Note that you may be liable for Invalid Transactions or Disputed Transactions under clause 6 and clause 7 of these Terms and Conditions.

1 Definitions

1.1 In this Agreement:

Account means the account we set up to record Transactions and any fees payable by the holder of the Account;

Accountholder means the holder of an Account;

Agreement has the meaning given in clause 2.2;

Anti-Money Laundering and Sanctions Law means rules, regulations or industry codes relating to anti-money laundering and counter-terrorism financing or economic or trade sanctions, including but not limited to: *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No 1)* (Cth), *Criminal Code Act 1995* (Cth), *Proceeds of Crime Act 2002* (Cth) and any sanctions laws or trade embargos administered or enforced by the United Nations Security Council, OFAC or the Department of Foreign Affairs and Trade (Australia);

Application Form means the application form completed by you when you applied to become a merchant;

Application Checklist means the checklist provided by us to you when you applied to become a merchant which contains (among other things) information about how to submit an application and the supporting materials required;

Bearer Card means a Payment Instrument issued by us or by one of our Partners that does not on its face identify or name the person who is authorised to use the Payment Instrument and has no signature panel on its reverse side to verify the signature of the person authorised to use the Payment Instrument;

Claim includes any claim, demand or legal proceedings;

Commencement Date means the date specified as the commencement date in the Application Form or, if later, the date of your application to be one of our Merchants is approved by us;

Contract Year means each consecutive period of 12 months commencing on the Commencement Date;

Customer Data means the following information relating to Accountholders or Payers:

(a) personal details (being name, address, email address, phone numbers and date of birth); and

(b) account specific information (being account number, Payment Instrument number, Payment Instrument expiry date, Transaction history, payment and credit history and credit limits);

Date of Termination means the date this Agreement was terminated in accordance with clause 10.2;

Disputed Transaction means an Invalid Transaction, or any Transaction that in our reasonable opinion is validly disputed by a Payer or Accountholder;

EFTPOS means electronic funds transfer at the point of sale;

Eligible Data Breach has the meaning given in the *Privacy Act 1988* (Cth);

Floor Limit means the maximum dollar value of any Transaction that you may accept from a Payer using a Payment Instrument without our specific authority. The initial Floor Limit is specified in the Application Form;

Force Majeure Event means an event or circumstance beyond the reasonable control of the Party affected by the event, and which could not be avoided by the exercise of due care by that Party, which makes it impossible or illegal to perform, or prevents or delays compliance with, or the performance of, a Party's obligations under this Agreement, including:

(a) fire, flood, earthquake, elements of nature or acts of God;

(b) war, revolution, or any other unlawful act against public order or authority;

(c) an industrial dispute; or

(d) a governmental restraint;

General Terms has the meaning given in clause 2.2;

GST has the meaning given in section 195-1 of the GST Law;

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Hot Card List means a flag or notice listing Payment Instruments that are no longer valid for use that we give you in writing or by electronic means on a monthly, interim or special basis or otherwise;

Intellectual Property means any copyright, trade mark, design, format, logo, know-how or other intellectual property right owned by us, whether registered or unregistered, and provided by us to you;

Insolvency Event means:

(a) a receiver, manager, receiver and manager, trustee, administrator, or similar officer is appointed in respect of a person or any asset of a person (and that appointment is not withdrawn or dismissed within 7 days);

(b) a liquidator or provisional liquidator is appointed in respect of a corporation (and that appointment is not withdrawn or dismissed within 7 days);

(c) any application (not being an application withdrawn or dismissed within 7 days) is made to a Court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:

(d) appointing a person referred to in paragraphs (a) or (b);

(e) winding up a corporation; or

(f) proposing or implementing a creditors' scheme of arrangement;

(g) a moratorium of any debts of a person, or an official assignment, or a composition, or an arrangement (formal or informal) with a persons' creditors, or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered, declared, or agreed to, or is applied for and the application is not withdrawn or dismissed within seven days; or

(h) a person becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts;

Invalid Transaction has the meaning given in clause 6 of this Agreement.

Liabilities means all liabilities, whether actual or contingent, present or future, quantified or unquantified;

Material Impact means a material impact on:

(a) your ability to meet your obligations under this Agreement;

(b) our credit or security risk (or our ability to assess these);

(c) our costs in providing services to you; or

(d) our risk of breaching or being involved in any breach of applicable law;

Marketing Material means brochures and other promotional material relating solely to Payment Instruments including documents, Payment Instrument application forms, Payment Instrument order forms, direct debit forms, Payment Instrument design and artwork, and statements issued to Payers or Accountholders;

Merchant Copy means any physical or electronic record of a Transaction that you are required to keep in accordance with the Merchant Operating Guide;

Merchant Operating Guide means the document entitled "Merchant Operating Guide" and any other document that explains our procedures for accepting Payment Instruments and submission of Transactions and payments to you, issued by us to you from time to time, those documents forming part of this Agreement;

Merchant Service Fee means a percentage of each Transaction charged by us and payable by you when a Payer uses a Payment Instrument, as set out in your Application Form;

Merchant Summary means any form we provide to you to summarise Offline Transactions;

Nominated Account means the account specified by you in the Application Form or notified to us in accordance with clause 15;

Offline Transaction means a transaction which is not an Online Transaction; ***Online Transaction*** means a transaction where the merchant submits the Transaction electronically to us and receives a response from us electronically in real time;

Partner means a person who partners with us to issue Payment Instruments that are accepted through our Payment Processors;

Party means a party to this Agreement;

Payer means a person who has been issued with a Payment Instrument;

Payment Instrument means a physical or virtual card or other instrument issued by us or by one of our Partners to a Payer that allows the Payer to charge Transactions to the Accountholder's Account;

Payment Processor means the software, online portal or physical terminal which you use to submit a Transaction to us;

Personal Information means all information about a person that is "personal information" as defined in the *Privacy Act 1988* (Cth);

PIN means Personal Identification Number;

Sales Voucher means stationery supplied by us to you to record manually the details of an Offline Transaction and which must be signed by the Payer and bear an imprint of the Payer's physical Payment Instrument or otherwise

capture details of the Payer's electronic Payment Instrument in accordance with the Merchant Operating Guide;

Self-Service Processor means a Payment Processor which a Payer can use to process a Transaction without the presence of a human representative;

Settlement Period means the time period set out in your Application Form or the Merchant Operating Guide which commences at the time we receive (or are deemed to receive) notice of the Transaction from you.

Site means a site, branch or outlet at which you carry on business as specified in the schedule to the Application Form or as notified by you to us during the Term;

Software means any software in which we own the copyright that is required to enable you to process Transactions using a Payment Processor;

Taxes means all stamp duty, financial institutions duty and any other duties or taxes including a goods and services tax, consumption tax or similar tax;

Term means the duration of this Agreement, from the Commencement Date until Termination in accordance with clause 10.2;

Termination means the termination of this Agreement in accordance with clause 10.2

Transaction means an Online Transaction or an Offline Transaction;

us or we means WEX Australia Pty Ltd ABN 68 005 970 570;

you means the person named as the "Merchant" in your Application Form.

2 Interpretation

2.1 In these General Terms:

(a) words denoting the singular include the plural and vice versa;

(b) Business day means a day which we are open for business in Melbourne;

(c) A reference to a person includes an individual, company, other body corporate, association, partnership, firm, joint ventures, trust or government agency;

(d) a reference to a clause is a reference to a clause of these General Terms;

(e) a gender includes all genders;

(f) a reference to a document includes any variation or replacement of it;

(g) a reference to a party to these General Terms or another agreement or document, includes the party's successors and permitted substitutes or assigns.

2.2 The general terms set out in clauses 1 to 29 of this document ("**General Terms**") are to be read in conjunction with the Application Form, the Application Checklist and the Merchant Operating Guide, together the "**Agreement**".

2.3 If there is any inconsistency between the documents referred to in clause 2.2, the Merchant Operating Guide will prevail, followed by the Application Form, the Application Checklist and the General Terms (in that order).

2.4 Under these terms, any obligation or option which we hold that falls on a day which is not a business day must be satisfied or executed by us by no later than close of business on the next business day.

3 Your obligations

3.1 You must:

(a) at all times comply with your obligations under this Agreement and perform all obligations under this Agreement in compliance with all applicable laws, rules and industry codes;

(b) accept Payment Instruments as payment for goods and services on the terms set out in this Agreement;

(c) not allow Offline Transactions at a Self-Service Processor;

(d) not accept an Invalid Transaction if you know or reasonably suspect that the Transaction is an Invalid Transaction;

(e) supply goods and services to a Payer at the prices at which you would supply the goods and services to the Payer for cash;

(f) at all times act in good faith when processing a Transaction and making representations about us, any of our Partners, a Payment Instrument or the payment services provided by us;

(g) not make any warranty or representation that may bind us or misrepresent the payment services provided by us to Payers or our responsibilities;

(h) not advance cash to a Payer;

(i) establish and comply with a fair policy for:

(i) the exchange or return of goods or services by a Payer; and

(ii) the investigation and resolution of disputes raised by a Payer in relation to the goods or services you have supplied;

(j) not reveal to any Payer the Floor Limit or any other restriction on your authority to process Transactions;

(k) not, either directly or indirectly, process any Transaction using a Payment Instrument unless you have, or will within a reasonable period, supply the goods or services to the person to whom the Transaction relates;

(l) pay us amounts owing under this Agreement;

(m) permit us to access your premises and to inspect and examine your books of account and records relating to any Transactions, as reasonably required by us in order to audit your compliance with this Agreement, or in the event of any Disputed Transaction;

(n) securely keep Merchant Copies and provide such records within 5 business days following any reasonable request by us;

(o) comply with any reasonable written direction we give you (including under the Merchant Operating Guide) in relation to the acceptance of a Payment Instrument or submission of a Transaction to us and the use of a Payment Processor;

(p) comply with any lawful request by a card scheme, regulatory or similar body and provide access to your premises and documentation to the extent such body lawfully considers necessary in its role as regulator;

(q) notify us immediately of loss of equipment used to submit a Transaction or to access a Point of Sale. You will be liable for Transactions processed on your computer or processing equipment up until the date at which you notify us that it has been lost or stolen; and

(r) use reasonable care in each Transaction to detect forged or unauthorised signatures or the unauthorised use of a Payment Instrument.

3.2 You must:

(a) provide us or any of our Partners with such assistance as we may reasonably require relating to our promotional and marketing activities;

(b) not use any Marketing Material in relation to Payment Instruments, except as authorised by us or any of our Partners;

(c) not refer to the Payment Instruments in information or statements relating to the eligibility for, or the availability of, any goods or services supplied by you;

(d) advertise in a prominent place at each Site, and in a manner no less conspicuous than the manner in which you advertise other charge or credit cards, acceptance of the Payment Instrument; and

(e) place in a prominent position at each Site Marketing Material (including the Payment Instrument decal insignia) and merchandising provided by us or any of our Partners to you from time to time.

3.3 You acknowledge that:

(a) you have no right, title or interest in the Intellectual Property other than the right to use the Intellectual Property as authorised by us in writing from time to time and the right to use the Software for the purpose of processing Transactions during the Term of this Agreement;

(b) you must not copy, alter, modify or reproduce the Intellectual Property or any part thereof, except with our prior written consent;

(c) any new copyright, trade mark, design, format, logo, know-how or other intellectual property right created in connection with this Agreement will be owned by us.

3.4 You must indemnify us from and against all losses, damages, Liabilities, costs and expenses that we may suffer or incur as a result of or in connection with:

(a) your negligence;

(b) any material damage to property supplied to you by us;

(c) any failure by you to perform any of your obligations under this Agreement;

(d) any dispute between you and any Payer or Accountholder about the supply, use or quality of goods or services (other than goods or services provided to the Payer or Accountholder by us);

(e) any claim by a Payer or Accountholder against you or us for damages to recover an amount from you or us for misrepresentation, breach of contract or failure of consideration relating to goods or services bought from you (other than goods or services provided to the Payer or Accountholder by us); or

(f) Taxes now or in the future assessed, levied, imposed or collected by any governmental, semi-governmental, administrative, fiscal or judicial body, department or authority in respect of the use of a Payment Instrument to buy goods or

services from you or any charge or any Transaction under, or contemplated by, this Agreement.

(g) outages, failures or delays in any of your computer systems; or

(h) any corruption of data caused by, or in any way attributable to, the misuse by a Payer of a Payment Instrument at any of your Sites.

(i) The indemnities in this clause 3.4 do not apply to the extent any losses, damages, Liabilities, costs and expenses arise as a result of or in connection with the fraud, negligence, mistake or wilful misconduct of us, our employees, officers, agents or contractors, or any external administrator.

3.5 You should promptly and carefully examine any statement issued pursuant to clause 4.1(c) of this Agreement to ensure that all Transactions have been and correctly recorded and promptly notify us of any errors or unauthorised transactions

4 Our obligations

4.1 We will:

(a) accept all valid Transactions and Transaction refunds processed by you under this Agreement;

(b) pay amounts owing to you under this Agreement;

(c) send you each calendar month a statement showing the amount of all Transactions, refunds processed by us, charges and fees incurred by you under this Agreement during the previous month; and

(d) use reasonable endeavours to process Transactions received from you in a timely manner.

5 Payment for Transactions

5.1 You must pay to us:

(a) the Merchant Service Fee in respect of each Transaction (which will be deducted from the amount we pay you in respect of such Transactions under clause 5.2);

(b) such other charges and fees as specified in the Application Form, Application Checklist or set by us from time to time in accordance with clause 25;

(c) the full amount of all Transaction refunds processed by you pursuant to this Agreement, less any charges referred to in paragraph (b) above already paid by you in respect of the relevant Transactions;

(d) any overpayments made by us in respect of Transactions due to errors or omissions made by you or by any person acting on your behalf;

(e) any amount we are entitled to charge back under clause 6.2;

(f) any amount we pay to an Accountholder in connection with a Disputed Transaction under clause 7; and

(g) any other moneys due and payable by you to us under any agreement with us.

5.2 Subject to this Agreement, we must pay to your Nominated Account within the Settlement Period the full amount of all valid Transactions processed by us less:

(a) an amount equal to the Merchant Service Fee calculated in respect of such Transactions; and

(b) any amount you are required to pay us under clause 5.1 that has not been paid.

6 Invalid Transactions

6.1 For the purposes of this Agreement, a Transaction is not valid if:

(a) it is illegal;

(b) you failed to comply with this Agreement in relation to the Transaction;

(c) the Transaction is received by us more than 30 days after the Transaction took place;

(d) the Payment Instrument used for the Transaction is not current at the time of the Transaction;

(e) the Payment Instrument used for the Transaction is listed on any Hot Card List at the time of the Transaction;

(f) the price charged to the Payer for any goods or services purchased is in excess of the price at which you would supply the item to the Payer for cash;

(g) the Payment Instrument used for the Transaction was used without the authority of the Payer or, in the case of Bearer Cards, the Accountholder, and the unauthorised use could reasonably have been detected by you;

(h) the Transaction was an Offline Transaction and you are not able to provide to us the Merchant Copy for the Transaction within 7 days if we ask for it;

(i) the Payment Instrument number or truncated Payment Instrument number appearing on the Merchant Copy is not consistent with the Payment Instrument number of the Payment Instrument which was produced;

(j) the Payer or Accountholder refuses to pay all or any amount charged for the Transaction because the goods and services were defective, returned, not delivered or provided, or not as promised, or for any other legitimate reason;

(k) a payment we receive from the Accountholder in respect of the Transaction is wholly or partly avoided, or a claim is made to avoid it and that claim is upheld, conceded or compromised under any law (including any law relating to bankruptcy or liquidation);

(l) the Payer or Accountholder asserts a claim of set-off or a counterclaim against you or us in connection with the amount charged for the Transaction;

(m) the Transaction is not authorised by the Payer entering their PIN, if a PIN entry is required; where a signature is not required, the Merchant Copy is not signed or there is no other record of Payer authorisation having been provided;

(n) it is made using a Payment Instrument that has a signature panel and the signature panel has not been signed by the Payer or the signature on the Merchant Copy is forged or unauthorised and you should have known or could reasonably have detected that the signature was forged or unauthorised;

(o) the particulars inserted in the Merchant Copy are not identical with the particulars inserted in the copy given to the Payer;

(p) the amount of the Transaction, when added to the amount of other Transactions made by you in any 24 hour period and charged to a particular Payment Instrument, was in excess of the Floor Limit applicable to that Payment Instrument, unless:

(i) you obtained authorisation from us and an authorisation number given by us for that Transaction has been noted on the Merchant Copy; or

(ii) you could not reasonably be expected to be aware that the Floor Limit has been breached;

(iii) the Merchant Copy is incomplete or illegible;

(q) it is otherwise treated as an Invalid Transaction under this Agreement.

6.2 We may refuse to accept or, having accepted, may hold you liable for and charge back within 18 months of the date of the Transaction, any Transaction if the Transaction is an Invalid Transaction.

6.3 Unless otherwise stated in clause 6.1, a Transaction can be an Invalid Transaction even if it has been authorised by us or if we have paid you an amount in respect of the Transaction.

6.4 If we ask you anything about a Transaction (including asking you to provide copies of any document), you must promptly help us with our enquiry and provide the information requested. If you do not answer our enquiry to our reasonable satisfaction within 7 days of the date of the enquiry the Transaction to which the enquiry relates, it will be treated as an Invalid Transaction.

7 Disputed Transactions

7.1 You acknowledge that we will process, manage and resolve any dispute by a Payer or Accountholder in relation to a Transaction that is received by us in accordance with all applicable laws, rules, industry codes and (if applicable) the Merchant Operating Guide.

7.2 You will provide such assistance as reasonably requested by us in relation to a Disputed Transaction (which may include allowing us (or our agents) to enter your premises to examine and take copies of your books of account and records as they relate to the Disputed Transaction).

7.3 We may (acting reasonably) pay the amount of a Disputed Transaction to the Accountholder, in which case you must pay us an equivalent amount under clause 5.1(f), and we may set-off this amount against amounts we owe you under clause 5.2.

8 Warranties

8.1 You warrant to us that, to the best of your knowledge and belief (having made due inquiries):

(a) the information provided in your Application Form is true and correct;

(b) (if you are a company) you are duly organised, validly existing and in good standing under the laws of the jurisdiction in which you are incorporated or taken to be incorporated, and you are in compliance with your constituent documents;

(c) the execution and performance of this Agreement and all instruments and documents to be delivered by you under or in connection with this Agreement are within your power, have been duly authorised and do not and will not contravene any provisions of your constituent documents (if relevant);

(d) no Insolvency Event has occurred in relation to you;

(e) this Agreement has been duly executed by you and constitutes your legal, valid and binding obligations.

8.2 Each time you submit a Transaction to us, you warrant to us that, to the best of your knowledge and belief (having made due inquiries):

(a) all statements of fact and/or data provided to us are true;

(b) The Transaction is valid; and

(c) the Transaction is not subject to any dispute, set-off or counterclaim.

8.3 You warrant to us in respect of each Transaction that, to the best of your knowledge and belief (having made due inquiries):

(a) you have complied with this Agreement, any applicable law, rule or industry code;

(b) all Transaction details are correct; and

(c) you are not aware of any fact that would cause the Transaction to be a Disputed Transaction or Invalid Transaction

9 Retention

9.1 We are entitled to retain any moneys that are otherwise payable by us to you in any of the following circumstances (table to right):

Circumstance	Conditions of retention	How we can use retained moneys
Where money is payable in respect of a Transaction or series of Transactions, and we suspect upon reasonable grounds: • that the Accountholder, Payer and/or you have acted fraudulently; • that the Transactions are not bona fide; or • there has been an Invalid Transaction.	We may retain the whole or part of the moneys payable for such period as is reasonably necessary to enable the Transactions in question to be properly investigated by us.	If we reasonably determine that the Accountholder, Payer and/or you have acted fraudulently, that the Transactions are not bona fide or there has been an Invalid Transaction, we can use the retained moneys to discharge in whole or in part any amounts that become owing by you to us under this Agreement as a result.
Where moneys are payable in respect of a period in which the volume of Transactions is considered by us to be exceptional, having regard to the volume of Transactions that we would reasonably have expected based on Transaction history for the period in question.	We may retain such proportion of moneys payable by us as we reasonably think fit, for a period of not more than 18 months.	We can use the retained money to discharge in whole or in part amounts owing by you to us under this Agreement.
On Termination of this Agreement.	We may retain an amount equal to 20% of the average monthly amount of valid Transactions over the 6 calendar months prior to the date of termination, or such other sum as we may reasonably consider necessary to be retained by us in order to meet: • our obligations to make payments in respect of any Disputed Transaction or Invalid Transaction; and • amounts that we reasonably believe you may become liable to pay to us under the terms of this Agreement (whether by way of indemnity or otherwise) after the date of termination. We may retain such moneys for 90 days from the date of termination of this Agreement.	We can use the retained money to discharge in whole or in part amounts owing by you to us under this Agreement after the date of termination, or to meet any obligation we have in respect of a Disputed Transaction or Invalid Transaction.

9.2 You acknowledge that:

(a) we have legal title to all moneys retained under this clause 9 and we do not hold any amount on trust for you;

(b) the retained moneys may not be segregated from other amounts held by us; and

(c) no interest will be paid to you on the retained moneys.

9.3 When reasonably necessary to protect our legitimate interests, we may retain these moneys without notice. In all other circumstances, we will give you not less than 7 days' notice prior to retaining moneys under this clause.

10 Term and Termination

10.1 This Agreement starts on the Commencement Date and continues unless terminated in accordance with clause 10.2.

10.2 This Agreement may be terminated:

(a) by either Party with 60 days' written notice;

(b) immediately by notice in writing to the other Party if an Insolvency Event occurs in relation to the other Party and the Party purporting to terminate is not restricted from doing so by law;

(c) by either Party with immediate effect by written notice to the other Party, in the case of a breach of any term of this Agreement by the other Party that is not remedied within 14 days of being given notice specifying the breach and asking the other Party to remedy it;

(d) by us with 30 days written notice if:

(i) in our reasonable opinion you have an unacceptably high number of Disputed Transactions or refund requests; or

(ii) legal or regulatory requirements concerning the Payment Instrument are changed and this has a Material Impact on us;

(e) by either Party with immediate effect by written notice to the other Party if the other Party receives significant negative media attention in the Australian media and the Party seeking to terminate determines that continuation of this Agreement would cause serious and imminent risk to the reputation of its business.

10.3 Termination of this Agreement will not affect obligations incurred prior to Termination. We will not be obliged to accept any Transactions or Transaction refunds processed by you after Termination.

10.4 You must promptly return to us any payment processing equipment or software, Marketing Material or other items supplied to you by us or any of our Partners upon Termination of this Agreement.

10.5 Clauses 3.3, 6.1, 10.5 and 23.2 survive rescission or Termination of the Agreement.

11 Liability

11.1 Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.

11.2 To the maximum extent permitted by law, our maximum aggregate liability to you for a breach of a condition or warranty implied into this Agreement by any legislation is limited to either the resupply of the services to you or, where that is not possible, to the total amount of Merchant Service Fees we have received from you during the 12 month period prior to the date on which the breach occurred.

11.3 To the fullest extent permitted by law, we have no liability to you arising from loss, injury, Costs or damage suffered or incurred by you directly or indirectly arising out of this Agreement, including as a result of:

(a) the use of a method to submit Transactions to us;

(b) the suspension of all or part of our services by us in accordance with clause 17;

(c) our failure to make any payment to you due to technical or administrative difficulties relating to the banking system used for transfer of funds to you;

(d) the acts or omissions of any partner or intermediary bank that we use in the provision of our services; or

(e) the loss of data except to the extent that is caused by our fraud, negligence, mistake or wilful misconduct.

11.4 Under the Australian Consumer Law, certain statutory guarantees (**Consumer Guarantees**) are conferred in relation to the supply of goods or services if the price of the goods or services is $100,000 or less or the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption. Except for the Consumer Guarantees (if applicable), and the warranties and conditions set out in this Agreement, and except to the extent prohibited by law, the Parties respectively exclude all implied terms, warranties and conditions from operating in this Agreement.

11.5 Except as expressly set out in this Agreement or as otherwise required by law, you acknowledge and agree that we make no warranty or representation in respect of the services provided by us under this Agreement.

11.6 The limitations of liability in clauses 11.2, 11.3 and 11.4 do not apply to either Party's liability for loss due to fraud, negligence, mistake or wilful misconduct of us, our employees, officers, agents or contractors, or any external administrator.

12 Credit worthiness

12.1 You agree that we make no representation or assurance concerning the credit worthiness of a Payer or an Accountholder.

13 GST Law

13.1 Except as otherwise provided by this clause, all moneys payable under this Agreement in relation to any Supply is exclusive of GST.

13.2 To the extent that any Supply by us under this Agreement constitutes a Taxable Supply, the amount payable by you to us will be increased by the applicable amount of GST (**GST Amount**), which will be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST.

13.3 Any GST Amount must be paid by you to us at the same time and in the same manner as the relevant amount is paid or given under this Agreement, without any right of set-off or deduction (unless otherwise provided in this Agreement).

13.4 If this Agreement requires you to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by us (**Relevant Expense**), the amount that you must pay, reimburse or contribute will be the amount net of any Input Tax Credits to which we are entitled in respect of the Relevant Expense.

13.5 We must provide a valid Tax Invoice to you at or prior to the time of payment of any GST Amount.

13.6 To the extent that any Adjustment occurs in relation to a Taxable Supply by us, we must issue an Adjustment Note to you within 28 days of becoming aware of the Adjustment and any payment necessary to give effect to such Adjustment must be made within 7 days after the date of receipt of the Adjustment Note.

13.7 In this clause 13, Adjustment Event, Adjustment Note, Consideration, Supply, Taxable Supply and Tax Invoice have the meanings given to those terms in section 195-1 of the GST Law.

14 Recipient Created Tax Invoice Agreement

14.1 You may make Taxable Supplies to us in accordance with this Agreement.

14.2 We may issue Recipient Created Tax Invoices in respect of such supplies (**RCTI**).

14.3 You must not issue Tax Invoices in respect of such supplies.

14.4 You acknowledge that you are registered for GST when you enter into this Agreement. You must immediately notify us if you cease to be registered.

14.5 We acknowledge that we are registered for GST when we enter into this Agreement. We must immediately notify you if we cease to be registered.

14.6 We will issue a copy of an RCTI to you within 28 days of you making any Taxable Supply under this Agreement.

14.7 We will not issue a document that would otherwise be a RCTI on or after a date when we or you have failed to comply with any of the requirements of A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No.1) 2000 (**the Determination**).

14.8 You must promptly notify us if you fail to comply with any requirement of the Determination.

14.9 To the extent that any Adjustment occurs in relation to a Taxable Supply by you, we must issue an Adjustment Note to you within 28 days of becoming aware of the Adjustment and any payment necessary to give effect to such Adjustment must be made within 7 days after the date of receipt of the Adjustment Note.

14.10 In this clause 14, Adjustment, Adjustment Note, Recipient Created Tax Invoice, Taxable Supply and Tax Invoice have the meanings given to those terms in section 195-1 of the GST Law.

15 Your Nominated Account

15.1 If you change your Nominated Account, you must give us at least 7 days' prior written notice of the change and the details of your new account. We are not liable for any loss, Liability, cost or expense you incur or are required to pay as a result of us transferring funds to an Nominated Account that is no longer current, if this occurs as a result of your failure to comply with this clause 15.1.

15.2 If we ask you (acting reasonably) to do so, you must complete, sign and promptly return to us a direct debit authority in the form provided to you by us authorising us to:

(a) debit your Nominated Account to correct any error relating to any payment that we make to your Nominated Account; and

(b) debit from your Nominated Account an amount equal to the amount of any Invalid Transaction.

16 You must notify us of certain matters

You must promptly notify us in writing if:

(a) you stop carrying on business at a Site or start carrying on business other than at a Site;

(b) you cease to carry on business or transfer your business to another person;

(c) you restructure your business (for example, change of owner or director) or register your business under a new ABN;

(d) (if you are a company) an Insolvency Event occurs in relation to you;

(e) (if you are a natural person) you commit an act of bankruptcy or enter into an assignment, arrangement or composition with any creditors.

17 Suspension

17.1 We may immediately, or upon notice where practical, cease any or all of the services we provide to you under this Agreement (including suspending payments to you) to the extent necessary in response tothe following circumstances:

(a) if we reasonably determine that an event referred to in clause 10.2(b) or (e) has or is likely to occur;

(b) in the circumstances set out in clause 18 (AML and Sanctions);

(c) for the purposes of (routine or emergency) maintenance;

(d) for security or technical reasons; or

(e) to avoid a material disadvantage and/or damage to either us or you.

Nothing in this clause impacts on our rights under clause 10 of this Agreement.

17.2 You acknowledge that the provision by us of the services set out in this Agreement may be affected by outages, faults or delays. Such outages, faults or delays may be caused by many factors, including without limitation, technical difficulties with the performance or operation of your or another person's software, equipment or systems, traffic or technical difficulties with internet or infrastructure failures.

18 AML and Sanctions

18.1 You:

(a) undertake to provide us with all information and assistance that we reasonably request in order to manage our risks relating to money laundering, terrorism financing or economic or trade sanctions, or to comply with the Anti-Money Laundering and Sanctions Laws;

(b) acknowledge that we have a right to suspend services to be provided to you under this Agreement and/or delay, block or refuse to process any payment or other Transaction if:

(i) we determine that it is reasonably necessary to mitigate or manage our money laundering or terrorism financing risks or risks of breaching Anti-Money Laundering and Sanctions Laws; or

(ii) we know or reasonably suspect that the payment or Transaction or the application of the Transaction's proceeds will:

(A) breach, or cause us to breach, any applicable law (including Anti-Money Laundering and Sanctions Laws) or directives of any jurisdiction or any directive or regulation of any agency of any such state or jurisdiction; or

(B) allow the imposition of any penalty on us;

(c) agree that we may take any action that we reasonably believe is necessary to comply with Anti-Money Laundering and Sanctions Laws including, but not limited to disclosing any information that we hold about you to service providers whether in Australia or outside Australia, or to any relevant Australian or foreign regulator; and

(d) acknowledge that, notwithstanding anything else in this Agreement, we may collect information about you from time to time (from you or from third parties) for the purposes of satisfying our obligations under any Anti-Money Laundering and Sanctions Law, and that we may use and disclose any such information as required.

19 Dispute resolution

19.1 If there is a dispute between the Parties concerning compliance with this Agreement (**Dispute**) then a Party must not start court proceedings in respect of the Dispute unless it has complied with clauses 19.3, 19.4, and 19.5.

19.2 Nothing prevents a Party from commencing proceedings against another Party in respect of urgent interlocutory relief in a court of competent jurisdiction in relation to any matter.

19.3 A Party claiming that a Dispute has arisen must notify the other Party in writing, giving details of the Dispute.

19.4 During the 28 day period after a notice is given under clause 19.3 (or such longer period as may be agreed in writing by the relevant Parties), the relevant Parties will use their best efforts to resolve the Dispute.

19.5 Any communication made for the purposes of this clause 19 must be kept confidential and may not be used except to attempt to resolve the Dispute.

19.6 During any dispute resolution process in relation to a Dispute, the pre-Dispute status quo will continue. Accordingly, each Party will comply with its obligations and may exercise its rights under this Agreement. The fact that a Party ceases to do anything in Dispute will not be taken to be an admission by that Party that it had breached, or had been in breach of, this Agreement.

20 Notices

20.1 Any notice under this Agreement must be legible and may be posted, faxed or sent by email.

20.2 A notice is treated as given to you:

(a) if faxed to you at the fax number set out in the Application Form or the fax number last notified by you to us, on receipt by us of confirmation of successful transmission of the notice;

(b) if posted in a prepaid envelope addressed to you at your address specified in the Application Form or the address last notified by you to us, 2 business days after the date it is posted; or

(c) if sent by email to you at the email address set out in the Application Form or the email address last notified by you to us, when sent to your computer system or your email account, but if delivery or receipt is on a day which is not a business day or is after 5.00pm (AEST), it is treated as given to you at 9.00am on the next business day.

20.3 A notice is treated as given to us:

(a) if faxed to us at the fax number set out below or the fax number last notified by us to you, on receipt by you of confirmation of successful transmission of the notice;

(b) if posted in a prepaid envelope addressed to us at our address set out below or the address last notified by us to you, 2 business days after the date it is posted; or

(c) if sent by email to us at our email address set out below or the email address last notified to you by us, when received by us, but if delivery or receipt is on a day which is not a business day or is after 5.00pm (Melbourne time), it is treated as given to us at 9.00am on the next business day.

Our current address and fax number are:

Level 23, 367 Collins Street
MELBOURNE, Vic 3000
Fax: (03) 9274 9139
Email: merchants@wexaustralia.com

Merchant Service Team: 1300 130 113

21 Assignment

21.1 You may not assign or transfer any of your rights or obligations under this Agreement without our prior written consent.

21.2 You must not sub-contract the performance, or appoint an agent to perform, all or any of your obligations under this Agreement (other than to your employees) without our prior written consent.

21.3 You will remain fully responsible for the performance of all your obligations under this Agreement and all costs incurred in relation to any sub-contractor or agent you engage.

21.4 We may assign or transfer this Agreement as part of a reorganization of our business or a transaction with third parties by providing 30 days' notice to you.

22 Matters outside our control

Neither Party will be liable to the other for any delay in the performance of its obligations under this Agreement if the delay in performance is a result of a Force Majeure Event. Each Party undertakes to use all reasonable endeavours to remove the cause of the delay as quickly as possible.

23 Confidentiality

23.1 This Agreement and all information provided by a Party to the other Party under this Agreement (**Confidential Information**) are confidential and each Party must keep all Confidential Information confidential and must not disclose the Confidential Information to any person other than:

(a) to an employee, officer, agent, contractor or service provider whose duties require such disclosure;

(b) to any of our Partners, but only to the extent that such disclosure relates to services provided to you, an Accountholder or a Payer by that Partner;

(c) to any person in connection with an exercise of rights or obligations under this Agreement, including to a potential assignee of the disclosing Party, provided that the person must have entered into a deed in favour of the other Party undertaking to keep the Confidential Information confidential on terms no less onerous than the terms of this clause 23;

(d) with the consent of the Party who provided the information (such consent not to be unreasonably withheld); or

(e) if required by law, judicial order or in accordance with the rules of any relevant stock exchange.

23.2 Without limiting the generality of clause 23.1, you must keep the Merchant Service Fee confidential and must ensure that the Merchant Service Fee is not disclosed to any person other than an employee whose duties require such disclosure and who undertakes to keep the Confidential Information confidential on terms no less onerous than the terms of this clause 23.

23.3 Each Party agrees to return or destroy the other Party's Confidential Information on the termination of this Agreement, if return or destruction is requested in writing by the other Party at any time, and to the extent reasonably practicable. For the avoidance of doubt, nothing in this Agreement requires a Party to deliver up its own Confidential Information to the other Party or to destroy its own Confidential Information or records containing Customer Data.

24 Joint and several liability

Where you consist of 2 or more persons, your obligations under this Agreement are joint and several.

25 Variation

25.1 We may vary this Agreement at any time by giving you not less than 30 days' notice unless a shorter period is required to comply with laws.

25.2 In varying this Agreement, we can only make the following changes:

(a) changes to the amount or method of calculation of any fee;

(b) changes required to be made to comply with any law or guidance or requirements of a regulator;

(c) changes which we reasonably consider will benefit you, are neutral to you, or are not materially adverse to you;

(d) changes that are administrative or minor, or correct a mistake or omission;

(e) reasonable changes that reflect changes to our business, products or technological systems, but are not materially adverse to you.

25.3 Notice under this clause 25 will be given in accordance with clause 20.

26 Customer Data and Personal Information

26.1 Each Party will maintain the security of Customer Data in their possession through appropriate security management processes and governance systems that comply with all relevant laws. If either Party suspects or becomes aware of any unauthorised use or disclosure of Customer Data, that Party must promptly notify the other Party after forming the suspicion or becoming aware of the incident.

26.2 Each Party agrees to use its best endeavours to obtain from Payers and Accountholders all consents necessary to permit both Parties to use and disclose Customer Data in accordance with and as contemplated by the terms of this Agreement.

26.3 You agree that you will not sell, purchase, provide or exchange Customer Data obtained by reason of a Transaction. However, you are not prohibited from providing Account number information in the form of Sales Vouchers or any other media to your agent solely for the purpose of facilitating the processing of Transactions to us on your behalf.

26.4 If any information exchanged between the Parties under this Agreement includes any Personal Information, each Party must:

(a) comply with all applicable privacy laws or data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, including the Privacy Act 1988 (Cth);

(b) promptly notify the other of any complaint or investigation under, or relating to, any of the laws referred to in clause 26.4(a);

(c) if an Eligible Data Breach has occurred or if a Party has reasonable grounds to suspect that an Eligible Data Breach may or will occur in respect of Personal Information it holds under this Agreement:

(i) promptly disclose to the other Party all information relevant to that actual or suspected Eligible Data Breach;

(ii) investigate whether an Eligible Data Breach has occurred and provide the other Party with access to and copies of relevant records relating to that investigation;

(iii) upon consultation with the other Party, make any notifications to affected individuals and any other third parties (including the Office of the Australian Information Commissioner) as required by applicable privacy or data protection laws;

(iv) take all reasonable steps to contain and remedy the Eligible Data Breach and promptly take remedial action, as appropriate in the circumstances of the Eligible Data Breach, to mitigate any loss or interference with privacy flowing from the incident, prevent any potential further serious harm to any individuals, and protect the affected Personal Information from further misuse or beach; and

(v) to bear all costs and expenses associated with determinations, notifications and remedial action under paragraphs (ii), (iii) and (iv) above.

In this paragraph 26.4(c), a person "holds" Personal Information if that person has possession or control of a record that contains the Personal Information (this includes where that person has the right or power to deal with the Personal Information, even if it does not physically possess or own the medium on which the Personal Information is stored);

(d) promptly notify the other Party if the owner of Personal Information makes any change to any consents for its use and disclosure;

(e) co-operate with the other Party in the resolution of any such complaint or investigation.

26.5 You agree that you will comply with any reasonable request made by us in relation to Personal Information of Payers or Accountholders that you may store. This includes the provision of full and complete records of Customer Data in, for example, the case of an allegation of fraud in relation to a Payment Instrument.

27 Governing law

This Agreement is governed by and must be construed in accordance with the laws of Victoria. The parties agree to submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

28 Severability of provisions

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective in that jurisdiction to the extent of the prohibition or unenforceability. Such prohibition or unenforceability does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

29 No Waiver

No failure to exercise or delay in exercising any right under this Agreement by either Party will operate as a wavier of that right, nor will any single or partial exercise of any right prevent any other or future exercise of that or any other right.