

This **CHEVRON AND TEXACO BUSINESS FLEX CARD ACCOUNT AGREEMENT**, together with the related credit application, documents and schedules (collectively, the "Agreement") govern the establishment and use of a revolving business charge card account provided by WEX Bank, a federally-insured Utah industrial bank ("Issuer"), to the business identified in the credit application approved by Issuer ("Company"). The definitions on Schedule A apply for purposes of this Agreement.

## **1. Use of Account.**

The Account may be used to make purchases at merchants participating in the WEX network. Company agrees that the Account and a Card may only be used for business purposes, and not for any agricultural or personal, family, or household purposes. Company shall adopt and follow internal policies and controls to ensure that the Accounts and Cards are used strictly for business purposes. Purchases of lottery tickets or other games of chance, gift cards, pre-paid cards or other cash equivalent charges are prohibited.

## **2. Account Users.**

**2.1** Company shall designate Account Users as well as those contacts authorized to: **(a)** provide Issuer with the information necessary to establish and maintain Account(s), Cards, and DINs; **(b)** provide vehicle, driver and other information; **(c)** receive all Account numbers, Cards or reports; **(d)** receive other Account information; and **(e)** 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. 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. Company shall ensure that each Account User complies with the terms and conditions of this Agreement. Company is liable for any employee misuse of Cards.

**2.2** Company is responsible for notifying Issuer of any revocation of authority of an Account User to use a Card or the Account. An Account User shall be deemed to have authority to use a Card and the Account until Issuer receives notice of revocation of authority from Company in the manner required by Issuer and Issuer has a reasonable time to act on the notice, notwithstanding whether any such use is consistent with any limitations on use imposed on an Account User by Issuer.

**2.3** 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 ensure that its employees or Account Users do not disclose any DIN. Company is liable for any Unauthorized Use that results if an Account User or other employee discloses a DIN or writes a DIN on a Card, even if the disclosure is inadvertent or unintentional. Company shall not provide actual, implied or apparent authority to any Person to use a Card or the Account except for an Account User.

## **3. Credit Limit and Authorizations.**

**3.1** Issuer will notify Company of the Credit Limit assigned to the Account. Company shall ensure that the balance of the Account does not exceed the assigned Credit Limit. Issuer may change the Credit Limit in its sole discretion without prior notice, except as may be required by applicable law. Issuer may, but is not required to, permit Company to exceed its Credit Limit. Company must comply with the Credit Limit even if Issuer has previously permitted Company to exceed the Credit Limit. Company shall, immediately upon request, pay the amount over the Credit Limit.

**3.2** Issuer has sole discretion to determine whether to establish an Account and extend credit to Company. Issuer may suspend an Account or refuse to authorize any Transaction in its sole discretion for any reason, including in the event that: (a) any balance is past due; or (b) the amount of the Transaction plus the outstanding balance (including Transactions authorized but not yet posted) exceeds the Credit Limit.

## **4. Controls.**

**4.1** Company may request that Controls be applied to the Account. 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 Issuer. In addition, some Controls are not enforceable at island card readers due to equipment restrictions at the merchant location. There are inherent limitations on the ability of Controls to limit the use of Cards in the manner intended.

**4.2** Issuer may, in its sole discretion and without prior notice, modify Controls for the purpose of, among others, the prevention of suspected fraudulent activity. Issuer may apply default Controls on its portfolio of accounts. Issuer will use reasonable efforts to notify Company after any modification to a Control setting is made. Company shall review and manage the account set-up for all Cards based on Company's specific purchasing needs. 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.

**4.3** Default Control values are modified through the online product. More detailed information and certain limitations regarding Controls is provided online. 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.

**4.4** Controls are provided for the convenience of Company in its efforts to manage

usage of Cards and the Account. Issuer encourages Company to set Controls in a manner that Company determines is most likely to conform usage of Cards and the Account to the purposes determined by Company. However, Issuer is not responsible for the prudence of any particular Control level selected by Company. Company shall be liable for all Transactions, regardless of Control settings selected by Company or the effectiveness of the Controls, except as expressly provided in this Agreement or under applicable law.

## **5. Billing and Payments.**

**5.1** Issuer will provide Company with a billing statement for each Billing Cycle in which the Account has activity. Company agrees to pay Issuer at least the Minimum Payment in full on or before the relevant cutoff time on the Due Date. The Due Date generally will be between twenty-six (26) days and fourteen (14) days after the end of the Billing Cycle, as designated by Issuer at the time of Account setup, although there may be variations. If Company's Due Date is fewer than twenty-two (22) days after the end of the Billing Cycle, Issuer strongly encourages Company to choose to receive billing statements electronically and make payment electronically to ensure that each payment posts by the relevant Due Date.

**5.2** The Minimum Payment on a billing statement is the greater of \$30.00 or the sum of (a) two percent (2%) of the entire unpaid balance of the Account at the end of the Billing Cycle covered by the billing statement, plus (b) any unpaid Interest or Other Fees assessed on the billing statement. Company has the option of paying in full the Statement Balance shown on each billing statement or paying it in installments, as long as Company pays at least the Minimum Payment shown on the billing statement. If the total Statement Balance is less than \$30.00, the Minimum Payment will equal the total Statement Balance. If Company pays more than the Minimum Payment, Company still must make the Minimum Payment on subsequent billing statements until Company has fully paid all amounts owed.

**5.3** Company will pay Issuer for all credit extended under the Account, as well as any interest, fees and charges, as provided in this Agreement. Company is liable for all Transactions on the Account to the fullest extent permitted by applicable law, except as expressly provided in this Agreement. Company may pay more than the Minimum Payment without penalty. Company may not prepay Minimum Payments for future Billing Cycles.

**5.4** All payments must be made in United States dollars, using checks or similar payment instruments drawn on financial institutions in the United States or by payment through the Automated Clearing House network in accordance with Issuer's requirements.

**5.5** Payments made via paper check are posted to the Account after processing and must arrive at Issuer at least two Business Days before the Due Date on the billing statement. It can take up to two Business Days to process a check from the time the envelope containing a check arrives at Issuer's facility to posting of the check amount to the Account.

**5.6** For payments not made by paper check, payments on a Business Day before the cut-off time (the "Cut-off Time") will be posted on that Business Day. Payments after the Cut-off Time on a Business Day, or on a day other than a Business Day, will be posted on the following Business Day. The Cut-off Times for payments not made by check are as follows: a payment transaction made via Issuer's online payment portal must be completed by 3:00 p.m. ET; a payment transaction made via IVR must be completed by 3:00 p.m. ET; and a payment transaction made via ACH must arrive to Issuer by 3:00 p.m. ET.

**5.7** Regardless of payment method, Company must ensure that Company's account number is provided with the payment. Failure to do so will cause processing delays in posting the payment to the Account. Payments that are received at locations other than the address specified on the billing statement, or that do not otherwise comply with instructions on the billing statement or the Agreement, may be delayed in posting.

**5.8** Issuer may apply payments on Account in any manner it determines in its sole discretion. If an Account has more than one Annual Interest Rate, Issuer may apply payments to balances with a lower Annual Interest Rate before balances with a higher Annual Interest Rate. Issuer is not required to apply payments on an Account in order to permit Company to receive the benefits of a promotional interest rate offer. Issuer, in its sole discretion, may determine when to restore available credit in the Credit Limit after crediting a payment to an Account.

**5.9** Company may be offered promotional interest rates, discounts and/or rebates from time to time. Such promotional interest rates, discounts and/or rebates may be suspended, modified, or discontinued at any time without 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 the Company's Account in good standing, will apply and be provided to Company when such offers are made.

## **6. Reports.**

Issuer provides Transaction data for the 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 the 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 an incorrect product code, Company is still liable for the Transaction, but may follow the dispute process as described in this Agreement.

**7. Interest.**

**7.1** No Interest will be charged on the Account for a Billing Cycle (the "Current Cycle") if Company paid the Ending Balances for each of the two previous Billing Cycles in full by the Due Dates on billing statements for those two Billing Cycles. If Company did not pay the Ending Balance for either of the two previous Billing Cycles in full by the Due Dates on the billing statements for those two Billing Cycles, interest will be charge for the Current Cycle.

**7.2** Interest is charged for a Billing Cycle, it will be calculated by applying the Daily Interest Rate to the Daily Balance of the Account to determine the "Daily Interest Charges," and adding together the Daily Interest Charges for each day in the Billing Cycle. The Annual Interest Rate for the Account is described in the Rate and Fee Schedule. The "Daily Interest Rate" is determined by dividing the Annual Interest Rate by 365 (or 366 in a leap year).

**7.3** The Rate and Fee Schedule describes the Annual Interest Rates that may apply to the Account. It specifies that the standard Annual Interest Rate is a variable rate, and a default Annual Interest Rate that may apply if Company defaults in its payment obligations. Issuer may change an Annual Interest Rate pursuant to its authority to change the terms of the Account.

**7.4** The standard Annual Interest Rate for a Billing Cycle will be the Prime Rate on the last day of the Billing Cycle, or the last Business Day of the Billing Cycle if the last day of the Billing Cycle is not a Business Day, plus the Margin indicated in the Rate and Fee Schedule. This means that the Annual Interest Rate is a variable rate that may change with each Billing Cycle if there is a change in the Prime Rate for the Billing Cycle.

**7.5** To determine the "Daily Balance" of the Account, the Issuer (a) starts with the balance on the Account as of the end of the previous day, (b) adds any new Transactions posted that day, the Daily Interest Charge for that day and any Other Fees posted that day, (c) subtracts any payments or credits posted that day, and (d) add or subtract any adjustments posted that day. A Transaction is posted to an Account as of the day that Issuer receives the Transaction from the merchant. Because Daily Interest Charges are added to the Daily Balance to which the Daily Interest Rate is applied, the Account provides for daily compounding of interest.

**7.6** Issuer may, from time to time, offer Company a promotional Annual Interest Rate for certain Transactions or period of time. The Annual Interest Rate for those Transactions or period of time will be subject to the terms of the offer provided by Issuer when the offer is made to Company. Interest will be calculated separately for balances subject to different Annual Interest Rates based on the applicable Annual Interest Rates and the Account balances subject to such different Annual Interest Rates.

**7.7** If Company fails to make any Minimum Payment by the applicable Due Date, or a payment is returned (each a "Payment Default"), Issuer may increase any standard or promotional Annual Interest Rate to the default Annual Interest Rate described on the Rate and Fee Schedule, effective as of the first day of the next Billing Cycle after the Payment Default occurred, without any prior notice. The default Annual Interest Rate will continue to apply until there are at least the number of consecutive Billing Cycles described on the Rate and Fee Schedule in which no Payment Default occurs, at which time the Annual Interest Rate for both promotional and non-promotional balances to which the default Annual Interest Rate was applied will return to the standard Annual Interest Rate.

**7.8** If Interest is charged for a Billing Cycle, a "Minimum Interest Charge" of one dollar (\$1.00) is imposed if the sum of the Daily Interest Charges for the Billing Cycle is greater than zero dollars (\$0) and less than one dollar (\$1.00). The Issuer may allocate any Minimum Interest Charge to different balances on the Account that are subject to different Annual Interest Rates.

**8. Other Fees.**

In addition to Interest, Company agrees to pay the additional fees in the amounts and as described on the Rate and Fee Schedule and the following "Other Fees":

(a) "Late Fee" equal to the greater of thirty-nine dollars (\$39) or nine and ninety nine percent (9.99%) of the Total Outstanding Balance on the Calculation Date, not to exceed the amount allowable by applicable law, will be charged if a payment in an amount of any Minimum Payment or more is not posted to the Account on or before the Due Date. However, no Late Fee will be charged if the Minimum Payment for a Billing Cycle is ten dollars (\$10) or less. For an Account with a Billing Cycle that is more frequent than monthly, the amount of the Late Fee described above will be prorated based on the length of such Billing Cycle in relation to a monthly Billing Cycle. The "Calculation Date" is the earlier of (a) the Due Date if an amount equal to or greater than the Minimum Payment is posted to the Account before the first Billing Cycle close date after the Due Date, or (b) the first Billing Cycle close date after the Due Date if an amount equal to or greater than the Minimum Payment is not posted to the Account before that date. The "Total Outstanding Balance" is the Ending Balance of the previous Billing Cycle plus any Transactions or other charges to the Account and minus any payments or credits, in each case that have posted to the Account after the Closing Date of the previous Billing Cycle and through the Calculation Date (excluding payments, if any, on the Calculation Date).

**9. Disputed Amounts.**

**9.1** Company shall use its best efforts to resolve any disputes regarding Transactions directly with the relevant merchant, including any dispute related to the quality of goods or services that are purchased in a Transaction or any warranty received in connection with a Transaction.

**9.2** All billed charges must be paid in full regardless of reported disputes. Charges must be disputed 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: (a) the amount does not reflect the face value of the Transaction; (b) the amount being disputed is a fee that is not properly accrued under this Agreement; or (c) Company does not believe it is liable for that amount.

**9.3** Transactions made at an island card reader where 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. In addition, island card reader Transactions require both a valid Card and DIN to be authorized and often disputes regarding such transaction are the result of an Account User failing to comply with limits on Card usage imposed by Company, which does not constitute Unauthorized Use or relieve Company from liability for the Transaction.

**9.4** Certain Transactions in dispute may qualify for charge back to the merchant. Issuer will use reasonable efforts to charge the Transaction back to the merchant in accordance with Issuer's procedures under its merchant acceptance agreement with the merchant. Any charge back paid by the merchant to Issuer will be credited to the relevant Account. Company may be liable for the Transaction if the disputed item cannot be charged back to the merchant.

**10. Unauthorized Use.**

**10.1** If Company or an Account User knows of or suspects the loss or theft of a Card or Account or possible Unauthorized Use, or if Company would like to terminate authority of an Account User to use a Card or Account, Company will notify Issuer by immediately calling **1-800-353-3842**. Company shall adopt and maintain reasonable security precautions and controls to prevent Unauthorized Use.

**10.2** Except as provided in Section 10.3, Company will be liable to Issuer for all Unauthorized Use of a Card or Account: (a) that occurs before Company provides Issuer with notice that a Card is lost or stolen or other possible Unauthorized Use of an Account provided in Section 10.1 of this Agreement; or (b) Issuer determines that such Unauthorized Use would have been prevented by Company adopting and following reasonable security precautions and controls surrounding the Cards or Accounts as described in Sections 1, 4 and 10.1 of this Agreement. A failure by an Account User to comply with Company's internal policy regarding use of an Account or Card does not, by itself, result in Unauthorized Use of an Account or Card.

**10.3** If Issuer has provided Company with fewer than ten (10) Cards to access the Account, Company's liability for Unauthorized Use of a Card will be limited to the lesser of fifty dollars (\$50) or the amount of money, property, labor or services obtained by the Unauthorized Use of the Card before notification is provided to Issuer of a lost or stolen Card or potential Unauthorized Use of a Card. The limitation on liability for Unauthorized Use of a Card as described in this Section 10.3 shall apply irrespective of any other provision of this Agreement and this Section 10.3 shall control in the event of any inconsistency between this Section 10.3 and any other provision of this Agreement.

**10.4** Company will use reasonable efforts to recover a Card from any Person whose authority to use Company's Account has terminated or from any unauthorized individual with possession of or access to a Card. Company will give Issuer and any law enforcement authority reasonable assistance with any investigation and prosecution with respect to Unauthorized Use, including without limitation, obtaining an affidavit or similar written, signed statement from the applicable Account User.

**11. Representations by Company.**

Company represents and warrants to Issuer that: (a) this Agreement constitutes the legal, valid, binding, and enforceable agreement of Company; and (b) that Company's execution and performance of this Agreement (i) does not constitute a breach of any agreement between Company and a Person other than Issuer, or of any duty arising in law or equity, (ii) does not violate any law, rule or regulation applicable to Company, and (iii) if Company is an organization, is within the organizational powers of Company and has been authorized by all necessary organizational action of Company.

**12. Other Obligations of Company.**

**12.1** Company shall provide information requested by Issuer for purposes of Issuer's compliance with federal law related to customer identification and verification, including, but not limited to, name, address, date of birth, and other application information to identify the Company and/or Account Users and the beneficial owners of each.

**12.2** Issuer may investigate the financial condition of Company and its subsidiaries and affiliates at any time. If requested, Company agrees to furnish Issuer copies of its official and finalized financial statements or other applicable financial information no later than one hundred twenty (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 confidential by Issuer in accordance with Section 20.

**12.3** Company agrees to provide written notice (a) in advance of any change to its legal name or in the ownership of Company, [including with beneficial owners], (b) in advance of any change in the organizational structure of Company, including any merger or reorganization, or sale of substantially all of Company's assets, (c) immediately if Company becomes insolvent or the subject of bankruptcy or insolvency proceedings, or (d) immediately after any appointment of a receiver or trustee for the benefit of creditors of Company.

**13. Amendment.**

Company agrees that Issuer may change the rates, charges, and other terms of this Agreement, including the Rate and Fee Schedule, as well as introduce new terms and fees to the fullest extent permitted under applicable law. Issuer will provide Company with any notice of such change as required by applicable law. Any change in the terms and conditions of the Account may be applied to the outstanding balance on the Account to the extent permitted by applicable law.

**14. Term and Termination.**

**14.1** This Agreement is effective when a Card is issued to Company or Issuer opens an Account for Company and shall remain in effect until terminated by a Party. Company and Issuer each shall have the right to terminate this Agreement for any reason. Issuer's right to terminate this Agreement pursuant to this Section 14.1 are in addition to Issuer's termination rights under Section 15 if Company is in Default and under Section 14.5 in connection with the termination or modification of products or services.

**14.2** Company shall exercise its termination right under Section 14.1 by providing written notice to Issuer. Issuer shall have a reasonable amount of time to terminate the Account after receiving a notice of termination from Company. Issuer shall provide Company with any notice required by applicable law in connection with the exercise of its termination right under Section 14.1.

**14.3** Company shall not use a Card or the Account to make a purchase after termination of this Agreement. Company shall return to Issuer, or provide verification of the destruction of, all Account numbers or Cards. Company may retain a copy of any records or Account information for archival or data retention purposes.

**14.4** The terms and conditions of this Agreement shall continue to apply until all amounts owing with respect to the Account are paid in full and Company has performed all of its obligations under this Agreement. As a result, after termination, Company remains obligated to pay for all amounts owing on an Account and charged under this Agreement after termination. Section 19 (Arbitration), Section 20 (Confidentiality) and Section 21 (Program Information) shall survive indefinitely.

**14.5** Issuer may, for any reason, elect to terminate or modify any product or service described in this Agreement, or provided in connection with the Account in which Company or an Account User has enrolled, upon such notice (if any) as may be required by applicable law.

**15. Default by Company.**

**15.1** Company will be in "Default" under this Agreement if: **(a)** Company fails to perform any obligation under this Agreement; **(b)** a representation or warranty by Company in connection with this Agreement was incorrect or misleading when made; **(c)** any petition in bankruptcy, insolvency, receivership, or reorganization or proceeding pursuant to any other debtor relief law is filed by or against Company; **(d)** any order is entered appointing a receiver, custodian, trustee, liquidator, or any other person with similar authority over the assets of Company; **(e)** there is an insolvency, dissolution, reorganization, or assignment for the benefit of creditors with respect to Company, or any other material adverse change in the financial condition of Company; **(f)** any adverse judgment, order or award is entered against Company that has a material adverse impact on the financial condition of Company or a detrimental effect on the ability of Company to perform its obligations under this Agreement; **(g)** Company is in default under any other agreement between Company and Issuer or its affiliates; or **(h)** any event described in Section 15.1(a) through (g) occurs with respect to any Guarantor or any Guarantor repudiates or otherwise defaults in its obligations under a guaranty.

**15.2** If Company is in Default: **(a)** Company will not have any further right to borrow under this Agreement; **(b)** Issuer may declare all outstanding amounts under the Account to be immediately due and payable; **(c)** Issuer may terminate this Agreement; and **(d)** Issuer will have the right to bring suit and exercise all rights and remedies available under applicable law. In addition, if Company is in Default, Issuer may, in its sole discretion, suspend all services and obligations, shorten the billing cycle, and change the payment terms. A suspension of services 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. Company agrees to pay any and all costs (including reasonable attorneys' fees) incurred by Issuer in enforcing Company's obligations under this Agreement.

**16. Foreign Transactions.**

**16.1** Cards are issued for use by Company's operations based in the United States, but may be used in Canada. Company may not distribute a Card to a Person based in a country other than the United States. If a Card is used in any country other than the United States, Company will: **(a)** be billed in U.S. Dollars; **(b)** receive reporting in English; and **(c)** pay the currency conversion fee as reflected in the Rate and Fee Schedule.

**16.2** Issuer will convert any Transaction 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 an international Transaction 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. The conversion rate used on the posting date may differ from the rate applicable on the date of the Transaction.

**17. Limitations on Liability.**

Issuer shall not be liable for any loss sustained by Company or any other Person resulting from any act or omission by Issuer or any other Person, 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 shall be limited to actual damages incurred by Company as a direct result of Issuer's gross negligence or willful misconduct. Issuer's liability for actual damages shall not exceed the sum of: **(a)** all fees paid by Company to Issuer under this Agreement in the twelve (12) month period prior to the date when any claim is made against Issuer; plus **(b)** all other revenue earned by Issuer for all of Company's Transactions made in the twelve (12) months prior to the date of any claim made against Issuer. In no event will Issuer be liable for incidental, special, consequential or punitive damages and Company expressly and unconditionally waives any right to such damages. Except as otherwise required under applicable law, Issuer makes no warranty with respect to goods, products, merchantability, or services purchased with a Card or the Account, or through Issuer. Issuer is not responsible for any failure of a merchant to accept the Account or a Card.

**17.1** Issuer is not liable to Company for any loss, liability or damages that Company suffers as a result of, 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.

**18. Waivers.**

**18.1** THE PARTIES AGREE VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY TO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING INSTITUTED IN ANY COURT, ARISING OUT OF THIS AGREEMENT.

**18.2** Company waives personal service of process in connection with any action or proceeding commenced by Issuer in connection with this Agreement, and agrees that service may be made by certified mail to the last known address in Issuer's records.

**19. ARBITRATION.**

PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY.

**19.1** This section provides that disputes may be resolved by binding arbitration. Arbitration replaces the right to go to court, have a jury trial or initiate or participate in a class action. In arbitration, disputes are resolved by an arbitrator, not a judge or jury. Arbitration procedures are simpler and more limited than in court. This arbitration provision is governed by the Federal Arbitration Act ("FAA"), and shall be interpreted in the broadest way the law will allow.

**19.2 Covered Claims.** **(a)** Company or Issuer may arbitrate any claim, dispute or controversy between Company and Issuer arising out of or related to this Account, any previous related Account, the relationship between Company and Issuer, or any other product or service provided by or through Issuer (called "Claims"). In this Arbitration provision, the term "Issuer" includes any of Issuer's affiliates that provide or are involved in providing any products or services to Company and the term "Company" includes any Guarantor. Claims include disputes relating to incentives or benefits relating to the Account. A Person who asserts a Claim, or against whom a Claim may be asserted, that is subject to this Arbitration provision may be referred to as a "Covered Person." **(b)** If arbitration is chosen by a Covered Person, then no Covered Person will have the right to litigate that Claim in court or have a jury trial on that Claim. **(c)** Except as stated below, all Claims are subject to arbitration, no matter the legal theory on which they are based on or the remedy (damages, or injunctive or declaratory relief) they seek, including Claims based on contract, tort (including intentional tort), fraud, agency, any Person's negligence, statutory or regulatory provisions, or any other sources of law; Claims made as counterclaims, cross-claims, third-party claims, interpleaders or otherwise; Claims made regarding past, present or future conduct; and Claims made independently or with other Claims. This also includes Claims made by or against any Person connected with Company or Issuer, or by a Person making a Claim through Company or Issuer, such as an Account User, employee, agent, representative or an affiliated/parent/subsidiary company.

**19.3 Arbitration Limits.** **(a)** Individual Claims filed in a small claims court are not subject to arbitration, as long as the matter stays in small claims court. **(b)** Claims brought as part of a class action, private attorney general or other representative action can be arbitrated only on an individual basis. The arbitrator has no authority to arbitrate any claim on a class or representative basis and may award relief only on an individual basis. If arbitration is chosen by any Covered Person, the Covered Person asserting the Claim may not pursue the Claim as part of a class action or other representative action. Claims of two (2) or more Persons may not be combined in the same arbitration. However, applicants, Account Users on a single Account and/or related Accounts or corporate affiliates are considered as one Person for these purposes.

**19.4 How Arbitration Works.** **(a)** Arbitration shall be conducted by the American Arbitration Association ("AAA") according to this arbitration provision and the applicable AAA arbitration rules in effect when the claim is filed ("AAA Rules"), except where those rules conflict with this arbitration provision. The AAA Rules may be obtained at the AAA's website ([www.adr.org](http://www.adr.org)) or by calling 800-778-7879. A Covered Person may choose to have a hearing, appear at any hearing by phone or other electronic means, and/or be represented by counsel. Any in-person hearing will be held in the same city as the U.S. District Court closest to Company's billing address. **(b)** If the AAA is not available to conduct the arbitration, then a Covered

Person may petition a court of appropriate jurisdiction to designate an appropriate arbitrator. (c) Arbitration may be requested at any time, even where there is a pending lawsuit, unless a trial has begun or a final judgment entered. A Covered Person does not waive the right to arbitrate by filing or serving a complaint, answer, counterclaim, motion or discovery in a court lawsuit. To choose arbitration, a Covered Person may file a motion to compel arbitration in a pending matter and/or commence arbitration by submitting the required AAA forms and requisite filing fees to the AAA. (d) The arbitration shall be conducted by a single arbitrator in accord with this arbitration provision and the AAA Rules, which may limit discovery. The arbitrator shall not apply any federal or state rules of civil procedure for discovery, but the arbitrator shall honor claims of privilege recognized at law and shall take reasonable steps to protect Account information and other confidential information of a Covered Person if requested to do so. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statute of limitations, and may award damages or other relief under applicable law. (e) The arbitrator shall make any award in writing and, if requested by a Covered Person, shall provide a brief statement of the reasons for the award. An arbitration award shall decide the rights and obligations only of the Persons named in the arbitration, and shall not have any bearing on any other Person or dispute.

**19.5 Paying for Arbitration.** Arbitration fees will be allocated according to the applicable AAA Rules. All Persons are responsible for their own attorney's fees, expert fees and any other expenses, unless the arbitrator awards such fees or expenses to a Person based on applicable law.

**19.6 The Final Award.** (a) Any award by an arbitrator is final unless a Covered Person appeals it in writing to the AAA within thirty (30) days of notice of the award. The arbitration appeal shall be determined by a panel of three (3) arbitrators. The panel will consider all facts and legal issues anew based on the same evidence presented in the prior arbitration, and will make decisions based on a majority vote. Arbitration fees for the arbitration appeal shall be allocated according to the applicable AAA Rules. An award by a panel on appeal is final. A final award is subject to judicial review as provided by applicable law. (b) A final award may be entered in any court of appropriate jurisdiction.

**19.7** If any part of this arbitration provision is deemed invalid or unenforceable, the other terms shall remain in force, except that there can be no arbitration of a class or representative Claim. This arbitration provision may not be amended, severed or waived, except as provided in this Agreement or in a written agreement between Company and Issuer.

## **20. Confidentiality.**

All information furnished by either Party or by any affiliate of Issuer in connection with this Agreement will be kept confidential (and will be used by the other Party only in connection with this Agreement), except to the extent that the information: (a) is already lawfully known when received; (b) becomes lawfully obtainable from other sources; (c) is required to be disclosed in any document filed with the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, or any other agency of any government; (d) is disclosed by Issuer to its financial services regulators; (e) is used or disclosed as provided in this Agreement or with the consent of the Person whose information is being used or disclosed; or (f) is required by law to be disclosed, provided that notice of the disclosure has been given (when legally permissible) by the Party proposing to make such disclosure, which notice, when practicable, shall be given sufficiently in advance of the proposed disclosure to permit the other Party to take legal action to prevent the disclosure. Nothing in this section or this Agreement prohibits Issuer from providing any information to its affiliates or third-party servicers related to the operation and maintenance of the business of Issuer and its affiliates, and Company expressly agrees to these disclosures and use of information, provided that such affiliates and third-party servicers agree to maintain the information confidentially and not disclose it to any other parties without Issuer's authorization.

## **21. Program Information.**

Transaction information related to the Account may be provided to merchants who accept the Card as payment for goods and services. Issuer and its affiliates may use and disclose information obtained by Issuer in operating its card programs, including Transaction information and/or identifiable information of the Company (collectively, "Program Information") for the purpose of operating Issuer's and its affiliates' business, delivering, improving, and customizing their respective services, sending communications related to their respective business, and for other legitimate purposes permitted by applicable law. Without limiting the foregoing, Issuer may provide Program Information to its affiliates and third parties which provide goods or services to commercial enterprises and Company understands that Issuer, its affiliates, including but not limited to WEX Inc., and third parties may contact Company to offer additional products or services including, for example, discount networks for certain non-fuel merchant purchases and telematics products designed to assist customers with vehicle tracking and management. If Company chooses to enroll in any such product or service offered by Issuer, its affiliates or a third party, Company may be required to complete additional enrollment forms or agreements, and/or agree to additional terms and conditions (which may include fees for use) with respect to such products or services. For more information on Issuer's privacy policy, please visit the website at: <https://www.wexinc.com/privacy-policy/>. Issuer and its affiliates may use and disclose Program Information that is not identifiable to Company in industry analytics and other data services or products provided to third parties. Program Information shall be subject to this Section 21 (Program Information) and not Section 20 (Confidentiality).

## **22. Assignment.**

Company may not assign this Agreement or any interest, rights or obligations under this Agreement, without Issuer's prior written consent. Issuer may, in its sole discretion, assign this Agreement and any of its obligations, transfer any right, or delegate any duty of performance under this Agreement without further notice. The Person to whom Issuer makes any assignment is entitled to all of Issuer's rights under this Agreement, to the extent that those rights were assigned.

## **23. Miscellaneous.**

**23.1** 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.

**23.2** Issuer may monitor telephone communications between its employees and its customers for service quality purposes. Company consents to such monitoring and recording of telephone communications and agrees to notify employees who may be in telephone contact with Issuer's representatives that periodic monitoring of conversations will occur.

**23.3** Issuer's compliance with this Agreement shall be excused to the extent that any failure or delay in performance by Issuer is attributable, in whole or in part, to causes or circumstances beyond Issuer's reasonable control including, but not limited to, acts of God; civil disturbance; war; acts of government; natural disasters; labor disputes and computer or telecommunication failures.

**23.4** This Agreement and any and all claims relating to or arising out of this Agreement, whether sounding in contract, tort, or otherwise, in each case, shall be governed by federal law and, to the extent that state law applies, the laws of the State of Utah.

**23.5** If either Party is notified by a state or federal regulatory body that any aspect of the services provided by Issuer or this Agreement does not comply with any applicable law, regulation, rule, policy, or order, then the affected Party shall give the other Party prompt written notice of the non-compliance. Following notice, the affected obligations will be suspended and the failure to perform those obligations will not be deemed a breach of or Default under this Agreement so long as the affected Party is unable to perform due to the notice given by the state or federal regulatory body.

**23.6** Nothing contained in this Agreement, or the performance by a Party of its obligations under this Agreement, shall result in the Parties having a partnership, co-venture or agency relationship, except to the extent that a Party is expressly designated to act as an agent of the other Party, or render a Party responsible for the debts, liabilities or obligations of the other Party.

**23.7** No delay or omission by Issuer to exercise any right under the Agreement shall impair such right or be construed to be a waiver of any default. The authorization of Transactions shall not constitute any waiver, including of Issuer's rights with respect to such Transaction. Any single or partial exercise of any such right by Issuer shall not preclude other or further exercise thereof or the exercise of any other right. No waiver, amendment, or other variation of the terms, conditions, or provisions of the Agreement shall be binding on Issuer unless in writing, and then only to the extent set forth in such writing.

**23.8** No Person other than a Party to this Agreement shall have any right to enforce the terms and conditions of this Agreement. No Person, including an Account User, will be a third party beneficiary of this Agreement.

**23.9** 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: (a) by facsimile to a number identified by the recipient as appropriate for communication under this Agreement; or (b) by email 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 email constitutes the "best evidence" and an "original" of such a writing.

**23.10** If any portion of this Agreement is held to be invalid, the remaining portions shall remain in full force and effect and shall continue to be binding upon the parties (except as specifically provided in Section 19 (Arbitration)).

**23.11** This Agreement, any notices in connection with this Agreement, and any guaranty of Company's obligations under this Agreement constitutes the entire agreement among the Parties and supersedes all prior agreements, understandings, and arrangements, oral or written, among the Parties with respect to the subject matter hereof.

**Schedule A**

**Definitions**

“Account” means the charge card account provided to Company by Issuer. An Account may be accessed by a Card or an account number.

“Account User” means Company or any other Person that Company has notified Issuer is authorized to use the Account or a Card in accordance with the requirements and procedures established by Issuer from time to time.

“Annual Interest Rate” means an annual percentage rate specified on the Rate and Fee Schedule that is used to determine the Daily Interest Rate and Daily Interest Charges.

“Billing Cycle” means the time interval between the dates of Company’s regular billing statements. Company’s first Billing Cycle may be shorter than other Billing Cycles. All credit terms will apply in each Billing Cycle including the first Billing Cycle.

“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 plastic card provided by Issuer that may be used to access an Account.

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

“Credit Limit” is the amount of credit assigned to Company’s Account as established by Issuer from time to time.

“DIN” means the identification number associated with an Account User or Card.

“Due Date” means the date the repayment of the balance of the Account is due as provided on a billing statement.

“Ending Balance” means, with respect to a Billing Cycle, the total amount owing with respect to the Account at the close of the Billing Cycle.

“Guarantor” means any Person who guarantees the obligations of Company under this Agreement.

“Index” means an interest rate index used to calculate a variable Annual Interest Rate.

“Interest” means a charge on the Account determined by applying an Annual Interest Rate to the balance of the Account.

“Margin” is the percentage rate that is added to the Index to determine a variable Annual Interest Rate.

“Minimum Payment” means the minimum amount Company must pay on its Account by the due date in a Billing Cycle, as shown on its billing statement.

“Party” means Bank or Company and “Parties” means Issuer and Company.

“Person” means an individual, corporation, partnership, limited liability company, trust or other organization.

“Prime Rate” means the prime rate quoted in the “Money Rates” section of the Wall Street Journal (Eastern Edition), or a comparable rate selected by Issuer if that rate is not available.

“Rate and Fee Schedule” means the Rates and Fees included as Schedule B.

“Transaction” means the use of a Card or Account to buy goods or services at a merchant that accepts the Card or Account.

“Unauthorized Use” means the use of the Account or a Card by a Person who does not have actual, implied or apparent authority for such use, and from which the Company receives no benefit.

**Schedule B**

**Use of the Account indicates Company’s acceptance of this Agreement, including the Rate and Fee Schedule.**

**Rates and Fees**

Standard Annual Interest Rate: Prime Rate plus Margin of 15.99%  
 Default Annual Interest Rate: Prime Rate plus Margin of 29.99%  
*Cure Period for Default Annual Interest Rate: Twelve (12) consecutive Billing Cycles without Payment Default.*

Replacement Card Fee*	\$2.00
Truck Stop Transaction fee	\$1.25 per swipe at a diesel pump
Reproduced Reports	\$25.00 per request
General Research Fee	\$15.00 per hour
Expedited Shipping Fees	Cost varies
International Currency Conversion Fee	2% of the total transaction value
Returned Payment Fee	\$50.00 per occurrence (max monthly fee of \$50.00)
Over Limit Fee	\$39.00 per occurrence (max monthly fee of \$39.00)
Paper Delivery Fee	\$10.00 per month for paper invoicing and reporting

\* For chip enabled Cards, the Replacement Card Fee will be \$3.00 per Card.

Pricing for additional products and services is available upon request or reflected on the enrollment forms or in the terms of use that Company must agree to in order to receive the additional products and services.

**For any questions about any of the above, please call Customer Service, toll-free at 1-800-353-3842.**