

# 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 - MERCHANT INFORMATION

|   |          |                |   |       |  |
|---|----------|----------------|---|-------|--|
| Full Legal Company Name   |          |                | Merchant's Taxpayer ID # (TIN, FEIN or SSN) |       |  |
| Site Name (DBA or AKA) Please use location form for additional sites            |          |                | Station Manager/Contact                     |       |  |
| Physical Site Address for site directory (number and street)                    |          | City           | State                                       | Zip+4 |  |
| Site Phone  | Site Fax | Highway Exit # | Nearest Highway                             |       |  |
| 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"/> Bank of America | <input type="checkbox"/> Buypass           |
| <input type="checkbox"/> GPS   | <input type="checkbox"/> LYNK            | <input type="checkbox"/> MPS (Fifth Third) |
| <input type="checkbox"/> EFS   | <input type="checkbox"/> First Data Corp | <input type="checkbox"/> GPI               |
| <input type="checkbox"/> NBS   | <input type="checkbox"/> NOVA            | <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?**  Yes  No **If you sell fuel, please complete section 4. If you do not sell fuel, please 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       |
| <b>BRAND PROGRAMS</b> (Check one if applicable) |   |  |  | <input type="checkbox"/> Precision Tune | <input type="checkbox"/> Other              |
| <input type="checkbox"/> ACCC                   | <input type="checkbox"/> GE Dealer Direct | <input type="checkbox"/> Jiffy Lube      |  |   |   |
| <input type="checkbox"/> Dodge Business Link    | <input type="checkbox"/> Grease Monkey    | <input type="checkbox"/> Parts Plus      | Dealer/Location Code (if applicable): <input style="width: 150px;" type="text"/> |   |   |
| <b>PRIMARY SERVICE</b> (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 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      |                              |

# WRIGHT EXPRESS BANKING AUTHORIZATION FORM

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.

## SECTION 1 - BANK ACCOUNT INFORMATION

|                       |                    |
|-----------------------|--------------------|
| Bank Name and Address | ABA Routing Number |
| Account Name          | Account Number     |

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

## SECTION 2 - CORPORATE INFORMATION

|                 |                                      |                                      |         |
|-----------------|--------------------------------------|--------------------------------------|---------|
| Legal Name      | <input type="checkbox"/> Corporation | <input type="checkbox"/> Partnership |         |
|                 | <input type="checkbox"/> PC or PA    | <input type="checkbox"/> LLC         |         |
| Mailing Address | City                                 | State                                | Zip + 4 |
| Contact         | Taxpayer ID#                         |                                      |         |

**IMPORTANT: PLEASE ATTACH A COMPLETED W-9 AND  
 IF YOU HAVE INCOME GENERATED FROM CALIFORNIA SOURCES,  
 YOU ARE REQUIRED TO COMPLETE AND RETURN FORM 590**  
 We must receive a completed W-9 and Form 590 in order to process application.

## SECTION 3 - 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 Interchange 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. The Merchant further affirms that they are establishing a credit card processing relationship with the processor indicated on the attached Wright Express merchant application. Once we begin processing credit cards through this processor, our company does not intend to process any transactions through a processing agreement with a branded petroleum marketer.

|                       |              |
|-----------------------|--------------|
| Signature<br><b>X</b> | Printed Name |
| Title                 | Date         |

## FOR WRIGHT EXPRESS INTERNAL USE ONLY

|                   |                |
|-------------------|----------------|
| Processed By      | Date Processed |
| Settlement Entity | Site ID#       |

## WRIGHT EXPRESS MERCHANT 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 a Distribution Site.
- 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 company owned or operated locations and any independently owned distributor, dealer or franchisee sites subject to the terms of this Agreement.
- E. "Products" for the purposes of this Agreement, shall include 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 that a posted sale has been disputed and the amount of such sale will be deducted from the pending settlement to the merchant in accordance with the provisions contained in the Card Sale Procedures.

### 1.2 HONORING CARDS

- A. MERCHANT shall in full compliance with this Agreement honor at its Distribution Sites in the United States, any Card properly presented for the purchase of Products based upon the authorization process of WEX.
- B. 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.
- C. This Agreement shall not apply to any Distribution Sites where the location is able to accept the card or currently accepts the Card through an agreement with the chain or brand that MERCHANT operates its Distribution Sites under.

### 2.1 CARD SALES

- A. MERCHANT agrees to comply with the WEX Card Sale Procedures, attached and incorporated herein as Exhibit A, and any related technical specifications regarding card acceptance provided by WEX. The current technical specification is the ISO 8583, version 2.02, dated September 2008 which provides requirements for both the point of sale equipment and the next work host ("WEX Technical Specification"). WEX reserves the right to amend, modify or supplement the WEX Technical Specification, provided that thirty (30) days written notice of any such change is provided to MERCHANT. MERCHANT agrees to adopt any such amendments or changes to the WEX Technical Specifications based upon a mutually agreed upon timeframe so that MERCHANT remains on the most up-to-date specification as required by WEX.
- B. MERCHANT is responsible for card acceptance at all of its Distribution Sites subject to this Agreement and as such, will enter into agreements with its independently owned Distribution Sites to 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.
  - i. MERCHANT shall be responsible for distributing payments for Card Sales to its Distribution Sites. WEX shall remit one payment to MERCHANT for all Card Sales under this Agreement as well as providing MERCHANT with its standard reporting through a daily settlement file so that MERCHANT may allocate payments as appropriate to its Distribution Sites.
- C. WEX reserves the right to terminate acceptance at a Distribution Site if such Distribution Site does not remain compliant with the terms of this Agreement or if in WEX's sole discretion, continued acceptance at the Distribution Site poses financial or reputational risk to WEX.

### 2.2 FEES

- A. MERCHANT shall pay to WEX certain fees ("WEX Fees") as follows:
  - i. Interchange Fee: **3.5% of the total Card Sale**. The amount transferred by WEX shall be equal to the face amount of each Card Sale as reflected on the Card Sale receipt or the sales file transmitted to WEX based on the following formula: **(Total Card Sale - Discounts provided by Merchant) - WEX Fees = Amount to MERCHANT**  
Any discounts or rebates offered to WEX Customers shall be provided to WEX in advance, in writing. The Interchange Fee does not include any network transaction fees incurred by Merchant.
  - ii. 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.
  - iii. 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.
  - iv. 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.
- B. Except for the interchange fee noted above, WEX reserves the right to change these fees upon thirty (30) days' notice to Merchant.
- C. Merchant shall not surcharge or impose additional fees upon cardholders who present the Card for payment under the terms of this Agreement that it does not also charge to other cardholders who present a credit or charge card as the method of payment.

### 2.3 MISCELLANEOUS MERCHANT RESPONSIBILITIES

- A. While WEX processes MERCHANT with a variety of reports for the Card Sales that WEX processes and provides payment. MERCHANT agrees that it shall still maintain its own records of the Card Sales.
- B. WEX shall not be responsible for collecting, paying or reporting taxes, fees or other charges related to purchases made using Cards such as but not limited to sales and use taxes that are incurred by MERCHANT. This section does not apply to the obligations of the parties as more fully described in Article V, Tax Reporting Service for Fuel Transactions.
- C. MERCHANT shall review any reports provided by WEX regarding the Card Sales promptly upon receipt and shall notify WEX within **sixty (60) days** of the date of the report as to any mistakes contained therein. Failure to do so shall be deemed MERCHANT's acceptance of the report as complete and satisfactory performance of WEX under this Agreement.
- D. MERCHANT is responsible for the correction of all Card Sales that have been identified with errors and will not be processed by WEX within **one hundred and twenty (120) days** from the reported error processing date. MERCHANT can elect in writing to have WEX correct the errors on MERCHANT's behalf based upon information provided by MERCHANT. Such services will be performed at WEX's then prevailing rate.
- E. MERCHANT shall provide WEX with a list of its locations, 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 pay MERCHANT for each Card Sale processed by WEX less any WEX Interchange Fee. Payment shall be made by WEX by an electronic funds transfer to a bank account or a third party designee named by MERCHANT as follows:
  - For FUEL MERCHANTS: no later than **thirty (30) calendar days**; following the day on which the Card Sale is processed by WEX. If the payment date is a Saturday, Sunday or legal holiday, payment will be made on the next business day.
  - For SERVICE MERCHANTS: no later than **three (3) calendar days**
- B. 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 payments hereunder any amounts due to WEX from MERCHANT pursuant to this Agreement.
- C. 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 or other designee, based on the banking information that is provided to WEX. WEX'S payment to MERCHANT'S network provider constitutes payment in full to MERCHANT.

### 3.2 REPORTS

- A. WEX shall provide MERCHANT or its designee, its standard reporting for Card Sales and the amounts paid to MERCHANT through its standard daily settlement reports which may include, but not be limited to

information related to the gross Card Sales, net Card Sales and amounts due to MERCHANT.

- B. WEX shall use 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 a correction to payment, WEX will adjust any payments to MERCHANT as required based upon the receipt of corrected data from the MERCHANT provided that such correction is requested in accordance with Section 2.3.C or 2.3.D.
- C. In the event that MERCHANT requests a custom report or custom file layout, such reports may be created by mutual agreement of the parties. Additional fees may be charged to MERCHANT for the creation and maintenance of custom reporting files and will be charged only upon the agreement of the parties.

#### 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 as to each Card Sale reported to WEX:
  - i. it represents a bona fide Card Sale of Products sold and delivered in the ordinary course of business for the total sales price reported by MERCHANT to WEX;
  - ii. MERCHANT shall have performed all of its obligations to the cardholder in connection with the Card Sale;
  - iii. it involves no other Card Sale than the one described therein;
  - iv. each Product had quality and grade as represented by MERCHANT;
  - v. (for in-store Card Sales only) MERCHANT shall have taken all commercially reasonable steps to validate the signature of the cardholder; and,
  - vi. all electronically or telephonically or hardware generated invoices, receipts, records 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. The parties shall be liable to the other for actual damages resulting from a breach of this Agreement whether due to the performance or failure to perform by a party.
- 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.

#### 5.1 CREDIT CARD ISSUER EXEMPTIONS (FEDERAL EXCISE TAX AND SOME STATES)

- A. WEX provides net billing of the federal excise taxes on gasoline and diesel fuel in accordance with the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 as well as net billing for certain motor fuel taxes for those states that have adopted similar rules which allow the credit card issuer to facilitate exemptions to qualified tax exempt fleets.
- B. MERCHANT shall be paid for Card Sales with the applicable taxes included and shall pay its Distribution Sites with applicable taxes included when WEX is facilitating the exemption.
- C. WEX will obtain from each Exempt Fleet copies of relevant tax exemption documentation necessary for the Exempt Fleet to demonstrate its tax-exempt status.

#### 6.1 TERM

- A. Initial Term: This Agreement shall commence upon the execution hereof, and unless sooner terminated pursuant to the provisions of Section 6.2 hereof, shall remain in effect for **sixty (60) months**.
- B. Renewal Term: This Agreement shall automatically renew for additional **twenty-four (24) month** terms immediately upon expiration of the term then in effect.

#### 6.2 TERMINATION

- A. Any party may terminate this Agreement upon the occurrence of any of the following:
  - i. Provide the other parties written notice of termination by certified or registered mail at least **six (6) months** prior to termination of the term in effect;
  - ii. the failure of a party 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(s) and corrective action is not undertaken and diligently pursued or, if the nature of such failure is such that it cannot reasonably be cured in 30 days;

- iii. any representation or warranty made in connection with this Agreement shall prove to be false or misleading in any material respect and is not cured after thirty (30) days written notice, which may include MERCHANT's compliance with its chargeback obligations as defined in the Card Sale Procedures;
  - iv. 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; or,
  - v. 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;
  - vi. a party's failure to comply with all applicable legal and regulatory requirements, whether federal or state; or
  - vii. a party's intentional misrepresentation or fraud in relation to its performance under this Agreement.
- B. Upon termination, MERCHANT shall:
    - i. cease entering into Card Sales using the Card or Cards with respect to which this Agreement is terminated;
    - ii. cease promoting Card Sales or acceptance of Cards including removing all decals or signage indicating acceptance from the Distribution Sites, and;
    - iii. return any unused materials or supplies issued by WEX with respect to any Card.
  - C. Termination shall not affect any party's respective rights, duties or obligations hereunder with respect to pre-termination Card transactions.

#### 7.1 ENTIRE AGREEMENT/ASSIGNMENT

- A. Entire Agreement: 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 may be altered or amended by a signed written agreement of the parties.
- B. This Agreement is effective only upon execution by all of the parties shall be binding upon the parties, their successors and assigns. This Agreement may not be assigned without the prior written approval of the other parties, which approval shall not be unreasonably withheld. A party may 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.
- C. As part of any assignment, change in ownership, change in organizational structure (i.e. change from sole proprietor to partnership) or change in control, MERCHANT shall provide WEX with an updated W-9 validating their proper legal name change and tax identification number.

#### 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, 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 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 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 SECURITY

- 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 the disclosing party 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.

- D. The parties each agree to establish security procedures in order to safeguard Card Sale data and cardholder information. Such procedures shall be compliant with all applicable data security laws and regulations. In the event of a breach or compromise of a party's systems resulting in a loss or theft of information (including cardholder information), or if such a breach or compromise is suspected, the impacted party shall immediately notify the other parties to this Agreement.

**7.5 LICENSING OF TRADEMARKS OR SERVICEMARKS**

- A. Both parties own certain trademarks and service marks ("Marks"), which may be used by each other 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"). The party granting the license in the use of their Marks to the other party is referred to as the "Licensor". The party receiving the benefits of the license in the other party's Marks is referred to as the "Licensee".
- B. Licensor hereby grants to Licensee, a limited non-exclusive, royalty free and non-transferable license to use certain trademarks and service marks of Licensor for the purpose of affixing such Marks to the any program materials to be developed for the Licensee in accordance with the terms of this Agreement.
- C. Licensee shall not in any manner represent that it has any ownership in the Licensor's Marks or any registrations thereof. Licensee acknowledges that use of the Marks shall not create in Licensee's favor any right (other than the limited rights of use granted pursuant to this license), title or interest in, or to, the Marks and that use of the Marks by the Licensee inures to the benefit of the Licensee only to the extent of the limited rights and interests set forth in this Agreement, otherwise use of the Marks by Licensee inures to the benefit of the Licensor.

**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 AUDIT/FINANCIAL STATEMENTS**

- A. Each party, at its sole expense, shall have the right to audit the book and records of the other party relating to performance of this Agreement. All audits shall be conducted in accordance with professional auditing standards and during normal business hours and the requesting party shall provide at least fifteen (15) days advance notice of their intent to audit. The audited party shall fully cooperate with the auditing party to accomplish the audit as expeditiously as possible. Any audit shall be limited in scope to no more than twelve (12) months prior to the date of the actual audit.
- B. 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 and statement of cash flows for the applicable fiscal year and a balance sheet, footnotes to the financial statements and auditor's opinion letter, if applicable 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 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 shall have the necessary equipment to permit the electronic acceptance of the Card at its Distribution Sites including but not limited to their point of sale equipment and networking services.

B. MERCHANT shall collect and transmit the Card Sale data in accordance with the WEX Technical Specification. Merchant shall obtain from Wright Express the necessary acceptance certification for its network and equipment that will be used 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 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 ("Manual Card Sale").

B. MERCHANT shall obtain all information required in Section 1.3.A below. MERCHANT shall take all commercially reasonable efforts to protect Manual Card Sale data from fraud or misuse.

C. MERCHANT shall not submit 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 set forth in Exhibit B.

D. In the event that MERCHANT allows a Manual Card Sale without first obtaining an authorization from WEX, the Merchant may still accept the Card for payment, however shall contact WEX as soon as communication with the WEX authorization facilities can be re-established.

E. When submitting a Manual Card Sale for processing, MERCHANT shall include the authorization or other approval code it received from WEX when submitting the completed Card Sale to WEX for processing.

F. WEX limits its liability for Manual Card Sales made in accordance with Section D above 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 Sale data sent to WEX shall include: account number, vehicle number, driver identification number, sales date, sales time, site identification number, authorization number, product code(s), quantity, total sales amount (in dollars), odometer, ticket number and any other information as WEX and MERCHANT may mutually agree upon.

B. All Card Sales require an authorization or approval from WEX. MERCHANT shall reserve such authorization from WEX for the total Card Sale amount prior to sending the Card Sale to WEX for processing.

C. WEX does not provide pre-authorizations, nor does it place available credit on "hold". If MERCHANT calls prior to completion of the services being provided to the cardholder, MERCHANT still needs to obtain an authorization number upon completion of the services or Card Sale to obtain payment from WEX.

D. An authorization or other approval code is not a guarantee that MERCHANT will receive payment. WEX does not provide payment to merchants based upon receipt of information during the authorization process. MERCHANT is still required to submit the completed Card Sale, including the authorization or other approval code, to WEX. Obtaining an authorization without submitting the completed Card Sale to WEX may result in non-payment by WEX for such Card Sale.

E. 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.

F. MERCHANT shall never make a Card Sale when MERCHANT believes or has reason to believe that the Card may be counterfeit or stolen or the Card Sale is in any way fraudulent or otherwise suspicious.

G. Merchant shall maintain a record of all information required in Section 1.3.A above.

H. 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.

I. 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 unless the total for the Card Sale is less than \$25.

J. Any Card Sale data received by WEX from MERCHANT by 5:00 p.m. Eastern Time ("ET") shall be treated as having been received on the next business day.

K. MERCHANT shall not divide the price of goods and services purchased in a single transaction among two (2) or more transaction receipts for billing to WEX.

L. Merchant must not submit Card Sales until Products are delivered.

M. A Card must be present at the time of purchase. In the event that MERCHANT processes a Card Sale when the Card is not presented, MERCHANT bears the risk of the sale being charged back.

N. 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.

### 1.4 DATA INPUT AND TRANSMISSION

A. Merchant is responsible for the data entry of Card Sale information by its personnel, or representatives. All data shall meet the WEX Technical Specification and shall be in good and usable condition.

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.

C. If MERCHANT has not provided WEX with required information or that WEX needs to interpret, verify, or validate a Card Sale, WEX may, 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. WEX shall provide notice to MERCHANT of any Card Sales that it is not able to process due to errors or missing information through its daily settlement reports.

D. 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.

E. MERCHANT 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.

F. MERCHANT 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. 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 returned back to MERCHANT for correction.

G. Use of the defaults in Section 1.4.E and 1.4.F above does not affect the total transaction value submitted for settlement and is only used to facilitate reporting to fleet customers. It does not relieve MERCHANT of its requirements to provide accurate and complete data as set forth in 1.3.A for Card Sales.

### 1.5 CHARGEBACKS

A. Chargebacks shall be made for Card Sales that are disputed and (i) the required authorization was not obtained, (ii) were for unauthorized Products, (iii) were fraudulently made by an employee of MERCHANT or (iv) the WEX Card Sale Procedures were not followed. MERCHANT shall remain liable for all outstanding Chargebacks.

B. Any obligation to pay a Chargeback pursuant to this Agreement shall be unconditional and shall be waived, released or affected by any settlement, extension, compromise of forbearance or other agreement made or granted by WEX with or to any cardholder or obligor. Failure to issue a Chargeback 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 a Card Sale. WEX will expend normal business efforts to remedy against cardholders and shall not be required to exhaust its remedies against cardholders or others as a condition precedent to requiring performance by MERCHANT of their obligations hereunder.

## Request for Taxpayer Identification Number and Certification

**Give Form to the  
 requester. Do not  
 send to the IRS.**

|   |   |   |
|---|---|---|
| <b>Print or type<br/>See Specific<br/>Instructions on page 2.</b> | Name (as shown on your income tax return)   |   |
|   | Business name/disregarded entity name, if different from above  |   |
|   | Check appropriate box for federal tax classification (required): <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate |   |
|   | <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶  |   |
|   | <input type="checkbox"/> Other (see instructions) ▶   |   |
| Address (number, street, and apt. or suite no.)                   |   | Requester's name and address (optional) |
| City, state, and ZIP code   |   |   |
| List account number(s) here (optional)                            |   |   |

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

| Social security number |  |  |  |  |  |  |  |  |  |
|------------------------|--|--|--|--|--|--|--|--|--|
|                        |  |  |  |  |  |  |  |  |  |

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

| Employer identification number |  |  |  |  |  |  |  |  |  |
|--------------------------------|--|--|--|--|--|--|--|--|--|
|                                |  |  |  |  |  |  |  |  |  |

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

|                  |                            |        |
|------------------|----------------------------|--------|
| <b>Sign Here</b> | Signature of U.S. person ▶ | Date ▶ |
|------------------|----------------------------|--------|

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,
- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

#### **Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

### **Updating Your Information**

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

### **Penalties**

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

### **Specific Instructions**

#### **Name**

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the “Name” line. You may enter your business, trade, or “doing business as (DBA)” name on the “Business name/disregarded entity name” line.

**Partnership, C Corporation, or S Corporation.** Enter the entity's name on the “Name” line and any business, trade, or “doing business as (DBA) name” on the “Business name/disregarded entity name” line.

**Disregarded entity.** Enter the owner's name on the “Name” line. The name of the entity entered on the “Name” line should never be a disregarded entity. The name on the “Name” line must be the name shown on the income tax return on which the income will be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a domestic owner, the domestic owner's name is required to be provided on the “Name” line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the “Business name/disregarded entity name” line. If the owner of the disregarded entity is a foreign person, you must complete an appropriate Form W-8.

**Note.** Check the appropriate box for the federal tax classification of the person whose name is entered on the “Name” line (Individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

**Limited Liability Company (LLC).** If the person identified on the “Name” line is an LLC, check the “Limited liability company” box only and enter the appropriate code for the tax classification in the space provided. If you are an LLC that is treated as a partnership for federal tax purposes, enter “P” for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter “C” for C corporation or “S” for S corporation. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the “Name” line) is another LLC that is not disregarded for federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the “Name” line.



**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

## Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the "Business name/disregarded entity name," sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
  2. The United States or any of its agencies or instrumentalities,
  3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
  4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
  5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
  7. A foreign central bank of issue,
  8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
  9. A futures commission merchant registered with the Commodity Futures Trading Commission,
  10. A real estate investment trust,
  11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
  12. A common trust fund operated by a bank under section 584(a),
  13. A financial institution,
  14. A middleman known in the investment community as a nominee or custodian, or
  15. A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

| IF the payment is for . . .  | THEN the payment is exempt for . . .                              |
|--|---|
| Interest and dividend payments   | All exempt payees except for 9                                    |
| Broker transactions  | Exempt payees 1 through 5 and 7 through 13. Also, C corporations. |
| Barter exchange transactions and patronage dividends                                   | Exempt payees 1 through 5   |
| Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup> | Generally, exempt payees 1 through 7 <sup>2</sup>                 |

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, below, and items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt Payee* on page 3.

**Signature requirements.** Complete the certification as indicated in items 1 through 3, below, and items 4 and 5 on page 4.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

### What Name and Number To Give the Requester

| For this type of account:   | Give name and SSN of:   |
|---|---|
| 1. Individual   | The individual  |
| 2. Two or more individuals (joint account)  | The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup> |
| 3. Custodian account of a minor (Uniform Gift to Minors Act)  | The minor <sup>2</sup>  |
| 4. a. The usual revocable savings trust (grantor is also trustee)<br>b. So-called trust account that is not a legal or valid trust under state law  | The grantor-trustee <sup>1</sup><br>The actual owner <sup>1</sup>                                       |
| 5. Sole proprietorship or disregarded entity owned by an individual   | The owner <sup>3</sup>  |
| 6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))   | The grantor*  |
| For this type of account:   | Give name and EIN of:   |
| 7. Disregarded entity not owned by an individual  | The owner   |
| 8. A valid trust, estate, or pension trust  | Legal entity <sup>4</sup>   |
| 9. Corporation or LLC electing corporate status on Form 8832 or Form 2553   | The corporation   |
| 10. Association, club, religious, charitable, educational, or other tax-exempt organization   | The organization  |
| 11. Partnership or multi-member LLC   | The partnership   |
| 12. A broker or registered nominee  | The broker or nominee   |
| 13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments | The public entity   |
| 14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))   | The trust   |

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

\*Note. Grantor also must provide a Form W-9 to trustee of trust.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

### Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

#### Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

### Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

# Withholding Exemption Certificate

**2011**

(This form can only be used to certify exemption from nonresident withholding under California Revenue and Taxation Code (R&TC) Section 18662. Do not use this form for exemption from wage withholding.)

**590**

File this form with your withholding agent. (Please type or print)

Withholding agent's name \_\_\_\_\_

Payee's name \_\_\_\_\_

Payee's  SSN or ITIN  
 SOS file no.  CA corp. no.  FEIN

Address (number and street, PO Box, or PMB no.) \_\_\_\_\_

Apt. no./ Ste. no. \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ ZIP Code \_\_\_\_\_

Read the following carefully and check the box that applies to the payee.

I certify that for the reasons checked below, the payee named on this form is exempt from the California income tax withholding requirement on payment(s) made to the entity or individual.

**Individuals — Certification of Residency:**

I am a resident of California and I reside at the address shown above. If I become a nonresident at any time, I will promptly notify the withholding agent. See instructions for General Information D, Who is a Resident, for the definition of a resident.

**Corporations:**

The above-named corporation has a permanent place of business in California at the address shown above or is qualified through the California Secretary of State (SOS) to do business in California. The corporation will file a California tax return and withhold on payments of California source income to nonresidents when required. If this corporation ceases to have a permanent place of business in California or ceases to do any of the above, I will promptly notify the withholding agent. See instructions for General Information F, What is a Permanent Place of Business, for the definition of permanent place of business.

**Partnerships or limited liability companies (LLC):**

The above-named partnership or LLC has a permanent place of business in California at the address shown above or is registered with the California SOS, and is subject to the laws of California. The partnership or LLC will file a California tax return and will withhold on foreign and domestic nonresident partners or members when required. If the partnership or LLC ceases to do any of the above, I will promptly inform the withholding agent. For withholding purposes, a limited liability partnership (LLP) is treated like any other partnership.

**Tax-Exempt Entities:**

The above-named entity is exempt from tax under California Revenue and Taxation Code (R&TC) Section 23701 \_\_\_\_\_ (insert letter) or Internal Revenue Code Section 501(c) \_\_\_\_\_ (insert number). The tax-exempt entity will withhold on payments of California source income to nonresidents when required. If this entity ceases to be exempt from tax, I will promptly notify the withholding agent. Individuals cannot be tax-exempt entities.

**Insurance Companies, Individual Retirement Arrangements (IRAs), or Qualified Pension/Profit Sharing Plans:**

The above-named entity is an insurance company, IRA, or a federally qualified pension or profit-sharing plan.

**California Trusts:**

At least one trustee and one noncontingent beneficiary of the above-named trust is a California resident. The trust will file a California fiduciary tax return and will withhold on foreign and domestic nonresident beneficiaries when required. If the trustee becomes a nonresident at any time, I will promptly notify the withholding agent.

**Estates — Certification of Residency of Deceased Person:**

I am the executor of the above-named person's estate. The decedent was a California resident at the time of death. The estate will file a California fiduciary tax return and will withhold on foreign and domestic nonresident beneficiaries when required.

**Nonmilitary Spouse of a Military Servicemember:**

I am a nonmilitary spouse of a military servicemember and I meet the Military Spouse Residency Relief Act (MSRRA) requirements. See instructions for General Information E, MSRRA.

**CERTIFICATE:** Please complete and sign below.

Under penalties of perjury, I hereby certify that the information provided in this document is, to the best of my knowledge, true and correct. If conditions change, I will promptly notify the withholding agent.

Payee's name and title (type or print) \_\_\_\_\_ Daytime telephone no. \_\_\_\_\_

Payee's signature ► \_\_\_\_\_ Date \_\_\_\_\_

# Instructions for Form 590

## Withholding Exemption Certificate

References in these instructions are to the California Revenue and Taxation Code (R&TC).

### What's New

**Backup Withholding** – Beginning on or after January 1, 2010, with certain limited exceptions, payers that are required to withhold and remit backup withholding to the Internal Revenue Service (IRS) are also required to withhold and remit to the Franchise Tax Board (FTB). The California backup withholding rate is 7% of the payment. For California purposes, dividends, interests, and any financial institutions release of loan funds made in the normal course of business are exempt from backup withholding. For additional information on California backup withholding, go to [ftb.ca.gov](http://ftb.ca.gov) and search for **backup withholding**.

If a payee has backup withholding, the payee must contact the FTB to provide a valid Taxpayer Identification Number (TIN) before filing a tax return. The following are acceptable TINs: social security number (SSN); individual taxpayer identification number (ITIN); federal employer identification number (FEIN); California corporation number (CA Corp No.); or Secretary of State (SOS) file number. Failure to provide a valid TIN will result in the denial of the backup withholding credit. For more information go to [ftb.ca.gov](http://ftb.ca.gov) and search for **backup withholding**.

### General Information

For purposes of California income tax, references to a spouse, husband, or wife also refer to a Registered Domestic Partner (RDP) unless otherwise specified. For more information on RDPs, get FTB Pub. 737, Tax Information for Registered Domestic Partners.

**Private Mail Box (PMB)** – Include the PMB in the address field. Write “PMB” first, then the box number. Example: 111 Main Street PMB 123.

**Foreign Address** – Enter the information in the following order: City, Country, Province/Region, and Postal Code. Follow the country's practice for entering the postal code. **Do not** abbreviate the country's name.

### A Purpose

Use Form 590, Withholding Exemption Certificate, to certify an exemption from nonresident withholding. California residents or entities should complete and present Form 590 to the withholding agent. The withholding agent is then relieved of the withholding requirements if the agent relies in good faith on a completed and signed Form 590 unless told by the FTB that the form should not be relied upon.

The following are excluded from withholding and completing this form:

- The United States and any of its agencies or instrumentalities

- A state, a possession of the United States, the District of Columbia, or any of its political subdivisions or instrumentalities
- A foreign government or any of its political subdivisions, agencies, or instrumentalities

### Important – This form cannot be used for exemption from wage and real estate withholding.

- If you are an employee, any wage withholding questions should be directed to the FTB General Information number, 800.852.5711. Employers should call **888.745.3886** or go to [www.edd.ca.gov](http://www.edd.ca.gov).
- Sellers of California real estate use Form 593-C, Real Estate Withholding Certificate, to claim an exemption from real estate withholding.

### B Requirement

R&TC Section 18662 requires withholding of income or franchise tax on payments of California source income made to nonresidents of California.

Withholding is required on the following, but is not limited to:

- Payments to nonresidents for services rendered in California.
- Distributions of California source income made to domestic nonresident S corporation shareholders, partners and members and allocations of California source income made to foreign partners and members.
- Payments to nonresidents for rents if the payments are made in the course of the withholding agent's business.
- Payments to nonresidents for royalties with activities in California.
- Distributions of California source income to nonresident beneficiaries from an estate or trust.
- Prizes and winnings received by nonresidents for contests in California.

However, withholding is optional if the total payments of California source income are \$1,500 or less during the calendar year.

For more information on withholding get FTB Pub. 1017, Resident and Nonresident Withholding Guidelines. To get a withholding publication see General Information H, Publications, Forms, and Additional Information.

### C Who Certifies this Form

Form 590 is certified by the payee. An incomplete certificate is invalid and the withholding agent should not accept it. If the withholding agent receives an incomplete certificate, the withholding agent is required to withhold tax on payments made to the payee

until a valid certificate is received. In lieu of a completed certificate on the preprinted form, the withholding agent may accept as a substitute certificate a letter from the payee explaining why the payee is not subject to withholding. The letter must contain all the information required on the certificate in similar language, including the under penalty of perjury statement and the payee's taxpayer identification number. The withholding agent must retain a copy of the certificate or substitute for at least four years after the last payment to which the certificate applies, and provide it upon request to the Franchise Tax Board.

For example, if an entertainer (or the entertainer's business entity) is paid for a performance, the entertainer's information must be provided. **Do not** submit the entertainer's agent or promoter information.

The grantor of a grantor trust shall be treated as the payee for withholding purposes.

Therefore, if the payee is a grantor trust and one or more of the grantors is a nonresident, withholding is required. If all of the grantors on the trust are residents, no withholding is required. Resident grantors can check the box on Form 590 labeled “Individuals — Certification of Residency.”

### D Who is a Resident

A California resident is any individual who is in California for other than a temporary or transitory purpose or any individual domiciled in California who is absent for a temporary or transitory purpose.

An individual domiciled in California who is absent from California for an uninterrupted period of at least 546 consecutive days under an employment-related contract is considered outside California for other than a temporary or transitory purpose.

An individual is still considered outside California for other than a temporary or transitory purpose if return visits to California do not total more than 45 days during any taxable year covered by an employment contract.

This provision does not apply if an individual has income from stocks, bonds, notes, or other intangible personal property in excess of \$200,000 in any taxable year in which the employment-related contract is in effect.

A spouse/RDP absent from California for an uninterrupted period of at least 546 days to accompany a spouse/RDP under an employment-related contract is considered outside of California for other than a temporary or transitory purpose.

Generally, an individual who comes to California for a purpose which will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident.

For assistance in determining resident status, get FTB Pub. 1031, Guidelines for Determining Resident Status, and FTB Pub. 1032, Tax Information for Military Personnel, or call the FTB at 800.852.5711 or 916.845.6500.

## E Military Spouse Residency Relief Act (MSRRA)

Generally, for tax purposes you are considered to maintain your existing residence or domicile. If a military servicemember and nonmilitary spouse have the same state of domicile, the MSRRA provides:

- A spouse shall not be deemed to have lost a residence or domicile in any state solely by reason of being absent to be with the servicemember serving in compliance with military orders.
- A spouse shall not be deemed to have acquired a residence or domicile in any other state solely by reason of being there to be with the servicemember serving in compliance with military orders.

**Domicile** is defined as the one place:

- Where you maintain a true, fixed, and permanent home
- To which you intend to return whenever you are absent

A military servicemember's nonmilitary spouse is considered a nonresident for tax purposes if the servicemember and spouse have the same domicile outside of California and the spouse is in California solely to be with the servicemember who is serving in compliance with Permanent Change of Station orders (Note: California may require nonmilitary spouses of military servicemembers to provide proof that they meet the criteria for California personal income tax exemption as set forth in the MSRRA ).

Income of a military servicemember's nonmilitary spouse for services performed in California is not California source income subject to state tax if the spouse is in California to be with the servicemember serving in compliance with military orders, and the servicemember and spouse have the same domicile in a state other than California.

For additional information or assistance in determining whether the applicant meets the MSRRA requirements, get FTB Pub. 1032.

## F What is a Permanent Place of Business

A corporation has a permanent place of business in California if it is organized and existing under the laws of California or if it is a foreign corporation qualified to transact intrastate business by the SOS. A corporation that has not qualified to transact intrastate business (e.g., a corporation engaged exclusively in interstate commerce) will be considered as having a permanent place of business in California only if it maintains a permanent office in California that is permanently staffed by its employees.

## G Withholding Agent

Keep Form 590 for your records. **Do not** send this form to the FTB unless it has been specifically requested.

For more information, contact Withholding Services and Compliance, see General Information H.

The payee must notify the withholding agent if any of the following situations occur:

- The individual payee becomes a nonresident.
- The corporation ceases to have a permanent place of business in California or ceases to be qualified to do business in California.
- The partnership ceases to have a permanent place of business in California.
- The LLC ceases to have a permanent place of business in California.
- The tax-exempt entity loses its tax-exempt status.

The withholding agent must then withhold and report the withholding using Form 592, Resident and Nonresident Withholding Statement, and remit the withholding using Form 592-V, Payment Voucher for Resident and Nonresident Withholding. Form 592-B, Resident and Nonresident Withholding Tax Statement, is retained by the withholding agent and a copy is given to the payee.

## H Publications, Forms, and Additional Information

You can download, view, and print California tax forms and publications at [ftb.ca.gov](http://ftb.ca.gov).

To have publications or forms mailed to you or to get additional nonresident withholding information, contact the Withholding Services and Compliance.

WITHHOLDING SERVICES AND  
COMPLIANCE MS F182  
FRANCHISE TAX BOARD  
PO BOX 942867  
SACRAMENTO CA 94267-0651

Telephone: **888.792.4900**  
916.845.4900

Fax: 916.845.9512

For all other questions unrelated to withholding or to access the TTY/TDD numbers, see the information below.

### Internet and Telephone Assistance

Website: [ftb.ca.gov](http://ftb.ca.gov)  
Telephone: 800.852.5711 from within the  
United States  
916.845.6500 from outside the  
United States  
TTY/TDD: 800.822.6268 for persons with  
hearing or speech impairments

### Asistencia Por Internet y Teléfono

Sitio web: [ftb.ca.gov](http://ftb.ca.gov)  
Teléfono: 800.852.5711 dentro de los  
Estados Unidos  
916.845.6500 fuera de los Estados  
Unidos  
TTY/TDD: 800.822.6268 personas con  
discapacidades auditivas  
y del habla