

**PARTICIPATING ADDENDUM
MASTER AGREEMENT 00819
FLEET CARD SERVICES**



WEX BANK FLEET CARD PROGRAM AGREEMENT

This Participating Addendum for the above referenced Master Agreement ("Participating Addendum") is made and entered into by and between the State of Wisconsin acting by and through the Department of Enterprise Services, a Wisconsin State governmental agency "Enterprise Services" and WEX Bank, a Utah corporation "Contractor" and will become effective on the date this agreement is fully executed by both parties.

1. **Scope.** This Participating Addendum between the Participating Entity signing below and WEX Bank governs the Fleet Card program offered pursuant to the NASPO Master Contract 00819 between the State of Washington "Washington" and U.S. Bank. State Agencies, Campuses, and Political Subdivisions designated by the State of Wisconsin, Department of Administration may participate in the Fleet Card Program.

"Government Entity" means the State of Wisconsin. In order for Government Entity Agencies "State Agencies" to participate in the Commercial Card Program, the Government Entity will furnish to WEX Bank a Government Entity Agency Addendum listing those agencies allowed to participate. The Government Entity has the right to exclude any agencies from the Agreement by providing written notice to WEX Bank at any time.

"State Agencies" means an office, department, agency, institution of higher education, the legislature, a legislative service agency, the courts, a judicial branch agency, an association, society, or other body in state government that is created or authorized to be created by the constitution or by law, for which appropriations are made by law.

"Political Subdivisions" means any municipalities, which is defined in Wisconsin Statute as any county, city, village, town, school district, board of school directors, sewer district, drainage district, vocational, technical and adult education district, or any other public body having the authority to award public contracts (s. 16.70(8), Wis. Stats.). Federally recognized Indian tribes and bands in this state may participate in cooperative purchasing with the state or any municipality under ss. 66.0301(1) and (2), Wis. Stats. Political Subdivisions may participate in this Agreement upon credit approval by U.S. Bank and upon the signing and submission of a properly completed Political Subdivision Addendum.

2. **Term.** The term of this Addendum (the "Term") shall commence on the Effective Date of this Addendum and shall be in effect until December 31, 2025. The Participating State and WEX Bank shall have the option to renew this agreement for two (2) additional years upon mutual agreement. Notwithstanding anything to the contrary, this Agreement shall end on the termination date of the Master Agreement unless this Addendum is terminated earlier in accordance with the Master Agreement.
3. **Notices.** The parties will make all notifications, consents, or approvals required under this Participating Addendum in writing, unless otherwise expressly stated to the contrary. The parties will deem any required notices given either (i) two days after the date of mailing if sent by registered or certified mail, return receipt requested; or (ii) one day after the date of mailing if sent by a national overnight courier service to either of the addresses indicated below.

To Participating State:

State of Wisconsin
Department of Administration
101 E. Wilson St., 6th Floor
Madison, WI 53703
Attn: Bruce Derge

To WEX Bank:

WEX Bank
Public Sector
97 Darling Ave. So.
Portland, ME 04106
Attn: Ryan Kelly

4. **Governing Law and Venue.** The laws of the State of Wisconsin and applicable federal laws and regulations of the United States apply to any dispute arising out of this Participating Addendum, its subject matter, or its formation. The parties shall bring any dispute or claim, arising out of or related to this Participating Addendum, before a state or federal court in the city of Madison, Wisconsin.

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5. Incorporation. The following documents are incorporated herein by reference as if set forth at length:

Appendix A: State of Wisconsin Standard Terms and Conditions

Appendix B: State of Wisconsin Supplemental Terms and Conditions

The Master Agreement

In the event of a conflict between the terms and conditions set forth in this Addendum and/or applicable law, the conflict shall be resolved by giving precedence to the following documents in the following order:

1. This Addendum, without reference to Appendix A, Appendix B, or the Master Agreement
2. Appendix A: Standard Terms and Conditions
3. Appendix B: Supplemental Standard Terms and Conditions
4. Master Agreement

6. Participating Entity Modifications or Additions to the Master Agreement

Participating Entity must check one of the boxes below.

- ☐ No changes to the terms and conditions of the Master Agreement are required.
- ☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

The following sections shall be deleted from the Master Agreement 00819:

- Section 4.3 - Wage Violations
- Section 4.4 - Pay Equality
- Section 4.5 - Executive Order 18-03 Workers' Rights (Mandatory Individual Arbitration)
- Section 11.1 - Records Retention
- Section 13 - Public Information
- Section 17.17 - Attorney's Fees

7. Authorization and Execution. Participating Addendum may be executed and delivered by the parties electronically, and fully executed electronic versions of this Participating Addendum, or reproductions thereof, will be deemed to be original counterparts.

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IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of Wisconsin, Department of Administration	Contractor: WEX Bank
Signature: DocuSigned by:  E70A1AADB106453...	Signature:  APPROVED By W435075 at 6:13 pm, Feb 10, 2021
Name: Cheryl Edgington	Name: Tim Laukka
Title: Director	Title: President
Date: 2/16/2021 2:15 PM CST	Date: February 12, 2021

APPENDIX A

STANDARD TERMS AND CONDITIONS

1.0 PARTIES AND SCOPE:

This Participating Addendum, including all of its attached exhibits and other documents incorporated by reference, including the State Supplemental Terms and Conditions (the "Participating Addendum"), is entered into by and between WEX Bank (the "Contractor"), and the State of Wisconsin (the "State"). This Participating Addendum covers participation in the Fleet Card Services Master Agreement led by the State of Washington (the "Master Agreement"), for use by State agencies and other entities located in Wisconsin which are authorized by law to utilize State contracts.

2.0 DEVIATIONS AND EXCEPTIONS:

The parties acknowledge and agree that the only provisions of this Participating Addendum that apply as between the parties with respect to the business relationship they are entering into for the fleet card services are those (a) which specifically apply to the provision of such fleet card services (and the related extension of credit) and (b) the subject matter of which is not already addressed in the Master Agreement (provisions constituting BOTH (a) or (b) are referred to as "Applicable Clauses"). All clauses contained in this Participating Addendum which are not Applicable Clauses shall be deemed inapplicable and of no effect between the parties. The Applicable Clauses shall be deemed to supplement the Master Agreement.

3.0 UNFAIR SALES ACT:

Prices quoted to the State of Wisconsin are not governed by the Unfair Sales Act.

4.0 TAXES:

The State of Wisconsin and its agencies are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below.

The State of Wisconsin, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.

5.0 ENTIRE AGREEMENT:

The Master Agreement and these Standard Terms and Conditions shall apply to any contract or order awarded as a result of this request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the contracting authority.

6.0 APPLICABLE LAW AND COMPLIANCE:

This contract shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin reserves the right to cancel this contract if the contractor fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

7.0 ANTITRUST ASSIGNMENT:

The contractor and the State of Wisconsin recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Wisconsin (purchaser). Therefore, the contractor hereby assigns to the State of Wisconsin any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.

8.0 ASSIGNMENT:

No right or duty in whole or in part of the contractor under this contract may be assigned or delegated without the prior written consent of the State of Wisconsin.

9.0 NONDISCRIMINATION / AFFIRMATIVE ACTION:

In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation as defined in s. 111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.

9.1 Contracts estimated to be over fifty thousand dollars (\$50,000) require the submission of a written affirmative action plan by the contractor. An exemption occurs from this requirement if the contractor has a workforce of less than fifty (50) employees. Within fifteen (15) working days after the contract is awarded, the contractor must submit the plan to the contracting state agency for approval. Instructions on preparing the plan and technical assistance regarding this clause are available from the contracting state agency.

9.2 The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.

9.3 Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.

9.4 Pursuant to s. 16.75(10p), Wis. Stats., contractor agrees it is not, and will not for the duration of the contract, engage in a prohibited boycott of the State of Israel as defined in s. 20.931(1)(b). State agencies and authorities may not execute a contract and reserve the right to terminate an existing contract with a company that is not compliant with this provision. This provision applies to contracts valued \$100,000 or over.

9.5 Pursuant to 2019 Wisconsin Executive Order 1, contractor agrees it will hire only on the basis of merit and will not discriminate against any persons performing a contract, subcontract or grant because of military or veteran status, gender identity or expression, marital or familial status, genetic information or political affiliation.

10.0 CANCELLATION:

The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.

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11.0 VENDOR TAX DELINQUENCY:

Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.

12.0 PUBLIC RECORDS ACCESS:

It is the intention of the state to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities. Bid/proposal openings are public unless otherwise specified. Records may not be available for public inspection prior to issuance of the notice of intent to award or the award of the contract. Pursuant to §19.36 (3), Wis. Stats., all records of the contractor that are produced or collected under this contract are subject to disclosure pursuant to a public records request. Upon receipt of notice from the State of Wisconsin of a public records request for records produced or collected under this contract, the contractor shall provide the requested records to the contracting agency. The contractor, following final payment, shall retain all records produced or collected under this contract for six (6) years.

13.0 DISCLOSURE:

If a state public official (s. 19.42, Wis. Stats.), a member of a state public official's immediate family, or any organization in which a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this agreement, and if this agreement involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this contract is voidable by the state unless appropriate disclosure is made according to s. 19.45(6), Wis. Stats., before signing the contract. Disclosure must be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).

State classified and former employees and certain University of Wisconsin faculty/staff are subject to separate disclosure requirements, s. 16.417, Wis. Stats.

14.0 PROMOTIONAL ADVERTISING / NEWS RELEASES:

Reference to or use of the State of Wisconsin, any of its departments, agencies or other subunits, or any state official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the State of Wisconsin. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.

15.0 FOREIGN CORPORATION:

A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority. Any foreign corporation which desires to apply for a certificate of authority should contact the Department of Financial Institutions, Division of Corporation, P. O. Box 7846, Madison, WI 53707-7846; telephone (608) 261-7577.

APPENDIX B

SUPPLEMENTAL STANDARD TERMS AND CONDITIONS

1.0 ACCEPTANCE OF BID/PROPOSAL CONTENT:

The contents of the bid/proposal of the successful contractor will become contractual obligations if procurement action ensues.

2.0 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:

By signing this bid/proposal, the bidder/proposer certifies, and in the case of a joint bid/proposal, each party thereto certifies as to its own organization, that in connection with this procurement:

- 2.1 The prices in this bid/proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/proposer or with any competitor;
- 2.2 Unless otherwise required by law, the prices which have been quoted in this bid/proposal have not been knowingly disclosed by the bidder/proposer and will not knowingly be disclosed by the bidder/proposer prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other bidder/proposer or to any competitor; and
- 2.3 No attempt has been made or will be made by the bidder/proposer to induce any other person or firm to submit or not to submit a bid/proposal for the purpose of restricting competition.
- 2.4 Each person signing this contract certifies that: He/she is the person in the contractor's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 2.1 through 2.3 above; (or)

He/she is not the person in the bidder's/proposer's organization responsible within that organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decisions in certifying that such persons have not participated, and will not participate in any action contrary to 2.1 through

2.3 above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to 2.1 through 2.3 above.

3.0 DUAL EMPLOYMENT:

Section 16.417, Wis. Stats., prohibits an individual who is a State of Wisconsin employee or who is retained as a contractor full-time by a State of Wisconsin agency from being retained as a contractor by the same or another State of Wisconsin agency where the individual receives more than \$12,000 as compensation for the individual's services during the same year. This prohibition does not apply to individuals who have full-time appointments for less than twelve (12) months during any period of time that is not included in the appointment. It does not include corporations or partnerships.

4.0 EMPLOYMENT:

The contractor will not knowingly engage the services of any person or persons now employed by the State of Wisconsin, including any department, commission or board thereof, to provide services relating to this agreement without the written consent of the employing agency of such person or persons and of the contracting agency.

5.0 CONFLICT OF INTEREST:

Private and non-profit corporations are bound by ss. 180.0831, 180.1911(1), and 181.0831 Wis. Stats., regarding conflicts of interests by directors in the conduct of state contracts.

6.0 RECORDKEEPING AND RECORD RETENTION:

It is the intention of the state to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities. Pursuant to §19.36 (3), Wis. Stats., all records of the contractor that are produced or collected under this contract are subject to disclosure pursuant to a public records request. Upon receipt of notice from the State of Wisconsin of a public records request for records produced or collected under this contract, the contractor shall provide the requested records to the contracting agency. The contractor, following final payment, shall retain all records produced or collected under this contract for six (6) years.

7.0 INDEPENDENT CAPACITY OF CONTRACTOR:

The parties hereto agree that the contractor, its officers, agents, and employees, in the performance of this agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the state. The contractor agrees to take such steps as may be necessary to ensure that each subcontractor of the contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the state.