaining unencumbered balance	\$37,023.09
Net change this amendment	\$141,933.57
New recommended price limitation	\$591,933.57

Based on the foregoing, I am respectfully recommending approval of the **Sole Source Retroactive** amendment to the contract with WEX Bank.

Respectfully submitted,



Charles M. Arlinghaus  
Commissioner

**FIRST AMENDMENT TO THE CONTRACT  
BETWEEN WEX BANK  
AND  
THE STATE OF NEW HAMPSHIRE, DEPARTMENT OF ADMINISTRATIVE SERVICES,  
FOR FUEL CARD SERVICES  
CONTRACT # 8002671**

This First Amendment (hereinafter referred to as the "Amendment"), dated this 22 day of February, 2023, is by and between the State of New Hampshire, Department of Administrative Services (hereinafter referred to as "the State") and WEX Bank (hereinafter referred to as "the Contractor") for Fuel Card Services.

WHEREAS, pursuant to an agreement effective March 1, 2020 set to expire February 28, 2023, (hereinafter referred to as "the Agreement"), the Contractor agreed to perform certain fuel card services for the State in consideration of payment by the State of certain sums as specified therein; and

WHEREAS, pursuant to Section 17 of the Agreement, the Agreement may be amended by an instrument in writing executed by both parties;

NOW, THEREFORE, for and in consideration of the mutual promises set forth in this Amendment and the underlying Agreement, the parties do mutually agree as follows:

1. Delete in its entirety from Form Number P-37, item 1.4, Contractor Address, item 1.7 Completion Date, and substitute the following:
  - 1.4 111 East Sego Lily Drive, Suite 250, Sandy, UT 84070
  - 1.7 February 28, 2024
2. Delete in its entirety from Form Number P-37, item 1.8 Price Limitation and substitute the following:
  - 1.8 \$591,933.57
3. All other provisions of the Agreement, approved by the Governor and Executive Council on February 19, 2020, item #78, shall remain in full force and effect.

WEX Bank

Signed by:  
By: Jason Price  
EE0EEC720DFF478...

Jason Price  
(Print Name)

Title: President / CEO

Date: 2/22/2023



STATE OF NEW HAMPSHIRE

By: Charles M. Arlinghaus

Charles M. Arlinghaus  
(Print Name)

Title: Commissioner  
Department of Administrative Services

Date: 3-21-23

OFFICE OF THE ATTORNEY GENERAL

By: Jahnuha Pakhman

Jahnuha Pakhman  
(Print Name)

Title: Assistant Attorney General

Date: 3/23/23

The foregoing contract was approved by  
the Governor and Council of New  
Hampshire on

\_\_\_\_\_

Signed: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

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

Contractor Initials: JP  
Date: 2/22/2023

# State of New Hampshire

## Department of State

### CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that documents regarding WEX BANK, were filed in this office on August 21, 2014.

INFORMATION REGARDING ANNUAL REPORTS AND/OR FEES MUST BE OBTAINED FROM THE NEW HAMPSHIRE BANKING DEPARTMENT.

Business ID: 713574

Certificate Number: 0006076894



IN TESTIMONY WHEREOF,  
I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 11th day of January A.D. 2023.

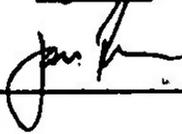
A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan  
Secretary of State

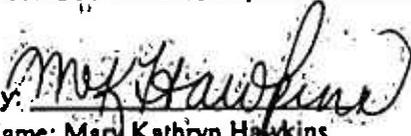
*Certificate of Incumbency*  
*(List of Authorized Representatives)*

Client Name: WEX Bank

As an Authorized Officer of the above referenced entity, I hereby certify that each person listed below is an authorized signor for such entity, and that the title and signature appearing beside each name is true and correct.

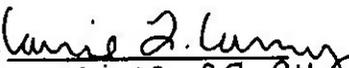
<u>Name</u>	<u>Title</u>	<u>Signature</u>	<u>Contact Number</u>
Jason Price	President		801-568-4345

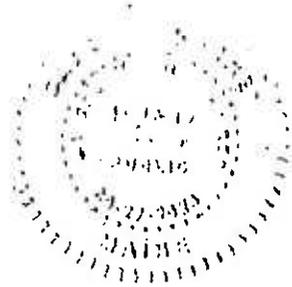
IN WITNESS WHEREOF, this certificate has been executed by a duly authorized officer by:

By:   
Name: Mary Kathryn Hawkins  
Title: Legal Counsel, Assistant  
Corporate Secretary  
Date: 3-06-2023

State of Maine  
County of Cumberland

On this 6<sup>th</sup> day of March, 2023, I certify that the signature by Mary Kathryn Hawkins, personally known to me, is her true, exact, and complete signature sworn to before me and subscribed in my presence.

Notary Public   
My commission expires 09.27.24





## DESCRIPTIONS (Continued from Page 1)

WC Policy Limit: \$1,000,000

WC Each Employee Limit: \$1,000,000

Certificate Holder, its subsidiaries, directors, officers, agents, representatives, employees and volunteers are additional insureds under WEX's automobile and general liability policies, on a primary, non contributory basis to the extent that they have a written contract and follow all other terms and conditions within the insurance contract. A waiver of subrogation is granted to the Certificate Holder where granted and delineated in a written contract and to the extent they follow all other terms and conditions within the insurance contract. The Umbrella policy follows the form of the underlying automobile and general liability policies.

See next page for list of Named Insureds on all evidenced policies.

Casualty Insureds continued:

WEX Bank (Subsidiary of WEX Inc.)

WEX Finance, Inc. (Subsidiary of WEX Bank)

Electronic Funds Source LLC (Subsidiary of OTR HOLDINGS LLC)

Truckers B2B LLC (Subsidiary of Electronic Funds Source LLC)

EFS Payments LLC (Subsidiary of Electronic Funds Source LLC)

PO Holding LLC (subsidiary of WEX Inc.)

Discovery Benefits LLC (Subsidiary of PO Holding LLC)

Competitive Health, Inc. (Subsidiary of WEX Health, Inc.)

First Access, Inc. (Subsidiary of WEX Health, Inc.)

TCH Canada Inc. (Subsidiary of Electronic Funds Source LLC)

Payment Connection Inc. (Subsidiary of WEX Payments Inc.)

Wright Express International Holdings Limited LLC (Subsidiary of WEX Inc.)

WEX Fleet US LLC (Subsidiary of WEX Inc.)

Transplatinum Service, LLC (Subsidiary of FleetOne Holdings, LLC)

FleetOne Factoring, LLC (Subsidiary of Transplatinum Service, LLC)

Pavestone Capital LLC (Subsidiary of FleetOne Factoring, LLC)

Wright Express Holdings 2 LLC (Subsidiary of WEX Inc.)

Wright Express Holdings 3 LLC (Subsidiary of WEX Inc.)

WEX Health, Inc. (fka Evolution1, Inc. (Subsidiary of PO Holding LLC.)

FleetOne Holdings, LLC (Subsidiary of WEX Inc)

FleetOne LLC (Subsidiary of Transplatinum Service, LLC)

FleetOne Receivables, LLC (Subsidiary of FleetOne LLC)

OTR TOPCO LLC (Subsidiary of OTR Blocker LLC)

OTR HOLDINGS LLC (Subsidiary of OTR TOPCO LLC)

WEX Payments Inc. (fka Noventis (Subsidiary of WEX)

Wright Express Fueling Solutions, Inc. (Subsidiary of WEX Inc.)

OTR Blocker LLC (Subsidiary of WEX Inc.)

eNett International USA, LLC (Subsidiary of eNett International (Singapore) Pte. Ltd)

eNett Merchant Services LLC (Subsidiary of eNett International USA, LLC)

Cirrus Holdings, LLC; Benefit Express Services, LLC and each of their respective subsidiaries

And any U.S. subsidiaries, owned, controlled, affiliated, or managed companies (including limited liability companies), which, directly or indirectly controls or is controlled by, or is under common control with any of the above named entities, as now or hereafter constituted.



NH Act 156 727  
E-104-10

# State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES  
25 Capitol Street - Room 120  
Concord, New Hampshire 03301  
[Office@das.nh.gov](mailto:Office@das.nh.gov)

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FEB 19 2020

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Charles M. Arlinghaus  
Commissioner  
(603) 271-8201

Joseph B. Bouchard  
Assistant Commissioner  
(603) 271-3204

Catherine A. Keane  
Deputy Commissioner  
(603) 271-2059

January 24, 2020

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

### REQUESTED ACTION

Authorize the Department of Administrative Services to enter into a contract with WEX Bank, Midvale, UT, vendor # 176090, for an amount not to exceed \$450,000.00 total for the three year contract, for Fuel Card Services. The term shall be for approximately three years effective March 1, 2020 or upon Governor and Council approval, which ever is later through February 28, 2023.

Funding is provided through individual agency expenditures; none of which shall be permitted unless there are sufficient appropriated funds in a specific Accounting Unit to cover the expenditure.

### EXPLANATION

The current fuel card service contract with WEX Bank is set to expire on February 29, 2020. The fuel card program provides significant benefits for all State of New Hampshire agencies and improves the efficiency and effectiveness of processing and monitoring travel related fuel expenses.

On September 11, 2019, the Bureau issued a request for bid for fuel card services. On October 8, 2019, two compliant bids were received. Bids were evaluated on the basis of the bidders' lowest applicable fees. Wex Bank offers no fees, in addition to a discount for early payment and a rebate on fuel purchases. This contract contains no penalty or interest payments. Attached are copies of the bid tab evaluation of the compliant bids.

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
January 24, 2020  
Page 2 of 2

Based on the foregoing, I am respectfully recommending approval of the amendment to the contract with Bank of America, N.A.

Respectfully submitted,



Charlie M. Arlinghaus  
Commissioner



Division of Procurement Support Services  
Bureau of Purchase Property

Gary S. Lunetta  
Director  
(603) 271-2210

Bid Description	Fleet Fuel Credit Card Services
Bid #	2255-20
Agent Name	Paul Rhodes

Vendor	Fixed Fee %
wex inc.	0.0
Gilbarco	0.9

**No Bid**  
Citizens Bank

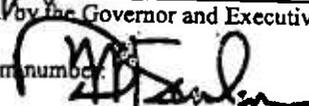
**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name Department of Administrative Services		1.2 State Agency Address State House Annex 25 Capitol Street Concord, NH 03301	
1.3 Contractor Name WEX Bank		1.4 Contractor Address 7090 South Union Park Center Suite 350 Midvale, UT 84047	
1.5 Contractor Phone Number (207) 749-6176	1.6 Account Number Various	1.7 Completion Date February 28, 2023	1.8 Price Limitation \$450,000.00
1.9 Contracting Officer for State Agency Tara Merrifield		1.10 State Agency Telephone Number (603) 271-7411	
1.11 Contractor Signature  Date: 1/23/20		1.12 Name and Title of Contractor Signatory Tim Laukka, President and CEO	
1.13 State Agency Signature  Date: 1/29/2020		1.14 Name and Title of State Agency Signatory Charles M. Arlinghaus	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: 2/4/2020			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number:  <b>DEPUTY SECRETARY OF STATE</b> FEB 19 2020			

Contractor Initials TL

**APPROVED**  
By Eleanor Driscoll on 11/22/2019 11:23:20 AM

Date 1/23/20

**2. SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provide in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

**8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**9. TERMINATION.**

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor

shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

**10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

10.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State..

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.**

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against

Contractor Initials TL

Date 1/23/20

the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

#### 14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

#### 15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire

Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

17. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

18. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

20. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. **HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. **SPECIAL PROVISIONS.** Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

23. **SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

**EXHIBIT A**  
**SPECIAL PROVISIONS**

1. Section 9.2 of Form P-37 is deleted and replaced with the following:

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion if requested in writing by the State, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

2. Add to Section 10 of Form P-37 the following:

10.4 Notwithstanding anything to the contrary set forth in this Section 10, data arising from card sales (i.e., transactions) processed by the Contractor hereunder, including but not limited to number of gallons purchased, price per gallon, fuel grade, and location of fueling station, shall be the exclusive property of the Contractor.

3. Add to Section 13 of Form P-37 the following:

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.

4. Section 18 of Form P-37 is deleted and replace with the following:

18. CHOICE OF LAW AND FORUM. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except as pertains to matters of banking, lending and extending credit, which shall be governed by the laws of the State of Utah, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The Contractor shall promptly notify the State in the event of any change to the laws of the State of Utah that would require the amendment of this Agreement, and upon receipt of such notice, State shall have the option to either amend or terminate the Agreement upon 60 days advance written notice to the Contractor. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

**EXHIBIT B  
SCOPE OF SERVICES**

**1. INTRODUCTION**

WEX Bank (hereinafter referred to as the "Contractor") hereby agrees to provide the State of New Hampshire (hereinafter referred to as the "State"), Department of Administrative Services, with Fleet Fuel Credit Card Services in accordance with the bid submission in response to State Request for Bid #2255-20 and as described herein.

**2. CONTRACT DOCUMENTS**

This Contract consists of the following documents ("Contract Documents"):

- a. State of New Hampshire Terms and Conditions, General Provisions Form P-37
- b. EXHIBIT A Special Provisions
- c. EXHIBIT B Scope of Services
- d. EXHIBIT C Method of Payment
- e. EXHIBIT D RFB 2255-20 and Contractor's written response thereto dated October 8, 2019 ("RFB")
- f. EXHIBIT E Supplemental Terms Government Fleets

In the event of any conflict among the terms or provisions of the documents listed above, the following order of priority shall indicate which documents control: (1) EXHIBIT A "Special Provisions," (2) Form Number P-37, (3) EXHIBIT B "Scope of Services," (4) EXHIBIT C "Method of Payment," (5) EXHIBIT D "RFB" and (6) EXHIBIT E "Supplemental Terms Government Fleets."

**3. TERM OF CONTRACT**

The term of this Contract shall commence on March 1, 2020 or upon the approval by the Governor and Executive Council, whichever is later, and shall continue thereafter for a period of approximately three (3) years, unless extended for additional terms.

The Contract may be extended for two (2) additional one-year extension terms thereafter upon the same terms, conditions and pricing structure the approval of the Governor and Executive Council.

The maximum term of the Contract (including all extensions) cannot exceed five (5) years.

**4. SCOPE OF WORK**

The Contractor shall supply and service the State of New Hampshire agencies with fleet fuel credit cards as described herein, and shall be ordered as needed during the term of the Contract. Cards ordered under this Contract shall be delivered FOB destination.

The fleet fuel credit card services shall primarily involve the State of New Hampshire department vehicles and therefore commands the services to be available 24 hours a day, 7 days per week, and 365 days a year.

The term "vehicle(s)" shall include but not be limited to automobiles, trucks, watercraft, motorcycles and ATV's.

### **INTERFACE**

The Contractor's system shall be capable of producing an Accounts Payable report in a CSV flat file format for use by the State in its ERP system.

### **FLEET CARD REQUIREMENTS**

A universally accepted fuel card (shall be accepted at all major U.S. retailing fueling locations):

- Magnetic, embossed cards.
- Capture all fuel transactions electronically.
- Capability to assign or modify funding at the transaction level.
- Pay at the pump capability, requiring odometer input.
- Individual driver PINs, usable at the pump.
- No cost for initial or replacement cards.
- Immediate access to transaction data as it posts.
- Provide undercover cards for law enforcement with the ability to mask the cards association with New Hampshire state government.
- No transaction cost to customer.
- Ability to assign users based on roles to the organization and sub-organizations.

Online capabilities: All online capabilities, access and use of the Contractor's website shall be provided to the State of New Hampshire free of charge.

- Reporting
  1. Ability for agencies to create ad-hoc custom reports in a downloadable format.
- Account Maintenance
  1. Agencies must be brought online in a timely manner, with assistance from the Contractor, once they request participation;
  2. Ability to easily add, activate or delete PINs in real-time, through an authorized user;
  3. Ability to easily delegate assignment of PINs to agency level, through an authorized user;
  4. Ability to easily add or delete/cancel/deny cards online at no cost, through an authorized user; and
  5. Ability to easily provide individual employee fuel credit cards with a programmable limit; in addition the authorized user of each agency shall have the ability to control the limits as well as set restrictions on purchases.
  6. Ability to link individual fuel credit cards to state specific accounting units

- The Contractor shall be required at the point of service to record and provide a receipt copy with the following information on each fuel purchase transaction for processing by State Personnel:
  1. Quantity of fuel purchased
  2. Cost of fuel purchased
  3. Card/account number
  4. Date and time of purchase
  5. Location
  
- Fuel Price Searches
  1. To obtain the lowest price by searching a current price list of all fuel locations on the expected route.
  
- Fuel Location Mapping
 

Print a map of all available fuel locations along the driver's route, with current prices and product availability.
  
- All information available 24/7

**TAXES**

The Contractor shall deduct the following from any invoice, in accordance with the guidelines of the law:

- State taxes for all In-State purchases
- Federal taxes for all purchases
- Out of State taxes, if applicable

Please note this is subject to change as legislation dictates. In the event of any such change, the State shall give notice to the Contractor and Contractor shall have the option to either make necessary modifications to the Contractor's systems to account for such change, or terminate the Agreement upon 60 days written notice to the State.

**TRAINING**

The Contractor shall be required to provide training for key Department Personnel at the start-up of the credit card program and upon request at no additional cost and shall include the following minimum requirements:

- The information needed for the State of New Hampshire Departments' Personnel to process a fueling transaction
- Instructions on processing of the fuel receipts
- A pamphlet of the above instructions.

The Contractor shall create a custom training program to address the State's specific needs. All training shall be held in Concord, NH, or another mutually agreed upon location in NH. The Contractor shall be dedicated to working with the State to ensure that Administrators and drivers completely understand all that the program has to offer.

**CARD PRODUCTION**

Card product, customization, and distribution will be free of charge as summarized below, but may not be limited to:

- Card Customization
- Card distribution via regular mail
- Plastic Card Protectors
- Customization of Embossing
- Card Guides

#### **CUSTOMER SERVICE**

The fuel credit card system is absolutely necessary for the daily operations of the State of New Hampshire Departments, therefore access shall be provided at all times. The Contractor shall provide a toll free customer service telephone number in the event that a problem arises. Such problems include, but may not be limited to: the computer system is down at the time of transaction, there is an invalid user or vehicle number, the key pad is not working, the card swipe is not working, etc.

The Contractor shall also provide a dedicated account representative that shall be available during normal working hours, 8:00 am through 4:30 pm. The State shall be notified within five (5) business days if that contact changes.

#### **FUELING LOCATIONS**

Contractor listing of all fueling locations within the State of New Hampshire that includes the physical address, phone number, and hours of operation for each location is attached as Appendix I.

#### **ADDITIONAL REQUIREMENTS**

The Contractor shall not commence work until a conference is held with each State agency intending to utilize the Contractor's services, at which representatives of the Contractor and the State are present. The conference will be arranged by the State agency.

The State shall require correction of any defective work and the repair of any damages to any part of a building or its appurtenances caused by the Contractor or its employees, subcontractors, equipment or supplies. The Contractor shall correct, repair, or replace all defective work, as needed, to complete said work in satisfactory condition, and damages so caused in order to restore the building and its appurtenances to their previous condition. Upon failure of the Contractor to proceed promptly with the necessary corrections or repairs, the State may withhold any amount necessary to correct all defective work or repair all damages from payments to the Contractor.

The work staff shall consist of qualified persons completely familiar with the products and equipment that they will use. The Contracting Officer may require the Contractor to dismiss from the work such employees as the Contracting Officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed to be contrary to the public interest or inconsistent with the best interest of security and the State.

Neither the Contractor nor its employees or subcontractors shall represent themselves as employees or agents of the State.

While on State property the Contractor, its employees, and its sub-contractors shall be subject to the authority and control of the State, but under no circumstances shall such persons be deemed to be employees of the State.

All personnel shall observe all regulations or special restrictions in effect at any State agency location at which services are to be provided.

The Contractor's personnel shall be allowed only in areas where services are to be provided. The use of State telephones by the Contractor, its employees, or its sub-contractors is prohibited.

If sub-contractors are to be utilized, Contractor shall provide information regarding the proposed sub-contractors including the name of the company, their address, contact person and three references for clients they are currently servicing. Approval by the State must be received prior to a sub-contractor starting any work.

#### **5. TERMINATION**

The State of New Hampshire has the right to terminate the contract at any time by giving the Contractor thirty (30) days advance written notice.

#### **6. OBLIGATIONS AND LIABILITY OF THE CONTRACTOR**

The Contractor shall provide all services strictly pursuant to, and in conformity with, the specifications described in RFB, as described herein, and under the terms of this Contract.

The Contractor shall agree to hold the State of NH harmless from liability arising out of injuries or damage caused while performing this work. The Contractor shall agree that any damage to building(s), materials, equipment or other property during the performance of the service shall be repaired at its own expense, to the State's satisfaction.

#### **7. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS**

The Contractor certifies, by signature of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal Department or Agency.

#### **8. INSURANCE**

Certificate of insurance amounts must be met and maintained throughout the term of the contract and any extensions as per the P-37, section 14 and cannot be cancelled or modified until the State receives a 10 day prior written notice.

#### **9. CONFIDENTIALITY & CRIMINAL RECORD**

If requested by the using agency, the Contractor and its employees, and Sub-Contractors (if any), shall be required to sign and submit a Confidential Nature of Department Records Form and a Criminal Authorization Records Form. These forms shall be submitted to the individual using agency prior to the start of any work.

**EXHIBIT C  
METHOD OF PAYMENT**

**1. CONTRACT PRICE**

The Contractor hereby agrees to provide fleet fuel credit card services in complete compliance with the terms and conditions specified in Exhibit B for an amount up to and not to exceed a price of \$450,000.00; this figure shall not be considered a guaranteed or minimum figure; however it shall be considered a maximum figure from the effective date through the expiration date as indicated in Form P-37 Block 1.7.

**2. PRICING STRUCTURE**

- I. Fleet fuel credit cards fixed fee percentage: 0.00%
- II. Early payment incentive: Discount rate/s for all payments made early by the State of New Hampshire:

**DISCOUNT RATE**

0.06 % OFF

0.08 % OFF

**NET TERMS**

15 DAYS

10 DAYS

The Payment Timing Rebate set forth herein is expressly conditioned on the following: (1) electronic reporting (i.e. no paper reports); and (2) payment in full in accordance with one of the Payment Timing Options in the Payment Timing Table.

**Calculation**

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

**Payment**

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

- III. Volume Rebate

Contractor shall issue a monthly rebate, paid one (1) month in arrears, in the accordance with the below Rebate Table, off all Monthly Retail Transactions based on the tier established in the table below.

"Monthly Gallons" shall mean all gallons of fuel purchased using Cards at retail locations that appear on invoices provided to the State during a calendar month. Fuel purchased at Tier 1 Truck Stop locations (currently Flying J, Loves, TA, Petro, and Pilot) are excluded from the Monthly Gallon amount. Due to billing cycle cut off dates and monthly calendar variances invoices received by the State in a given month may contain transactions from the previous month and they may not contain all transactions that occurred during the month in which the State was invoiced.

"Monthly Retail Transactions" shall mean the total amount of all purchases made using Cards at retail locations that appear on invoices provided to the State in a calendar month. Monthly Retail Transactions shall not include: (i) those amounts representing credits, disputed items, fees, late fees or charges posted to the State's accounts (such as returned check fees, collection costs, administrative fees and reporting fees), (ii) fuel purchased at Tier 1 Truck Stop locations (currently Flying J, Loves, TA, Petro, and Pilot), or (iii) any amounts posted to an account with respect to which a Card has been reported lost or stolen.

**Cycle Swaps**

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

Rebate Table Monthly Gallons	Basis Points (Rebate Percentage)
0-99,999	135 (1.35%)
100,000-149,999	140 (1.40%)
150,000+	145 (1.45%)

The Rebate set forth herein is expressly conditioned on the following: (1) monthly billing; (2) payment in full within 30 calendar days of the billing date appearing on invoice; and (3) credit approval by Contractor of the State of New Hampshire.

**Calculation**

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

**Payment**

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

IV. Universal Fleet Card Fee Schedule

Set-up Fee	WAIVED
Monthly Card Charge	WAIVED
Replacement Card	WAIVED
International Currency Conversion Fee	2% of the total transaction value
Reproduced Reports	\$25.00 per request

Expedited Shipping Fees	Cost varies
Returned Payment Fee	\$50.00 per occurrence
Reactivation Fee	WAIVED
Truck Stop Fee	WAIVED
Program Maintenance Charge	WAIVED
Paper Delivery Fee	WAIVED

**3. INVOICE**

The Contractor shall be required to furnish to the State of New Hampshire a complete Itemized electronic Invoice for all fuel purchased per card and include the following minimum requirements on a monthly basis:

1. Quantity of fuel purchased
2. Cost of fuel purchased
3. Taxes paid, if applicable; taxes shall be broken down in detail by tax.
4. Person receiving fuel
5. Date and time of purchase
6. Total of the fuel bill
7. Location

Any invoice that cannot be substantiated by documentation will not be paid until sufficient documentation has been provided to support the charges being billed.

Contractor shall be paid within 30 days after receipt of properly documented invoice and acceptance of the services to the State's satisfaction.

**5. PAYMENT**

Payments may be made via ACH. Use the following link to enroll with the State Treasury for ACH payments: <https://www.nh.gov/treasury>

**EXHIBIT D**

RFB #2255-20 (and Contractor's written response thereto) is incorporated here within.

## EXHIBIT E

### WEX FLEET BUSINESS CHARGE CARD AGREEMENT

#### Supplemental Terms Government Fleets:

**1. Definitions.** The below 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 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 in its sole discretion extends credit and establishes Accounts. Issuer may investigate the financial condition of Company or, as applicable, its subsidiaries and affiliates. If requested, Company agrees to furnish Issuer copies of its official and finalized financial statements or other applicable financial information no later than 120 days following the end of each of its fiscal years. The financial statements shall have been prepared, consistently year over year and shall be in accordance with the books and records of Company. Any financial information submitted shall be kept strictly confidential by Issuer.

2.2. Account Users can make purchases up to the credit limit that is assigned by Issuer. The credit limit appears on the billing statement and can be monitored via WEXOnline®. Company agrees not to exceed its credit limit, unless such credit limit has been changed by the Issuer without prior notice. Issuer may change the credit limit without giving the Company prior notice. Issuer will use its best efforts to provide advance notice of any changes to the credit limit. If Issuer 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 or the entire balance due on the Account. Nothing contained in this Agreement prevents Company or an Account User from requesting a modification 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; and (iv) receive other Account information. Company will provide notice of any change or removal of any contact or Account User either in writing, by telephoning Issuer's customer service department or through Issuer's online system. Company remains liable for any unauthorized use until Issuer receives notice of any change in or removal of any Account User or contact. Issuer is authorized to take instruction from any Account User or contact with apparent authority to act on Company's behalf. Unless Company reports any errors in Account information or Cards, 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 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 an accepting location for use by its drivers or Account Users and as such, agrees to pay for all charges made with that Card or on that Account. 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 or upon termination of the Contract, whichever is sooner. Unless and until the Contract is terminated, Company will automatically receive new Cards prior to the expiration date of their current Cards.

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.

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. 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 not by the Issuer. In addition, some Controls are not enforceable at island card readers due to equipment restrictions at the merchant location.

3.2. Default Control values are only assigned by Company through the online product. More detailed information related to Controls and their limitations is available online. Issuer is not responsible for the prudence of any particular Control level selected by Company. Issuer shall 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 in certain circumstances and is more fully described in the guidance information provided when you make your Control elections. Only transactions submitted for authorization are subject to Controls and those Controls can only be enforced when the merchant provides sufficient information as part of the authorization.

3.3. Issuer may, in its sole discretion and/or without prior notice, modify Controls for the purpose of, among others, 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 and Other Product Features.**

4.1. Issuer provides transaction data for each Account to the Company as transmitted by merchants. Company is responsible for reconciling that data. Issuer will report the data received from merchants and as such is not liable for accuracy or completeness of the data received, posted or contained in any specialty reports, management reports, data services or other information services provided. In addition, 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. Intentionally Omitted**

#### **6. Intentionally Omitted**

**7. Application of Payments and Early Payments.** Payments will be applied first to unpaid late fees and then to any unpaid balances. Company 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. Intentionally Omitted.**

**11. Intentionally Omitted.**

**12. Default.**

12.1. If Company Defaults: (i) it will not have any further right to borrow under this Agreement; (ii) all outstanding approved amounts under the Account are immediately due and payable. Alternatively, Issuer may, in its sole discretion: (i) suspend all services and obligations;

**13. Intentionally Omitted.**

**14. Compliance with Applicable Laws.**

14.1 Customer Identification Compliance. Issuer complies with federal law which requires all financial institutions to obtain, verify, and record information that identifies each company or person who opens an account. Issuer may ask for name, address, date of birth, and other applicable information to identify the Company and/or Account Users.

14.2 Data Privacy and Business Continuity. Issuer is subject to certain laws governing the protection of Company's information and the information of their employees and Account Users using the Program. As such, Issuer shall provide its credit services to Company in accordance with applicable laws and standards to protect and keep confidential such information. In doing so, Issuer shall maintain an information security plan and business continuity plan to help ensure that its systems are maintained in accordance with banking standards and regulations applicable to the information being held by Issuer.

**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. Discounts/Rebates.**

The Volume Rebate, detailed in Exhibit C, shall apply. Such discounts and/or rebates may be suspended, modified or discontinued at any time with prior notice and may not be applicable to all fuel types. In addition, certain conditions in order to earn or receive the rebate or discount such as but not limited to maintaining your account in good standing will apply and be provided to you when such offers are made.

# State of New Hampshire

## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that documents regarding WEX BANK, were filed in this office on August 21, 2014.

INFORMATION REGARDING ANNUAL REPORTS AND/OR FEES MUST BE OBTAINED FROM THE NEW HAMPSHIRE BANKING DEPARTMENT.

Business ID: 713574

Certificate Number: 0004764379



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 14th day of January A.D. 2020.

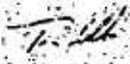
A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

**Certificate of Incumbency**  
**(List of Authorized Representatives)**

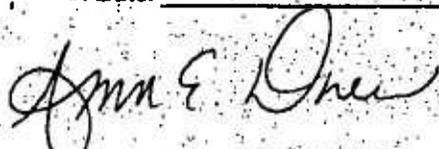
Client Name: WEX Bank

As an Authorized Officer of the above referenced entity, I hereby certify that the each person listed below is an authorized signor for such entity, and that the title and signature appearing beside each name is true and correct.

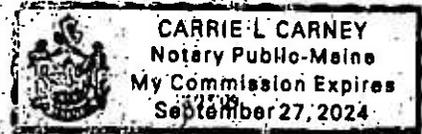
<u>Name</u>	<u>Title</u>	<u>Signature</u>	<u>Contact Number</u>
Tim Laukka	President		801-568-4400

IN WITNESS WHEREOF, this certificate has been executed by a duly authorized officer by:

By:   
Name: Ann E. Drew  
Title: Assistant Secretary  
Date: Dec 20, 2019

  
February 5, 2020

State of Maine  
County of Cumberland  
On this 5<sup>th</sup> day of February, 2020, I certify that the signature by Ann E. Drew, personally known to me, is her true, exact, and complete signature sworn to before me and subscribed in my presence.  
Notary Public:   
My commission expires 09.27.24





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
6/5/2019

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

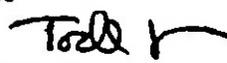
<b>PRODUCER</b> Commercial Lines - (617) 330-1005 USI Insurance Services LLC 855 Boylston St., 8th Floor Boston, MA 02116	<b>CONTACT NAME:</b> PHONE (A/C, No. Ext): 617-904-4140      FAX (A/C, No.): (610) 537-1950 E-MAIL ADDRESS:	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> WEX Bank fka Wright Express Financial Services Corporation 97 Darling Ave.  South Portland ME 04108-2301	<b>INSURER A:</b> Federal Insurance Company	NAIC # 20281
	<b>INSURER B:</b> MEMIC Indemnity Company	11030
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	

**COVERAGES**      **CERTIFICATE NUMBER: 14295358**      **REVISION NUMBER: See below**

**THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GENL. AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER: Per Location/ Per Project			36059290	08/1/2019	06/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$ COMBINED SINGLE LIMIT (Ea accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			78187803	06/01/2019	06/01/2020	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	5101800626	06/01/2019	06/01/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b>  State of New Hampshire Administrative Services State House Annex, Room 102 25 Capitol Street Concord, NH 03301	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  
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