

# WRIGHT EXPRESS® MERCHANT CHARGE CARD AGREEMENT APPLICATION

Please read the following before completing this form: 1) The undersigned merchant ("Merchant") represents that the information given in this application is complete and accurate and authorizes Wright Express Corporation and Wright Express Financial Services Corporation (hereinafter collectively referred to as "Wright Express") to check with credit reporting agencies, credit references, and other sources to confirm information given;

2) Merchant agrees to provide additional financial information to Wright Express upon request; 3) Merchant requests approval of this Wright Express Merchant Charge Card Agreement Application ("Application");

4) Merchant agrees to the terms and conditions set forth in the Wright Express Merchant Charge Card Agreement ("Agreement") provided with this Application and incorporated herein by reference; 5) If this application is for a general partnership or a proprietorship, Wright Express may obtain and use personal credit information (including consumer reports from consumer reporting agencies) about the individual partners or owners of the Merchant in making a credit decision, and in the administration of this program, to the extent permitted by law;

6) Merchant agrees that in the event the Merchant does not meet its obligations pursuant to the Agreement, Wright Express may report the Merchant's liability (as well as any general partner or proprietor's) liability for and the status of the account to credit bureaus and others who may lawfully receive such information.

## SECTION 1 - BUSINESS INFORMATION

Site Name (DBA or AKA) Please use location form for additional sites			Station Manager/Contact		
Physical Address for site directory (number and street)		City		State	Zip
Phone	Fax	Highway Exit #	Nearest Highway		
Full Legal Company Name			Merchant's Taxpayer ID # (TIN, FEIN or SSN)		
Mailing Address if different than physical address (for settlement & reporting)		City		State	Zip+4
Corporate Contact (for settlement)		Phone		Fax	
Email address					

## SECTION 2 - PROCESSING

Bank Card Processor			Phone		
Credit Card Network (check one):					
<input type="checkbox"/> ADS	<input type="checkbox"/> Buypass	<input type="checkbox"/> EFS	<input type="checkbox"/> First Data Corp	<input type="checkbox"/> GPI	<input type="checkbox"/> GPS
<input type="checkbox"/> MPS (Fifth Third)	<input type="checkbox"/> LYNK	<input type="checkbox"/> NBS	<input type="checkbox"/> Nova	<input type="checkbox"/> NPC	<input type="checkbox"/> Paymentech
<input type="checkbox"/> SPS					
Inside the site POS Equipment (example, Omni 3200, Tranz 380, etc.)			Terminal ID #		
At the dispenser POS Equipment (example, Omni 3200, Tranz 380, etc.)			Terminal ID #		
DO YOU SELL FUEL? <input type="checkbox"/> Yes <input type="checkbox"/> No If you sell fuel, complete section 4. If you do not sell fuel, complete section 3.					

## SECTION 3 - NON-PETROLEUM MERCHANTS

BRANDS (check all that apply)					
<input type="checkbox"/> Aamco	<input type="checkbox"/> Chrysler	<input type="checkbox"/> GM	<input type="checkbox"/> Les Schwab	<input type="checkbox"/> Napa	<input type="checkbox"/> Quaker St/Pennzoil
<input type="checkbox"/> ACCC	<input type="checkbox"/> D-Triumph GL	<input type="checkbox"/> Goodyear	<input type="checkbox"/> Maaco	<input type="checkbox"/> Nissan	<input type="checkbox"/> Tire Centers, Inc.
<input type="checkbox"/> AC Delco	<input type="checkbox"/> Econolube	<input type="checkbox"/> Grease Monkey	<input type="checkbox"/> Mazda	<input type="checkbox"/> Novus	<input type="checkbox"/> Toyota
<input type="checkbox"/> American Lubefast	<input type="checkbox"/> Firestone	<input type="checkbox"/> Harmon Glass	<input type="checkbox"/> Meineke	<input type="checkbox"/> Oil Changer	<input type="checkbox"/> Volvo
<input type="checkbox"/> BF Goodrich	<input type="checkbox"/> Ford	<input type="checkbox"/> Honda	<input type="checkbox"/> Midas	<input type="checkbox"/> Parts Plus	<input type="checkbox"/> Wash Depot
<input type="checkbox"/> Big O Tires	<input type="checkbox"/> Glass America	<input type="checkbox"/> Jiffy Lube	<input type="checkbox"/> Mitsubishi	<input type="checkbox"/> Pep Boys	<input type="checkbox"/> Winston Tire
			<input type="checkbox"/> Precision Tune	<input type="checkbox"/> Other	
BRAND PROGRAMS (check one if applicable):					
<input type="checkbox"/> ACCC	<input type="checkbox"/> GE Dealer Direct	<input type="checkbox"/> Grease Monkey	<input type="checkbox"/> Parts Plus		
<input type="checkbox"/> Dodge Business Link	<input type="checkbox"/> GM Goodwrench	<input type="checkbox"/> JLI South Cal	Dealer/Location Code (if applicable): <input style="width: 100px;" type="text"/>		
PRIMARY SERVICE (check one):					
<input type="checkbox"/> Auto Body	<input type="checkbox"/> Dealership	<input type="checkbox"/> Mechanical	<input type="checkbox"/> Parts	<input type="checkbox"/> Tires	
<input type="checkbox"/> Car Wash	<input type="checkbox"/> Glass	<input type="checkbox"/> Oil Change/Lube	<input type="checkbox"/> Road Service		

## SECTION 4 - FUEL MERCHANT ONLY SITE INFORMATION

Please check all the features and fuel types that apply to your station:					
<input type="checkbox"/> Fuel available 24 hours	<input type="checkbox"/> Pin Pad	<input type="checkbox"/> Alcohol	<input type="checkbox"/> Unleaded Plus	<input type="checkbox"/> CNG	
<input type="checkbox"/> Car Wash	<input type="checkbox"/> Crinds (Pay-at-the-pump)	<input type="checkbox"/> Unleaded	<input type="checkbox"/> Diesel	<input type="checkbox"/> LPG	
<input type="checkbox"/> Service Bays	<input type="checkbox"/> Tractor Trailer Accessible	<input type="checkbox"/> Premium	<input type="checkbox"/> Methanol		

**SECTION 5 - BANK ACCOUNT INFORMATION FOR PAYMENT OF CHARGE CARD SALES**

Merchant hereby authorizes and requests Wright Express to make payments of amounts owing to Merchant by Wright Express by initiating credit entries to Merchant's demand deposit account at the Bank indicated below ("Merchant's Bank"), and authorizes and requests Merchant's Bank to accept any credit entries initiated by Wright Express to such account without responsibility for the correctness thereof. In the event of an overpayment or payment in error, Merchant hereby authorizes Wright Express to initiate a debit entry to the account for each overpayment or payment in error.

It is understood that for purposes of this Agreement, the term "Merchant's Bank" shall mean and include the bank identified below by Merchant and any successor bank identified to Wright Express (i) in a Notice of Change provided to Wright Express by any Automated Clearing House Association processing credit or debit transactions under this Agreement, or (ii) by Merchant, whether orally or by other non-written means. Any such notification to Wright Express shall be effective only with respect to entries credited to Merchant's account by the Bank after receipt of such notification and a reasonable time to act upon such notice. Merchant agrees and acknowledges that Wright Express will not be liable to Merchant for any damages resulting from the performance or the failure to perform of any Automated Clearing House Association.

Bank Name and Address	ABA Routing Number
Account Name	Account Number

**IMPORTANT: PLEASE ATTACH A VOIDED CHECK TO PAGE 3**  
**We must receive a voided check (or photocopy if faxing) in order to process application.**

**SECTION 5A - BUSINESS BANK TRADE REFERENCES**

Please indicate your type of business:  Corporation  LLC  Partnership  PC or PA  Proprietorship

Primary Bank	Address	City	State	Zip
Bank Contact Person	Phone	Commercial Checking Account #		
Business listed in Yellow Pages? <input type="checkbox"/> Yes <input type="checkbox"/> No	MasterCard / Visa #			

Please provide three trade credit references for companies that issue you credit on a regular basis, suppliers or service companies.  
Do not provide credit cards or oil company cards.

Company Name	City	State	Contact Name	Phone
Company Name	City	State	Contact Name	Phone
Company Name	City	State	Contact Name	Phone

**SECTION 6 - SETTLEMENT**

**Please refer to the Wright Express Merchant Charge Card Agreement which accompanied this application for your Terms and Conditions. It describes the Wright Express Discount Fee and Payment Terms.**

**AUTHORIZED SIGNATURE**

MERCHANT: The undersigned represents and warrants to Wright Express that all of the terms and conditions of this Wright Express Merchant Charge Card Agreement Application consisting of this entire document in addition to any other document or addendum including the Wright Express Merchant Charge Card Agreement have been reviewed in their entirety, are true and correct, and set forth the agreement between Wright Express and Merchant. Additionally, the undersigned represents and warrants that he or she has authority to sign and to bind Merchant to the terms of this Application. Also, the undersigned represents that the undersigned has the authority to provide information and execute this Application on behalf of the Merchant. The Agreement shall only become effective upon Wright Express' acceptance of the Agreement and the Application at its headquarters following approval, and the assignment to Merchant of a merchant processing identification number.

Signature <b>X</b>	Printed Name
Title	Date

**FOR OFFICE USE ONLY**

Acquisition Code	Sales Code	Log Number
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**▼ ATTACH VOIDED CHECK HERE ▼**  
**Application will not be processed without voided check**

**VOIDED CHECK FROM CHECKING ACCOUNT MUST BE ATTACHED. IF FAXING, PHOTOCOPY OF VOIDED CHECK IS PERMISSABLE.**

# WRIGHT EXPRESS®

## CHARGE CARD ACCEPTANCE AGREEMENT

The merchant ("MERCHANT") identified in the Wright Express Charge Card Acceptance Application ("Application") understands that Wright Express Corporation ("WEX CORP") and Wright Express Financial Services Corporation ("WEX FSC"), hereinafter referred to collectively as "WEX", each operate commercial fleet charge card programs whereby they each issue and/or service commercial fleet charge cards for the purchase of motor fuels and or vehicle-related products and services. MERCHANT wishes to participate in the Program by accepting such charge cards at its Distribution Sites. MERCHANT, WEX CORP and WEX FSC agree as follows, subject to approval of the Application by WEX CORP and WEX FSC:

### 1.1 DEFINITIONS

- A. "Card" or "Cards" shall mean the charge cards or other approved account access devices issued or serviced by either WEX CORP or WEX FSC bearing the trademarks of WEX CORP. Notwithstanding the foregoing, Card or Card(s) shall not include any charge card also bearing the MasterCard trademark
- B. "Card Sale" shall mean any transaction involving the use of any Card at participating MERCHANT locations.
- C. "Confidential Information" shall include, without limitation, software, processes, trade secrets, financial information, customer lists, inventions, technical data, developments, pricing, drawings, business plans, schedules, test marketing data, marketing plans of either party which shall be proprietary and confidential.
- D. "Distribution Sites" means the retail company owned or operated locations and any independently owned distributor, dealer or franchisee retail sites.
- E. "Products" means motor fuel, motor oil, repairs, tires and other merchandise, excluding cash equivalent transactions, gift cards, pre-paid cards, lottery or other games of chance.
- F. "Chargeback" means a posted sale has been disputed and the amount of such sale will be deducted from the pending settlement to MERCHANT in accordance with the provisions contained in the Card Sale Procedures.
- G. "Error" means the sales transaction presented for processing did not adhere to the Card Sale Procedures and WEX was unable to process and post the transaction for billing and or payment.
- H. "Transaction Value" means the total amount charged for Product(s) sold, as reflected on the data transmitted to WEX, including any taxes, if applicable.

### 1.2 HONORING CARDS

- A. MERCHANT shall in full compliance with this Agreement honor at its Distribution Sites in the United States, Cards properly presented for the purchase of Products based upon the authorization process of WEX.
- B. For its independently owned Distribution Sites, MERCHANT will enter into agreements with such Distribution Sites so as to provide these sites with procedures as will enable them to accept the Card in a manner consistent with this Agreement. MERCHANT will use commercially reasonable efforts to cause its independently owned Distribution Sites to comply with the terms herein.
- C. Each Card Sale shall be deemed to create a sales draft issued by the Cardholder and instructing the card issuer to pay MERCHANT. WEX shall honor such sales drafts issued in conformity with the terms and conditions set forth herein.
- D. This Agreement shall not apply to any Distribution Sites that accept the Card in accordance with MERCHANT'S brand or distributor agreements with their fuel supplier.

### 2.1 CARD SALES

- A. MERCHANT agrees to comply with the WEX Card Sale Procedures, attached as Exhibit A, and any related technical specifications regarding card acceptance provided by WEX. WEX reserves the right to amend, modify or supplement such procedures or specifications from time to time, provided that thirty (30) days written notice of any such change is provided to MERCHANT.

### 2.2 FEES

- A. MERCHANT shall pay WEX a fee ("Interchange Fee"), which shall be deducted by WEX from the amount of each Card Sale hereunder. The Interchange Fee shall be **3.50%** of the total Transaction Value of the Card Sale.
- B. The Interchange Fee is exclusive of any network transaction fees incurred by Merchant.
- C. It is understood between the parties that transactions shall be processed electronically. WEX reserves the right to increase the Interchange Fee to **6.50%** of the total Transaction Value if the Merchant processes transactions telephonically. Merchant must obtain prior approval from WEX to process transactions telephonically prior to submission of such sales ("Telephonic Interchange Fee").
- D. Merchant shall not surcharge or impose additional fees upon cardholders who present the Card for payment under the terms of this Agreement.
- E. Manual Transaction Fee shall be **\$0.20** per Card Sale, where such manual transaction is not due to an equipment or communications failure by WEX.
- F. Phone Authorization Fee shall be **\$0.30** per authorization, when such authorization is not made electronically, and is not the result of an equipment or communications failure by WEX.
- G. A Research Fee of **\$25.00/hr.** per employee for any research services requested by MERCHANT, which may include, research for archived transactions or reports. WEX shall provide MERCHANT with an estimate of the amount of such fee and obtain MERCHANT's approval prior to undertaking any work.
- H. WEX reserves the right to change these fees upon thirty (30) days' notice to Merchant.

### 2.3 MISCELLANEOUS MERCHANT RESPONSIBILITIES

- A. MERCHANT agrees that services rendered under this Agreement shall not relieve MERCHANT from any obligations to maintain records.
- B. Payment of all taxes, fees and other charges relating to purchases made using Cards, shall be the responsibility of MERCHANT or their Distribution Sites, and WEX shall have no obligation with respect to the collection, payment or reporting of such taxes or fees.
- C. MERCHANT shall review any reports provided by WEX regarding the Card Sales promptly upon receipt. The failure of MERCHANT to notify WEX within **sixty (60) days** of receipt of the applicable report as to any errors contained therein shall constitute MERCHANT'S acceptance of such report as complete and satisfactory performance of WEX under this Agreement.
- D. MERCHANT is responsible for the correction of all errors reported by WEX within the settlement report within **one hundred and twenty (120) days** from the reported error processing date. If MERCHANT fails to correct the transaction information reported in the settlement report, WEX will not remit payment to MERCHANT. MERCHANT can elect in writing to have WEX correct the error file on MERCHANT'S behalf based upon information provided by MERCHANT. Such services will be performed at WEX'S prevailing rate.

- E. MERCHANT shall provide WEX with a list of its Distribution Sites, which shall be updated as necessary and prior to transmitting Card Sale data from a specific location.

### 3.1 PAYMENT FOR CARD SALES BY WEX

- A. WEX shall initiate an electronic funds transfer to an account at a bank participating in the automated clearing house network designated by Merchant as follows:
  - (i) MERCHANTS who sell Fuel: no later than **thirty (30) calendar days**;
  - (ii) MERCHANTS who do not sell Fuel: no later than **three (3) calendar days**;following the day on which the Card Sale is processed by WEX, in the face amount of each Card Sale as reflected on the sales slip or on data automatically transmitted to WEX, less any WEX Interchange Fee. Any Card Sale data received by WEX from MERCHANT before 5:00 p.m. (eastern standard time) shall be treated as having been received on the next business day. WEX may periodically offset or deduct from MERCHANT'S payment hereunder any amounts due to WEX from MERCHANT pursuant to this Agreement. In the event that the calendar day set forth above for payment is a Saturday, Sunday or other holiday, then payment shall be made on the next business day.
- B. Any amounts due to MERCHANT from WEX as a result of the submission of a sales draft may be paid, at MERCHANT'S option, to MERCHANT'S network provider. WEX'S payment to MERCHANT'S network provider constitutes payment in full to MERCHANT.

### 3.2 REPORTS

- A. WEX shall, on a timely basis provide to MERCHANT or its designee, reporting for all transactions relating to the funds transferred, which may include summary settlement reports reflecting gross sales, net sales and amounts due to MERCHANT.
- B. WEX hereby agrees to exercise its best efforts to provide accurate and complete reports, based upon the data transmitted to WEX by MERCHANT. In the event that incorrect data was provided resulting in corrections to payment, WEX will adjust any payments to MERCHANT as required based upon the receipt of corrected data from the MERCHANT.
- C. At MERCHANT'S request, WEX shall also produce and deliver to MERCHANT, such standard reports as are provided to WEX accepting merchants generally from time to time. Any custom reports requested by MERCHANT may be prepared with WEX'S consent and at MERCHANT'S expense.

### 4.1 REPRESENTATIONS AND WARRANTIES

- A. The parties each hereby represent and warrant:
  - i. they are duly organized, validly existing and in good standing under the laws of their state of their organization and have all governmental approvals, licenses, filings or permits necessary to conduct their business and enter into and perform this Agreement;
  - ii. The Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.
- B. In addition, MERCHANT represents and warrants:
  - i. Each of the representations and warranties made above shall be deemed to be remade, on and as of each date on which any Card Sale is made.
  - ii. As to each Card Sale reported to WEX:
    - 1. it represents a bona fide completed sale of Products sold and delivered in the ordinary course of business for the total sales price reported for such Card Sale by MERCHANT to WEX and as such MERCHANT shall have performed all of its obligations to the cardholder in connection with the Card Sale;
    - 2. it shall involve no Card Sale other than the one described therein;
    - 3. each Product covered by a Card Sale will have such quality and grade as represented by MERCHANT;
    - 4. MERCHANT shall have taken all commercially reasonable steps to validate that the signature purporting to be the cardholder or an authorized card user and all electronically or telephonically or hardware generated invoices, records or transactions, or memoranda of sales shall in fact be genuine and not forged or unauthorized.
- C. WEX hereby disclaims any and all warranties, express or implied, concerning card processing services covered by this Agreement, including all warranties of merchantability and fitness for a particular purpose.

### 4.2 LIABILITIES

- A. Except as provided in Section 4.1.A and B above, the parties shall be liable to the other for any damages resulting from performance or failure to perform pursuant to this Agreement, when such performance or failure to perform is due to negligence or willful misconduct.
- B. Notwithstanding the foregoing, the parties shall not be liable to the other for any indirect, special, incidental or consequential damages, including, but not limited to, lost profits even if the parties have knowledge of the possibility of such damages.

## **TAX REPORTING SERVICE FOR FUEL MERCHANTS ONLY**

### 5.1 FEDERAL EXCISE TAXES

- A. Effective January 1, 2006, WEX shall provide net billing or reporting for the federal excise taxes on gasoline and diesel fuel in accordance with the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 to its cardholders. Therefore, MERCHANT shall not be responsible for any net billing of these taxes to qualified tax exempt fleets and shall be paid with these taxes included. MERCHANT as part of its obligations to its Distribution Sites, shall pay its Distribution Sites with these amounts included.

### 5.2 GENERAL PROGRAM PROVISIONS

- A. MERCHANT agrees to sell fuel to certain pre-qualified tax-exempt fleets ("Exempt Fleet") net of any state, county or local taxes on motor fuel that it has notified WEX that it shall provide net billing to such Exempt Fleets. WEX will obtain from each Exempt Fleet copies of relevant tax exemption documentation necessary for the Exempt Fleet to demonstrate its tax-exempt status.
- B. MERCHANT is responsible for providing WEX with all Card Sale data generated at its Distribution Sites, and acknowledges that WEX will charge the Exempt Fleet, and calculate the amount of MERCHANT'S tax, based on this data. All tax-exempt Card Sales will be reported to WEX by MERCHANT in the amount of the full purchase price inclusive of all applicable taxes. WEX shall pay MERCHANT net of all taxes from which the Exempt Fleet is qualified for the exemption and for which MERCHANT has agreed to provide the exemption which shall fully satisfy WEX'S obligation to pay MERCHANT for such Tax Exempt Card Sale.
- C. WEX shall to calculate the tax amount for each appropriate taxing jurisdiction. WEX will also provide MERCHANT, on or before the 15th day of each month, a detailed report showing the total amount of tax-exempt Card Sales for each taxing jurisdiction together with a calculation of the amount

of tax for each taxing jurisdiction.

### 5.3 TAX LOSSES

Notwithstanding any other provision contained in this Agreement, liability and loss with respect to any taxes, penalties, interest or other assessments arising out of incorrect tax exemption processing or documentation provided shall be allocated as follows:

- A. WEX shall be responsible for tax losses that result from errors in data processing, including errors in interpretation, while calculating the net amount of a tax-exempt Card Sale.
- B. MERCHANT shall be responsible for tax losses which arise from errors in calculation by WEX based on incorrect information and data, including, but not limited to incorrect product codes and site information, supplied by the MERCHANT to WEX; and
- C. WEX shall not be responsible for any Tax Losses resulting from the accurate application of information provided by recognized expert information sources, such as big six accounting firms, publishers of nationally recognized state tax information guides, or the applicable taxing jurisdiction.

### 5.4 CALCULATION OF DAMAGES

- A. The total liability of WEX for all tax losses for which it is responsible, occurring in any contract year shall not exceed two times the average monthly fees (including Discount Fees and other applicable Card fees as defined in the Agreement) charged by WEX to MERCHANT for tax exempt Card Sales in the two calendar months immediately preceding the date of the Tax Loss in question. If there is more than one date of tax loss in any Contract Year, the measuring months shall be the two calendar months immediately prior to the most recent tax loss. If a tax loss occurs during the first two months of this Agreement, the measuring period shall be the first two calendar months of this Agreement. Any tax loss must be asserted in writing to WEX no later than the earlier of: (i) six months after the audit report identifying the tax loss; or (ii) three years after the date of the transaction from which the Tax Loss arose.
- B. If MERCHANT incurs a tax loss for which WEX is not liable hereunder, WEX will assist MERCHANT, as appropriate, in attempting to collect from the Exempt Fleet and/or filing a refund claim, as appropriate.

### 6.1 TERM

This Agreement shall commence upon the execution hereof, and unless sooner terminated pursuant to the provisions of Section 3.2 hereof, shall remain in effect for sixty (60) months. This Agreement shall automatically renew for additional twenty-four (24) month terms immediately upon expiration of the term then in effect, unless written notice of termination shall have been sent by certified or registered mail by either party to the other party at least six (6) months prior to termination of the term in effect. Upon termination, MERCHANT shall:

- A. cease entering into Card Sales using the Card or Cards with respect to which this Agreement is terminated;
- B. cease promoting the same pursuant to this Agreement, and;
- C. return any unused materials or supplies issued by WEX with respect to any Card.

Termination shall not affect any party's respective rights, duties or obligations hereunder with respect to pre-termination Card transactions.

### 6.2 TERMINATION

Any party may terminate this Agreement upon the occurrence of any of the following:

- A. the failure to comply with any of the covenants or the terms, conditions, agreements and limitations set forth in this Agreement, and such failure continues for more than thirty (30) days following written notice from the other party or, if the nature of such failure is such that it cannot reasonably be cured in 30 days, if corrective actions are not commenced within said period and thereafter diligently pursued;
- B. any representation or warranty made in connection with the transaction contemplated by this Agreement shall prove to have been false or misleading in any material respect, which misrepresentation or breach shall not have been cured after thirty (30) days written notice, which may include MERCHANT's compliance with its chargeback obligations as defined in the Card Sale Procedures;
- C. the making of an assignment for the benefit of creditors or the institution of any bankruptcy or insolvency proceeding by a party or the institution by a third party of any bankruptcy proceeding against a party hereto which is not dismissed within sixty (60) days;
- D. the dissolution or termination of operations of a party other than in connection with a merger or sale of substantially all of such party's assets; or
- E. with respect to any cardlock or unattended sites operated by MERCHANT, WEX may terminate this Agreement upon thirty (30) days notice if, in its sole judgment, the operation of the program at such sites is not in compliance with the applicable laws and regulations, or WEX has legal exposure or risk with respect to the program.

## MISCELLANEOUS PROVISIONS

### 7.1 ENTIRE AGREEMENT/ASSIGNMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof; all prior agreements, representations, statements, negotiations and undertakings are superseded hereby. This Agreement (except as expressly authorized herein) may be altered or amended only by a writing signed by each party hereto. This Agreement is effective only upon execution by all of the parties hereto and shall be binding upon the parties hereto, their successors and assigns. No party hereto may assign this Agreement without the prior written approval of the other parties hereto, which approval shall not be unreasonably withheld; provided, however, that either party shall be entitled to assign this Agreement without the other party's consent if (i) the assignee has the ability to perform the obligations of the assignor(s) hereunder and expressly assumes such obligations, and (ii) such assignment is in connection with a merger or sale of substantially all of the assets of the assignor, or (iii) such assignment is to an affiliate of assignor and (iv) the assignee is not a competitor of the non-assigning party.

### 7.2 SEVERABILITY AND WAIVERS OF PROVISIONS

The fact that any provision of this Agreement may prove to be invalid or unenforceable under any law, rule or regulation of any governmental agency, Federal, State or local, shall not affect the validity or enforceability of any other provisions of this Agreement. The waiver of any term, condition or right under this Agreement by any party hereto shall not waive any other term, condition or right, or the same term, condition or right on any other occasion.

### 7.3 FORCE MAJEURE

The parties shall not be liable for failure to timely perform its obligations hereunder if such performance is interrupted or delayed by reason of floods, fires, earthquakes, strikes, civil commotions, acts of war or other extraordinary or unexpected manifestations of physical occurrences which cannot be prevented by the exercise of reasonable diligence or ordinary care.

#### **7.4 CONFIDENTIALITY AND DATA OWNERSHIP**

- A. The parties agree that it is in their mutual best interest to maintain the confidentiality of the provisions of this Agreement and accordingly, agree that they will not, without the written consent of the other, intentionally disclose the terms hereof, including without limitation, the price terms (unless required by court order or other governmental authority) and that all such terms shall be held in confidence and revealed only to employees, agents, lenders or other persons having a need to know such terms in the course of such person's employment or business relationship with such party.
- B. The parties further agree that any obligations to protect Confidential Information is set forth herein shall survive termination of this Agreement for a period of three years, except that as to any Confidential Information designated in writing by Discloser to be a "trade secret", such obligations shall continue indefinitely unless otherwise agreed in writing by the disclosing party.
- C. All data collected by WEX from processing transactions shall remain the exclusive property of WEX. WEX may also use and disclose statistics and data generated by WEX as a result of processing transactions at MERCHANT'S Distribution Sites.

#### **7.5 LICENSING OF TRADEMARKS OR SERVICEMARKS**

MERCHANT own certain trademarks and service marks ("Marks"), which may be used by WEX on marketing materials used in connection with the acceptance of Cards and in WEX'S standard marketing presentations identifying MERCHANT as a WEX accepting merchant ("Program Materials") and hereby grants to WEX, a limited non-exclusive, royalty free and non-transferable license to use certain Marks for the purpose of affixing such Marks to the Program.

#### **7.6 GOVERNING LAW**

This Agreement shall be governed and construed by the internal laws of the State of Utah (without reference to choice of law rules).

#### **7.7 FINANCIAL STATEMENTS**

MERCHANT agrees, if requested by WEX, to furnish WEX with financial information related to its business operations. In addition, WEX may undertake any such credit reviews as necessary to verify the financial condition of MERCHANT. If requested, financial statements shall include an income statement for the applicable fiscal year and a balance sheet prepared in accordance with generally accepted accounting principles, consistently applied, and shall be in accordance with the books and records of MERCHANT.

#### **7.8 OTHER AGREEMENTS**

MERCHANT hereby consents to WEX granting to their principal financing source(s) a security interest in and collateral assignment of this Agreement and acknowledges that, upon the occurrence of an event of default, in connection with the present or future financing arrangements between either WEX and the financing source shall have all of the rights of WEX.

# EXHIBIT A

## WRIGHT EXPRESS CARD SALE PROCEDURES

### 1.1 METHOD OF TRANSMISSION OF CARD SALES TO WEX

- A. Merchant is responsible to insure, at its expense, the provision of necessary equipment to permit the electronic acceptance of the Card at its Distribution Sites and to collect the sales transaction data and to transmit the same in accordance with the Wright Express' Authorization and Sales Transaction Specification. Merchant is responsible for the operation and maintenance of the equipment, telecommunication link, and provision of all networking services. Merchant shall obtain from Wright Express the necessary acceptance certification for the network and equipment that will be utilized by the merchant for processing sales transaction.

### 1.2 MANUAL CARD SALE PROCEDURES

- A. If MERCHANT is unable to obtain an authorization for a Card Sale due to the communication facilities for WEX are at the time not operable, MERCHANT must capture the sales transaction through the use of a suitable imprinter to legibly imprint the Cards on the sales slip and requiring the cardholder to sign the sales receipt.
- B. MERCHANT shall obtain all information required in Section 1.3.A below MERCHANT shall obtain all information required in Section 1.3.A below. MERCHANT agrees that MERCHANT and its Distribution Sites, employees, representatives and agents shall take all commercially reasonable efforts to protect such Card Sale data from fraud or misuse.
- C. MERCHANT shall not submit to WEX paper Manual Card Sales directly to WEX for processing unless prior approval is first obtained. In the event that WEX has agreed to accept such Manual Card Sales, WEX reserves the right to assess the manual transaction fee.
- D. MERCHANT shall obtain an authorization number or other approval code from WEX as soon as communication with the WEX authorization facilities can be re-established and MERCHANT shall include any authorization or other approval code when submitting the completed Card Sale to WEX for processing.
- E. Notwithstanding the foregoing, WEX hereby limits its liability for any such sales to **\$50.00** per transaction and **\$500** per day per Distribution Site. WEX reserves the right to change these limits from time to time. Manual Card Sales that exceed these limits shall be at the credit risk of MERCHANT.

### 1.3 MINIMUM CARD SALE PROCESSING REQUIREMENTS

- A. Card Sales data sent by MERCHANT to WEX shall include: account number, vehicle number, driver identification number, sales date, sales time, site identification number, authorization number, product codes, quantity, sales dollars, odometer, ticket number and any other information as WEX and MERCHANT may mutually agree upon.
- B. All Card Sales require an authorization or other approval code from WEX. MERCHANT shall request such authorization from WEX for the total Card Sale amount prior to sending the Card Sale to WEX for processing. If MERCHANT calls prior to completion of the Card Sale, MERCHANT will still have to obtain an authorization number upon completion of the Card Sale to obtain payment from WEX.
- C. An authorization or other approval code is not a guarantee that MERCHANT will receive payment for the related Card Sale. WEX does not provide payment to merchants based upon the authorization or other approval code. MERCHANT is still required to submit the completed Card Sale, including the authorization or other approval code, to WEX for payment. Obtaining an authorization without submitting the completed Card Sale to WEX for processing may result in non-payment by WEX for such Card Sale.
- D. MERCHANT shall not accept payment through use of an expired Card or when advised upon authorization inquiry, that the Card is not to be honored.
- E. In any event, MERCHANT shall never make a Card Sale without specific authorization where MERCHANT believes or has reason to believe that the Card may be counterfeit or stolen or the transaction is in any way fraudulent or otherwise suspicious.
- F. Merchant shall maintain a record of all information required in Section 1.1.B above. Upon request, MERCHANT shall provide the cardholder with a copy of the transaction receipt documenting the Card Sale. Such receipt shall not include the full account number or driver identification number printed on the receipt.
- G. If the Card Sale is not an island card reader transaction ("pay-at-the-pump"), MERCHANT shall require the cardholder to sign the transaction receipt.
- H. Any Card Sale data received by WEX from MERCHANT by 5:00 p.m. Eastern Standard Time ("EST") shall be treated as having been received on the next business day.
- I. Upon request, a true and complete copy of the sales slip or Card Sale receipt shall be made available to the WEX Cardholder at the time of the Card Sale.
- J. MERCHANT shall submit all Card Sales to WEX for processing within thirty (30) days of the transaction date. WEX may accept transactions up to one hundred and twenty (120) days from the date of the transaction for processing and billing to the fleet, however, reserves the right to chargeback any such transaction that is disputed by a fleet customer.
- K. Merchant must use one sales receipt for all goods and services sold in the same transaction. MERCHANT shall not divide the price of goods and services purchased in a single transaction among two (2) or more transaction receipts nor shall MERCHANT permit a Card Sale when only a part payment is made by use of a Card, and the balance is made by another card.
- L. Merchant must not submit Card Sales until goods have been delivered or services performed. No Card Sales shall be made unless the Card is presented at the time of sale. In the event that MERCHANT processes a Card Sale when the Card is not presented at the time of the sale, MERCHANT bears the risk of the sale being charged back to MERCHANT.
- M. MERCHANT shall maintain a record of the Card Sale, including all sales data required for a period of one (1) year. Upon the reasonable request of WEX, such records shall be provided to WEX within thirty (30) calendar days of WEX'S request. Failure to provide the requested record will result in a charge back of the Card Sale to MERCHANT.
- N. It is understood by the parties that MERCHANT may be manually capturing the WEX account information, including, but not limited to, driver identification number, even if the Card Sale is not processed as a Manual Card Sale in accordance with Section 1.2 above. MERCHANT shall use commercially reasonable efforts to require its Distribution Sites to maintain the security of such information and not cause said information to be lost, stolen or otherwise used for unlawful or unauthorized purposes.

### 1.4 DATA INPUT AND TRANSMISSION

- A. MERCHANT is responsible for the data entry of Card Sales information by its personnel, or representatives. All data shall meet WEX'S reasonable standard technical specifications as provided to MERCHANT from time to time and shall be in good and usable condition. MERCHANT is responsible for the data entry of information by its personnel or representatives.

- B. If information pertaining to any Card Sale is garbled in transmission such that part or all of the record is likely to vary from what MERCHANT transmitted, WEX may advise MERCHANT of the suspected inaccuracy and request retransmission of the record or other appropriate confirmation. WEX may, with notice to MERCHANT, withhold payment for such Card Sales until the record is retransmitted or MERCHANT provides other appropriate confirmation. Similarly, if MERCHANT has not provided WEX with required information or that WEX needs to interpret, verify, or validate a Card Sale, WEX may, with notice to MERCHANT, withhold payment for such Card Sale until MERCHANT sends WEX the necessary information. WEX may make appropriate adjustments in its settlements with MERCHANT to reflect the receipt or correction of any such Card Sale information.
- C. MERCHANT hereby authorizes WEX to refer to a default price per gallon table, which may be used when the calculated price per gallon for the transaction falls outside of WEX's acceptable range of pricing which is updated from time to time by WEX based upon market conditions. The table is based upon average price per gallon data collected from all merchants who accept WEX Cards.
- D. MERCHANT hereby authorizes WEX to refer to the authorization log to obtain information to complete the processing of transactions in the event that errors are detected by WEX during processing. It is understood by the parties that the information contained in the authorization log is the "actual, real-time" information received by WEX from the MERCHANT at the time the use of the charge card was authorized. It is further understood that if sufficient information is not available in the authorization log to correct any errors in the transaction file received by WEX from MERCHANT, then these transactions will be charged back to MERCHANT for correction.
- E. Use of the defaults set forth in sub-section (ii) and (iii) above does not affect the transaction value submitted for settlement and is only used to facilitate reporting to fleet customers nor does it relieve MERCHANT of its requirements to provide accurate data for Card Sales.

#### **1.5 PAYMENT POLICIES FOR CARD SALES**

- A. Chargebacks: MERCHANT shall reimburse WEX upon demand all amounts previously paid to MERCHANT with respect to any Card Sale as to which (i) there shall have been any material breach by MERCHANT, its employee(s) or agents of any term, representation, condition or warranty set forth in this Agreement and such breach is not subject to or is not cured within ten (10) days of notice of such from WEX, or (ii) the Cardholder or any other person obligated for payment has asserted a defense, claim or offset against payment based upon (A) any act, omission or alleged wrongful conduct of MERCHANT or any employee or agent of MERCHANT, or (B) any other defense, claim or offset against payment based on the quality or sufficiency of Products which relate to such Card Sale (hereinafter collectively, "Chargeback").
- B. Any obligation of MERCHANT to pay a Chargeback pursuant to this Agreement shall be unconditional and shall not be waived, released or affected by any settlement, extension, compromise of forbearance or other indulgence or agreement made or granted by WEX with or to any Cardholder or other obligor. Additionally, failure to issue a Chargeback to the MERCHANT with knowledge of a breach of warranty or other defect shall not be deemed a waiver of any of WEX'S rights with respect to such Card Sale. WEX will expend normal business efforts to remedy against Cardholders and shall not be required to exhaust its remedies against Cardholders, or other persons or Products as a condition precedent to requiring performance by MERCHANT of its obligations hereunder.
- C. MERCHANT shall not surcharge or impose additional fees upon Cardholders who present the Card for payment under the terms of this Agreement.

#### **1.6 AUDIT OF RECORDS**

Upon reasonable advance notice, WEX shall have the right during business hours, to verify all Card Sales and to examine and make copies of MERCHANT'S records for any purpose directly connected with and relevant to this Agreement, but not otherwise. MERCHANT shall have the same right to examine and make copies of WEX'S records.