EFTPOS Terminal Hire Terms & Conditions

WEX Australia Pty Ltd ABN 68 005 970 570

THIS AGREEMENT made on the date set out in item 1 of the First Schedule.
BETWEEN: WEX Australia Pty Ltd A.B.N. 68 005 970 570 of Level 3, 293 Camberwell Road, Camberwell, VIC 3124
AND THE PARTY WHOSE NAME AND ADDRESS IS SET OUT IN ITEM 2 OF THE FIRST SCHEDULE ("Merchant").

1. DEFINITIONS

1.1 In this agreement, unless inconsistent with the context:

(a) **Banking Acquirer** means the financial institution that processes card transactions on **Your** behalf.

(b) **Cloud Eftpos** means the internet based transaction processing services described in this Agreement.

(c) **Communicate** means the internet based transaction processing services described in this Agreement

(d) **Fees** means any fees payable to WEX in relation to provision of **Services** as detailed in the **WEX EFTPOS Terminal Hire Application**, or as advised from time to time.

(e) **Equipment or Goods** means the whole or part of any equipment supplied by Us to enable Us to provide the Services.

(f) **Merchant Account** means the merchant account You hold with **Your Banking Acquirer.**

(g) **Minimum Contract Term** means the period specified as the minimum contract term in the **WEX EFTPOS Terminal Hire Application.**

(h) **Personnel** means **Your** employees, agents, advisers, auditors, consultants or contractors.

(i) **Services** means the provision of software, services, documents and **Cloud Eftpos** and/or **Communicate** service enabling You to conduct card transaction processing with Your Banking Acquirer.

(j) **Support Services** means the maintenance and support services relating to the **Services,** as advised by **Us** from time to time.

(k) **Terminal** means any **Equipment** provided by **WEX**

(l) **We, Our or Us** means WEX Australia Pty Ltd and its successors and assigns.

(m) **You or Your** means jointly and severally any person nominated on the Customer Acceptance form as a customer.

(n) **WEX EFTPOS Terminal Hire Application** means **Your** application for provision of the **Services** to be covered under this agreement.

2. INTERPRETATION

2.1 In this agreement, unless inconsistent with the context:

(a) Words denoting a person shall include corporations, statutory corporations, partnerships, joint ventures, associations, boards, governments or semi-government agencies or authorities.

(b) Words denoting the singular number shall include the plural number and vice versa.

(c) Words denoting any gender shall include all other genders.

(d) A reference to a statute or a regulation also refers to any statute or regulation amending, or consolidating or re-enacting same.

(e) Money references are references to Australian currency.

(f) Headings used in this agreement are for convenience and ease of reference only, and are not part of this agreement and shall not be relevant or affect the meaning or interpretation of this agreement.

(g) Every obligation, covenant, agreement, condition express or implied in this agreement and entered into by more than one Party shall bind them jointly and each of them severally.

(h) A provision of this agreement shall not be construed adversely to the Party that drafted it.

(i) If any provision or part provision of this agreement is held invalid, unenforceable or illegal for any reason, this agreement shall remain otherwise in full force apart from such provision or part provision which shall be deemed deleted.

3. OUR OBLIGATIONS

3.1 We shall supply the **Equipment, Services, Support Services** and **Cloud Eftpos** and/or **Communicate** service to enable **You** to conduct financial transactions with **Your Banking Acquirer.**

4. YOUR OBLIGATIONS

4.1 **You** shall:

(a) pay all applicable **Fees** with respect to the **Services;**

(b) follow Our instructions with respect to the use of the **Services** and the **Equipment;**

(c) take care of the **Equipment** and follow all **Our** directions for its maintenance and protection;

(d) not alter the **Equipment** in any manner;

(e) not move the **Equipment** to a different premises from that in which it was installed and or delivered, except in instances where **You** have notified **Us**, or where **We** have provided **You** with mobile **Equipment;**

(f) provide Us with all information and assistance we reasonably require for performing our obligations and to deal with any queries in relation to our provision of the **Services;**

(g) allow **Our** employees, contractors or agents to enter **Your** premises to check **Your** compliance with this agreement;

(h) ensure **Your** premises or operating locations enable a cardholder to shield from observation, video surveillance or reflection the entry of any information for the transaction;

(i) ensure appropriate power and telecommunications facilities are available for **Equipment** and pay for same;

(j) pay for any repairs to, or replacement of, **Equipment** which are necessary because of **Your** neglect or misuse. **We** may choose whether **You** should repair or replace the **Equipment;**

(k) return any faulty **Equipment** to **Us** within five (5) business days of receiving replacement **Equipment** from **Us;**

(l) not allow any person except Our employees, contractors or agents to service or repair the **Equipment;**

(m) notify **Us** immediately when **You** become aware that the performance or functionality of any part of the **Service** is not capable of normal operation, whether **We** or someone else is responsible for its operation. This could include the breakdown or malfunction of **Equipment** or a communications line or a website;

(n) not, by any act or omission, cause a situation where the performance or functionality of the **Equipment** is not capable of its normal operation;

(o) not, by any act or omission, cause a situation where the performance or functionality of the **Services** is not capable of its normal operation;

(p) notify **Us** immediately if any **Equipment** is stolen, damaged or interfered with in any way;

(q) comply with any additional terms and conditions **We** prescribe from time to time in relation to software which **We** supply to **You** as part of the **Services;**

(r) comply with all relevant laws, including all security standards as defined by Your **Banking Acquirer;**

(s) not permit use of or access to **Cloud Eftpos** and/or **Communicate** other than for transactions You reasonably believe are legitimate;

(t) not permit use of or access to **Cloud Eftpos** and/or **Communicate** by any person or company other than as contemplated by this Agreement; and

(u) confirm that You are in possession of a **Merchant Account** approved for Your use by **Your Banking Acquirer**, and will maintain this account for the term of this Agreement;

(v) operate a point of sale system approved by **Us** in order for the **Equipment and Services** to be supplied;

(w) return **Equipment** including parts and accessories to **Us** at the end of the Term.

5. INTELLECTUAL PROPERTY

5.1 **You** acknowledge and agree that all applicable intellectual property rights and entitlements in the **Equipment** and **Services** provided to **You** under this agreement is held by **Us.**

5.2 **We** grant **You** a non-exclusive, non-transferable licence to use **Our** intellectual property for the sole purpose of **Your** use of the **Equipment, Services** and **Support Services** for the duration of this agreement.

6. RISK

6.1 **You** are responsible for any loss or damage to the **Equipment.** If the **Equipment** is lost or damaged, **You** must pay **Us** the full cost of replacing or repairing that **Equipment** including any freight costs associated with the repair or replacement. Loss or damage to the **Equipment** includes, but is not limited to, damage due to malicious acts, accidental damage, spillage of liquids, flood, fire and electrical surges. We may elect whether **You** must repair or replace the **Equipment. We** will determine the replacement value of any lost or damaged **Equipment** by reference to the market value of such **Equipment** at the relevant time. Risk in the **Equipment** passes to **You** upon delivery of the **Equipment** to the address **You** specified in the **WEX EFTPOS Terminal Hire Application.**

7. INSURANCE

7.1 **You** shall ensure that the insurance policy on **Your** premises covers the **Equipment** for its maximum insurable value.

8. COSTS, FEES AND OTHER PAYMENTS

8.1 Unless expressly stated in writing by **Us** all applicable **Fees** are exclusive of government taxes and imposts applicable to the supply of goods and services, without limitation, GST, sales tax, services tax and duties. If any such taxes or imposts are or become applicable, an amount equal to them shall be added to the **Fees** and **charges** under this agreement and shall be payable by **You** to **Us.**

8.2 Where applicable, setup Fees will be charged upon initial dispatch of **Equipment** or activation of the **Cloud Eftpos** and/or **Communicate** service.

8.3 Unless **We** agree otherwise, **Fees** will be charged monthly in advance, commencing on the first business day of the month after initial dispatch of the **Equipment** or activation of the **Cloud Eftpos** and/or **Communicate** service, then every month thereafter.

8.4 Unless **We** offer **You** an alternative payment option, **You;**

(a) Agree to execute and maintain a direct debit authority for collection of **Fees;** and

(b) Must ensure that sufficient funds are available in the nominated bank account to cover **Fees** payable under this agreement.

8.5 **You** agree to reimburse **Us** for any and all bank charges related to failed direct debit requests due to insufficient funds or incorrect account details.

8.6 **We** may only increase the **Fees** on prior written agreement with **You.**

8.7 The **Fees** for the **Services** are not refundable (whether in whole or part) to **You.**

8.8 **You** acknowledge that if **We** replace **Equipment** for **You,** and **You** do not return the original **Equipment** to **Us** within fourteen (14) business days, or following the termination or cancellation of the agreement **You** fail to return the **Equipment** to **Us** within fourteen (14) business days, **You** will be charged a Non-Return Fee equivalent to the full replacement cost of the **Equipment,** as reasonably determined by **Us.** This Fee will be debited to Your nominated **bank account.**

8.9 **You** shall pay interest at the Penalty Interest Rate on all overdue accounts at therate specified by section 2 of the Penalty Interest Rate Act (1983) Vic.

8.10 If **You** default in any payment to **Us:**

(a) **We** may suspend or cancel the **Service** or any other **Service** provided by us; and

(b) **We** may charge additional **Fees** to resume the **Service;** and

(c) **You** will pay all collection costs and the legal fees reasonably incurred by **Us** as a result of any default.

8.11 Where applicable, **Your** Point of Sale provider may be entitled to receive remuneration or other incentives for ongoing installation support, sales support or the provision of the Point of Sale software interface.

8.12 **You** acknowledge that the use of mobile **Equipment** may incur charges from your mobile service provider including data and/or SMS/MMS Services. Any such charges are **Your** sole responsibility and any matters regarding these charges should be raised with Your mobile service provider.

9. LIMITED WARRANTY

9.1 **We** shall supply the **Service** with all due care and skill.

9.2 **We** shall re-supply any **Service** which is not supplied in accordance with Sub-clause provided that **You** notify **Us** of same within a reasonable time of the supply of the **Services.** This remedy shall be **Your** sole remedy for breach of this agreement or any other cause of action against **Us**

10. EXCLUSIONS AND LIMITED WARRANTY

10.1 To the maximum extent permitted by law and except as expressly provided to the contrary in this agreement, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this agreement or to this agreement generally, are excluded. Where legislation implies into this agreement any condition or warranty and that legislation avoids or prohibits provisions in a contract from excluding or modifying the application or exercise of, or liability under, such term shall be deemed to be included in this agreement.

10.2 **Our** liability for any breach of such term shall be limited, at **Our** option, to any one or more of the following:

(a) If the breach related to **Equipment or Goods:**

i) the timely replacement of the **Equipment or Goods** at **Our** cost;

ii) the timely repair of such **Equipment or Goods** at **Our** cost;

iii) the payment of the cost of replacing the Equipment or Goods or of acquiring equivalent **Equipment or Goods;**

iv) or the payment of the cost of having the **Equipment or Goods** repaired;

(b) if the breach relates to **Services:**

i) the timely supply of the **Services** again at **Our** cost;

ii) the payment of the cost of having the **Services** supplied again

10.3 To the extent permitted by law and except as expressly provided to the contrary in this agreement, **We** shall not be under any liability (contractual, tortious or otherwise) to **You** in respect of any loss or damage (including, without limitation, consequential loss or damage) which may be suffered or incurred or which may arise indirectly in respect to the supply of **Goods or Services** pursuant to this agreement or **Our** act, failure or omission.

10.4 Without limiting any other provision of this agreement, You also acknowledge that:

(a) Performance of the **Cloud Eftpos** and/or **Communicate** service is dependent on a number of factors outside **Our** control, including traffic on and technical difficulties with the internet and **Acquirer** communications links and the performance of the banking system;

(b) The **Cloud Eftpos** and/or **Communicate** service is secure within certain technical boundaries which **You** have considered;

(c) Payment and payment clearance operates on the terms and conditions dictated by **Your Banking Acquirer;**

(d) There may be interruption or failure of the **Cloud Eftpos** and/or **Communicate** service;

(e) **We** shall not be obliged to put in place any substitute or alternative Service should there be a failure of or delay in the provision of the **Cloud Eftpos** and/or **Communicate** service.

11. INDEMNITY

11.1 To the maximum extent permitted by law, each party shall fully indemnify and keep indemnified the other party and its officers, employees and agents, against any loss, costs, expenses, demands, taxes or liability whether direct or indirect arising out of a breach of this agreement by a party or that party's wilful, unlawful or negligent act or omission. To the extent required, each party holds the benefit of this indemnity on trust for its officers, employees and agents.

12. TERM AND TERMINATION

12.1 Unless terminated earlier or superseded by a later agreement between You and Us, this agreement is for the **Term** as defined in the **WEX EFTPOS Terminal Hire Application,** beginning on the date **We** supply **You** with the **Equipment** and or **Services.** This agreement will automatically renew for a further 12 month period from the expiry of the **Term** unless **You** give **Us** at least 30 days written notice to this effect before the end of the term. **We** are not obliged to renew and will notify **You** if this agreement will not be renewed at the expiry of the **Term.**

12.2 If **You** terminate this agreement prior to expiration of the **Term,** an Early Termination Fee equivalent to the remainder of the **Fees** payable under this agreement will apply. For the avoidance of doubt, if superseded by a later agreement between **You** and **Us**, this clause 12.2 will not apply.

12.3 Without limiting any other clause in this agreement, **We** may terminate this agreement in whole or in part immediately on notice in writing to **You** if:

(a) any payment due from **You** to **Us** pursuant to this agreement remains unpaid for a period of 14 days;

(b) **You** breach this agreement and such breach is not remedied within 14 days of written notice by **Us;**

(c) **You** become, threaten or resolve to wind up or are in jeopardy of becoming subject to any form of insolvency administration;

(d) **You** being a partnership, dissolve, threaten or resolve to dissolve or is in jeopardy of dissolving;

(e) **You** being a natural person, become bankrupt or die; or

(f) **You** cease or threaten to cease conducting **Your** business in the normal manner.

12.4 If **We** terminate this agreement pursuant to clause 13.43

(a) **We** may retain any monies paid;

(b) **We** may, and **You** authorise **Us** to, enter Your premises to repossess the **Equipment;**

(c) **We** may charge a reasonable sum for work performed in respect of which work no sum has been previously charged and charge a **Fee** until the **Equipment** is returned to **Us;**

(d) **You** will immediately discharge **Us** from any further obligations under this agreement; and

(e) **We** may pursue any additional or alternative remedies provided by law.

(f) **You** will pay an Early Termination Fee equivalent to the remainder of the **Fees** payable under this agreement.

13. SURVIVAL

13.1 The provisions of this agreement which are capable of having effect after the expiration of this agreement shall remain in full force and effect following the expiration of this agreement.

14. FORCE MAJEURE

14.1 **We** shall not be liable for any delay or failure to perform **Our** obligations if such a failure or delay is due to Force Majeure.

15. ASSIGNMENT, NOVATION AND SUB-CONTRACTS

15.1 **We** may sub-contract for the performance or part performance of this agreement.

15.2 This agreement shall not be dealt with in any way by either party (whether by assignment, novation, sub-licensing or otherwise) without the other party's prior written consent.

16. NO RELATIONSHIP

16.1 No party to this document has the power to obligate or bind any other party. Nothing in this agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this agreement will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

17. WAIVER

17.1 A single or partial exercise or waiver of a right relating to this agreement does not prevent any other exercise of that right or the exercise of any other right.

17.2 No right of **Ours** under this agreement shall be deemed to be waived except by notice in writing signed by **Us.** Such a waiver by **Us** shall not prejudice its rights in respect of any subsequent breach of this agreement by **You.**

17.3 Any express statement of a right of **Ours** under this agreement is without prejudice to any other right **We** may have.

17.4 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

18. GOVERNING LAW

18.1 This agreement shall be governed by and construed according to the law of the State of Victoria.

18.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia and any courts hearing appeals from such Courts. Any proceedings in a Commonwealth court shall be commenced in Victoria.

19. NOTICES

19.1 Notices under this agreement may be delivered by hand, by mail or by facsimile to the addresses as advised by **Us.**

19.2 Notices shall be deemed given in the case of:

(a) hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;

(b) posting, 3 days after dispatch; and

(c) facsimile, upon completion of transmission.

20. ENTIRE AGREEMENT

20.1 This agreement constitutes the entire agreement between the parties for the subject matter referred to in this agreement. Any prior arrangements, agreements, representations or undertakings are superseded.

20.2 This agreement is not to be construed as creating a joint venture, partnership or agency situation between the parties and neither Party may represent such. Under no circumstances may any Party obligate or bind the other Party to any agreements, arrangements, contracts or understanding or represent that they have such authority.