



Eftsure Terms of Service

V3.0 (14 March 2025)

United States of America

This version 3.0 of the Eftsure Terms of Service only applies to Agreements entered into on or after 14 March 2025.

1. Composition of the Agreement

1.1 Agreement structure

By accepting Eftsure's offer set out in the Commercial Terms, You enter into a legally binding agreement with Eftsure that consists of:

- (a) the Commercial Terms;
 - (b) the Eftsure Terms of Service; and
 - (c) any applicable Service Addendum expressly referred to in the Commercial Terms,
- (together, this "Agreement").

1.2 Order of precedence

If there is any inconsistency or conflict between the documents listed in Section 1.1, the document listed higher in that Section will prevail to the extent of the inconsistency or conflict, except to the extent any such document expressly states that a different order of priority will prevail.

2. Term

2.1 Commencement and duration

This Agreement commences on the commencement date set out in the Commercial Terms ("Commencement Date"):

- (a) continues for the initial period set out in the Commercial Terms ("Initial Period"); and
 - (b) subject to Section 2.2(b), automatically renews for subsequent successive periods thereafter for the length of each renewal period set out in the Commercial Terms (each, a "Renewal Period"),
- (together, the "Term").

2.2 Renewal

- (a) At least 90 days prior to the expiration of the Initial Period or any Renewal Period, Eftsure will notify You in writing of:
 - (i) the forthcoming expiry of the Initial Period or then current Renewal Period (as applicable) and, where applicable, any proposed increase in the Subscription Service Fees for the purposes of Section 6.5; or
 - (ii) Eftsure's decision to terminate this Agreement, effective upon the expiration of the Initial Period or the then-current Renewal Period (as applicable), in accordance with Section 2.2(b).
- (b) A party may elect for this Agreement not to renew after the Initial Period or the then current Renewal Period (as applicable) by providing written notice to the other party before the expiration of the Initial Period or the then-current Renewal Period of that election, in which case, this Agreement shall terminate at the expiration of the Initial Period or the then-current Renewal Period.

3. Service performance

3.1 Provision of the Eftsure Services

Subject to User cooperation with Eftsure's Personnel, Eftsure must:

- (a) provide the Setup Services to You (if applicable) as soon as practicable after the Commencement Date (or by any other date specified in a relevant Service Addendum or otherwise agreed by the parties in writing); and
- (b) make the Subscription Services available to You (solely for access and use by Users in accordance with this Agreement and the Documentation) during the Term.

3.2 Service standards

Eftsure must:

- (a) provide the Eftsure Services with due care and skill and in accordance with this Agreement;
- (b) where a Service Addendum specifies service levels for a particular Eftsure Service, use commercially reasonable efforts to provide the applicable Eftsure Services in accordance with such service levels, subject to planned or unplanned maintenance and any other exceptions to the service levels set out in this Agreement;
- (c) ensure that each Eftsure Service substantially conforms to any specifications for that Eftsure Service, as set out in the applicable Documentation;
- (d) implement good industry practices, policies and procedures to prevent loss of Your Data in Eftsure's possession or control; and
- (e) maintain reasonable safeguards, precautions and security procedures to protect the Eftsure Services from unauthorized access and to secure and guard the Eftsure Services against known viruses.

3.3 Downtime

You acknowledge that, on occasion, the Eftsure Services may be unavailable in order to permit maintenance or other development activity to take place. Eftsure will provide You with access to a Status Page displayed on Eftsure's website for You to monitor the current availability and uptime status of the Eftsure Services. Eftsure will update this Status Page during outages and planned or unplanned maintenance events that affect the Eftsure Services.

4. Your rights to the Eftsure Services

4.1 Grant of Your rights

Subject to Section 4.2, Eftsure grants You a non-exclusive, non-transferable, non-sublicensable, revocable and royalty-free:

- (a) right for Users to access and use the Eftsure Services; and
- (b) right for Users to access and use (and a license to reproduce) but not modify the Documentation,

on Your behalf and on behalf of Your Affiliates, solely as required for You and Your Affiliates to obtain the full benefit of the Eftsure Services in accordance with, and subject to, the terms of this Agreement, the Documentation and all applicable laws.

4.2 Your responsibility for Your Affiliates and Users

You and Eftsure agree to the following:

- (a) Your Affiliates may access and use the Eftsure Services and access, use and reproduce the Documentation provided that You ensure that each of them comply with this Agreement as if they were You. You are responsible for all acts and omissions of Your Affiliates in connection with this Agreement;
- (b) if Eftsure suffers any loss and/or damage in connection with any act or omission of any of Your Affiliates, which would constitute a breach of any term, warranty or condition of this Agreement if it were Your act or omission, Eftsure may recover all such loss and damage from You to the same extent that it would have been able to had the act and/or omission been Your act and/or omission;
- (c) You are responsible for all acts and omissions of all Users in connection with this Agreement (each a “User Act or Omission”), as if they were Your own acts and omissions;
- (d) if Eftsure suffers any loss and/or damage in connection with any User Act or Omission, which would constitute a breach of any term, warranty or condition of this Agreement if it were Your act or omission, Eftsure may recover all such loss and damage from You to the same extent that it would have been able to had the act and/or omission been Your act and/or omission; and
- (e) You must ensure that Your Affiliates and Users do not, under any circumstances, bring any action, demand, claim or proceeding against Eftsure under or in connection with this Agreement.

5. Your general responsibilities

5.1 Your Technology

You are responsible for:

- (a) obtaining and maintaining any hardware, software, internet connectivity, equipment and other technology necessary for Users to access each Eftsure Service including any third-party integration, (individually or together, “Your Technology”); and
- (b) ensuring that Your Technology meets Eftsure’s reasonable technical requirements as notified to You from time to time or as set out in the Documentation.

5.2 The Eftsure Service safe use requirements

- (a) You must:
 - (i) ensure that all usernames and passwords required to access each Eftsure Service are kept secure and confidential;
 - (ii) maintain reasonable safeguards, precautions and security procedures to ensure that only Users access or use the Eftsure Services and Documentation in accordance with this Agreement;
 - (iii) implement reasonable procedures to secure Your Technology and guard against viruses and unauthorized interception, access, use or loss of data within Your, Your Affiliates’ or Users’ possession or control that is communicated via Your, any of Your Affiliates’, or a third party’s network, system or device;

- (iv) immediately notify Eftsure of any actual or suspected unauthorized access to, or use of, the Eftsure Services; and
 - (v) take all reasonable actions requested by Eftsure that are within Your control to protect the security of the Eftsure Services from any actual or potential impairment or vulnerability and to address any security incident arising out of Your Technology that could impair any Eftsure Services.
- (b) You are responsible for any access and use of the Eftsure Services by any User and by any person who accesses the Eftsure Services using the credentials of any User, whether authorized by You or not.

5.3 Prohibited activities

You must not, and must ensure that Users do not:

- (a) undermine the security or integrity of Eftsure's systems or networks or any third party's systems or networks;
- (b) use an Eftsure Service in any way that is contrary to the Documentation or Eftsure's reasonable directions or in any way that may impair the functionality of any Eftsure Service for You or any other person (including Eftsure's other customers) or that may breach any applicable law;
- (c) gain unauthorized access to any part of any Eftsure Service or any software or system that You or any Users are not expressly authorized to access under this Agreement;
- (d) transmit through, or upload to, any Eftsure Service:
 - (i) anything that may damage any other person's technology, device, software or data; or
 - (ii) material, information or data that:
 - (A) is offensive, fraudulent, harassing, abusive, discriminatory; or
 - (B) infringes another person's rights (including IPR) or any applicable law;
- (e) modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer the Documentation or any software, database or system used to deliver any Eftsure Service, except to the extent expressly permitted under any non-excludable applicable law;
- (f) rent, lease, lend, loan, sell, sublicense, assign, distribute, publish, transfer, create a derivative work from, separate the component parts of, or attempt to commercially exploit or otherwise make available, any Eftsure Services or Documentation to any third party (other than to Users), including on, or in connection with, the internet or any time-sharing or rental arrangement, service bureau or other technology or service;
- (g) alter, modify, merge, develop, translate, delete or make any other change to, or interfere with, any information or data held by Eftsure or processed by any Eftsure Services; or
- (h) attempt to do anything, or encourage any other person to do anything, referred to in this Section 5.3.

5.4 Suspension of the Eftsure Services

Without limiting Eftsure's termination rights under Section 12.1, Eftsure may suspend Your, Your Affiliates' or any Users' access to, and use of, any Eftsure Service where Eftsure reasonably believes that You, Your Affiliates or any User has breached, or is likely to breach, this Section 5 or otherwise compromise the security of the Eftsure Services. Eftsure is not required to remove any

suspension until it is reasonably satisfied that the breach, or security compromise, has been remedied.

6. Financial provisions

6.1 Fees and invoicing

- (a) The Fees payable by You to Eftsure under this Agreement are specified in the Commercial Terms.
- (b) Eftsure (or, where specified in the Commercial Terms, an Eftsure Authorized Reseller) will invoice You the Fees in accordance with the invoicing provisions of the Commercial Terms.
- (c) You must pay each invoice issued under this Agreement within 14 days after the date of the invoice.
- (d) You acknowledge that the Fees have been calculated by Eftsure based on the Entitlements. If You and/or any of Your Affiliates, through one or more Users, exceed (or are likely to exceed) any Entitlements or propose to vary any of the Entitlements or obtain new Entitlements, then without limiting any other rights or remedies available to Eftsure or any of Your obligations, Eftsure may require that You engage in, and in such circumstances You must engage in, good faith discussions with Eftsure to agree to:
 - (i) variations to the Entitlements or new Entitlements for the remainder of the Initial Period or then current Renewal Period; and
 - (ii) an increase in the Subscription Service Fees to reflect any varied entitlements or new Entitlements, calculated at Eftsure's then current rates and prices.

6.2 Taxes

Fees are exclusive of taxes, duties and charges imposed or levied in the United States of America (USA) or any other country in connection with the supply and use of the Eftsure Services, including any sales, use, gross receipts, environmental, ad valorem, or excise tax or any other similar taxes, fees, duties, or charges of any kind imposed by any governmental authority on any amounts payable by You under this Agreement.

6.3 Expenses

To the extent that Eftsure incurs any out-of-pocket expenses in delivering the Eftsure Services, such expenses must be reimbursed by You to Eftsure provided that:

- (a) Eftsure notifies You and seeks Your prior written consent before incurring any such expenses, for example, expenses relating to travel (including flights, taxi fares, meals and accommodation); and
- (b) Eftsure supplies You, on request, with reasonable evidence that the expenses have been incurred.

6.4 Late payments

- (a) If any amount payable under this Agreement is not paid by the relevant due date, Eftsure may, in its sole discretion:
 - (i) charge interest on any overdue amounts from the due date, compounded monthly (or part thereof) at 3% per annum, until the outstanding amount is paid in full by You to Eftsure;

- (ii) subject to Section 6.4(b) and without limiting Eftsure's termination rights under Section 12.1, suspend access to and use of the Eftsure Services by any or all Users, provided that Eftsure issues You a written notice that gives You at least 3 Business Days to pay the outstanding amount before the suspension takes effect, until the outstanding amount is paid in full by You to Eftsure; and
 - (iii) recover from You, on demand, the outstanding amount (together with applicable interest) plus any reasonable third-party debt collection fees and disbursements incurred by Eftsure in recovering, or attempting to recover, the outstanding amount from You (collectively, "Debt Collection Costs").
- (b) If Eftsure suspends access to, and use of, the Eftsure Services pursuant to Section 6.4(a)(ii), Eftsure will have no obligation to reinstate the Eftsure Services until such time as Eftsure has received payment from You of all outstanding amounts (together with applicable interest) and any applicable Debt Collection Costs.
 - (c) Nothing in this Section 6.4 limits Eftsure's right to terminate this Agreement pursuant to Section 12.1.

6.5 Fee increases

Eftsure may increase all Subscription Service Fees, effective on each Review Date, by giving You notice of any such increase in accordance with Section 2.2(a).

6.6 Fee discounts

Any Fee discount specified in the Commercial Terms applies for the Initial Period only.

7. Confidentiality

7.1 Use and disclosure of Confidential Information

A Receiving Party must:

- (a) protect the confidentiality of Confidential Information; and
- (b) only use or disclose Confidential Information:
 - (i) with the prior written consent of the Disclosing Party; or
 - (ii) without the prior written consent of the Disclosing Party, solely for the following purposes:
 - (A) exercising the Receiving Party's rights (including, in the case of Eftsure, any rights that Eftsure has under Section 8.2) or performing the Receiving Party's obligations under this Agreement;
 - (B) where Eftsure is the Receiving Party, for the purposes of processing, considering, disputing, disclosing or reporting any claim made under any indemnity given by Eftsure under a Service Addendum;
 - (C) subject to Section 7.3, complying with applicable law; and/or
 - (D) obtaining advice from the Receiving Party's insurers, auditors, accountants, debt recovery agents or legal and/or financial advisors in connection with this Agreement; and
 - (iii) as otherwise set out in this Agreement.

7.2 Compliance by Personnel

The Receiving Party will, before providing any of its Personnel with Confidential Information or access to such Confidential Information, inform them of the confidential nature of the Confidential Information and require them to comply with the Receiving Party's obligations under this Agreement in relation to that Confidential Information as if they were the Receiving Party.

7.3 Required disclosures

If a Receiving Party is required to disclose any Confidential Information under a request or order pursuant to any applicable law, the Receiving Party must not disclose the Confidential Information without first giving the Disclosing Party written notice of the request and sufficient opportunity to contest the order, to the extent such notice and opportunity to contest may be lawfully given.

8. Intellectual property

8.1 Ownership of IPR in Your Data

As between Eftsure and You, You (or Your licensors) own all Intellectual Property Rights subsisting in Your Data.

8.2 License of Your Data

- (a) You grant Eftsure and Eftsure's Affiliates a perpetual, non-exclusive, irrevocable, fully-paid up, royalty-free license to use, copy, disclose, reproduce, transmit, store, adapt and otherwise modify Your Data (including, IPR in Your Data) to provide You and Eftsure's other customers with the Eftsure Services and for any related purpose, including:
 - (i) any use, transfer or disclosure of any personal information contained in Your Data pursuant to the Privacy Policy; and/or
 - (ii) where necessary under a Service Addendum, to enable any third-party software product or service provider to integrate the Eftsure Services with Your Other Software.
- (b) The license granted in Section 8.2(a) includes the right of Eftsure to permit Eftsure's Personnel to exercise any right granted under the license.

8.3 Ownership and use of Your feedback

You agree that the Intellectual Property Rights subsisting in any feedback, suggestions and recommendations that You provide to Eftsure related to any Eftsure Services, including in respect of product improvements, new features and functionality suggestions, are hereby assigned to Eftsure under any applicable law or equity.

8.4 Ownership of the Eftsure Services and Documentation

- (a) You agree that as between You and Eftsure, Eftsure and/or its Affiliates (and/or their respective third-party licensors) own (and will retain) all rights, title and interest (including all Intellectual Property Rights) in the Eftsure Services (including any software, the API and databases used to supply and/or support the Eftsure Services) and the Documentation.
- (b) Your rights and the rights of Your Affiliates in respect of the Eftsure Services and the Documentation are limited to those expressly granted to You under this Agreement.

8.5 Restriction on the use of data held in Eftsure's databases

- (a) You acknowledge and agree that Eftsure will hold data (including, Your Data) in Eftsure's databases, including Eftsure's verified payee records database ("Eftsure Database Data").
- (b) Except where otherwise permitted by this Agreement, You agree not to:
 - (i) sell or commercially exploit any Eftsure Database Data, including any compilations or collections of that data (such as transactional data, business-related information or system-generated data); or
 - (ii) use any data referenced in Section 8.5(b)(i) for any purposes outside the scope of the right granted by Eftsure under Section 4.1, including for resale, to build any product or service that competes with an Eftsure Service, or for any other unauthorized commercial use.

9. Privacy and consents

9.1 Privacy

- (a) Eftsure will collect, use, disclose and manage any personal information contained in Your Data in accordance with this Agreement, applicable privacy law (subject to Section 9.2) and its Privacy Policy.
- (b) You will collect, use, disclose and manage any personal information under this Agreement in accordance with applicable privacy law.

9.2 Data consents and notices

You must ensure that You and Your Affiliates have obtained any and all consents and issued any and all relevant notices, as may be necessary, to enable You and Your Affiliates to disclose Your Data to Eftsure, so that Eftsure may exercise (and Eftsure's Personnel may exercise) its rights in respect of Your Data and perform any obligations under the Agreement pursuant to the license granted by You under Section 8.2(a) and in accordance with applicable law.

9.3 Detection of payment fraud

- (a) If You become aware of any payment fraud in connection with the Eftsure Services, You must immediately notify Eftsure of that payment fraud and promptly provide Eftsure with all necessary information to enable Eftsure to assess, investigate and diagnose the root cause of that payment fraud.
- (b) If Eftsure detects any payment fraud while providing Eftsure Services to You, Eftsure may, to the extent required by applicable law, notify any relevant authorities, including the police, of the payment fraud to aid those authorities in investigations or enforcement actions in respect of that payment fraud.

10. Indemnities

10.1 Eftsure's third party IPR infringement indemnity

- (a) Subject to Section 10.1(b), Eftsure must defend any claims made against You by a third party that Your use of the Eftsure Services or Documentation, in accordance with this Agreement, infringes the Intellectual Property Rights of that third party and indemnify You against any costs or damages finally awarded against You by a court of competent jurisdiction, or agreed in writing by Eftsure in settlement of such third party claims.

- (b) Eftsure will not have any obligation to defend any claim or to indemnify You, under Section 10.1(a), to the extent that the infringement or claim of infringement is caused or contributed to by:
 - (i) Your use of any Eftsure Services or Documentation other than in accordance with this Agreement and/or the Documentation;
 - (ii) any modification of the Documentation other than by or on behalf of Eftsure;
 - (iii) Your failure to install or use corrections or enhancements that have been made available, or recommended, to You by or on behalf of Eftsure;
 - (iv) Your use of any Eftsure Services in combination with any product or service not owned, developed or licensed by Eftsure, other than any software supplied by a third-party software supplier engaged directly by Eftsure to supply software that forms part of an Eftsure Service;
 - (v) any information (including, Your Data), software, direction, specification or materials provided by You or any third party, other than any software supplied by a third-party software supplier engaged directly by Eftsure to supply software that forms part of an Eftsure Service; or
 - (vi) any intentional breach of this Agreement by You or any User, or for any of Your or Your Affiliates' wrongful or negligent acts or omissions.

10.2 Your data indemnity

You must defend Eftsure against any and all third-party claims and indemnify Eftsure against any and all losses, damages, costs, fines, penalties, similar charges and expenses (each a "Loss") suffered or incurred by Eftsure to the extent such claims and/or Losses arise out of or otherwise in connection with any:

- (a) disclosure of Your Data to Eftsure in breach of Section 9.2;
- (b) use of Your Data by Eftsure or Eftsure's Affiliates in accordance with the license granted by You under Section 8.2(a); or
- (c) disclosure of data to Eftsure that constitutes sensitive financial information (such as unredacted credit card statements), health information, sensitive information or similar categories of personal information or personal data protected under any applicable law.

10.3 Indemnity procedures for third party claims

The party seeking to recover under an indemnity pursuant to Sections 10.1 or 10.2 in relation to a third-party claim ("Indemnified Party"), must:

- (a) promptly notify the indemnifying party of the third-party claim in writing, with sufficient details to allow the indemnifying party to assess the claim;
- (b) cooperate in good faith with the indemnifying party during the investigation and resolution of the third-party claim, at the indemnifying party's expense;
- (c) take follow-up actions as reasonably requested by the indemnifying party;
- (d) subject to Section 10.4, grant the indemnifying party full authority to defend or settle the third-party claim; and
- (e) not make any admissions in relation to the third-party claim without the prior written consent of the indemnifying party.

10.4 Settlement of indemnified third party claims

The indemnifying party may not, without the Indemnified Party's prior written consent, settle, compromise any claim, or consent to the entry of any judgment in respect of which indemnification is being sought under Sections 10.1 or 10.2 unless such settlement, compromise, or consent:

- (a) includes an unconditional release of the Indemnified Party from all liability arising out of such claim;
- (b) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of the Indemnified Party; and
- (c) does not contain any equitable order, judgment, or term (other than the fact of payment or the amount of such payment) that in any manner affects, restrains, or interferes with the business of the Indemnified Party.

11. Disclaimer and liability

11.1 Disclaimer

Except to the extent prohibited under non-excludable applicable law:

- (a) Eftsure excludes all liability for any loss of Your Data as Eftsure does not supply a data backup service and You must retain the master copy of Your Data;
- (b) Eftsure is not responsible for any disclosure, modification or deletion of Your Data resulting from access by providers of third-party software products or services referred to in Section 8.2(a)(ii);
- (c) Eftsure does not make any warranties in respect of the Eftsure Services, including that access to or use of the Eftsure Services will be uninterrupted or error free; and
- (d) Eftsure excludes from this Agreement all terms, conditions, warranties and undertakings in connection with this Agreement that are not expressly set out in this Agreement.

11.2 Mutual indirect loss exclusion

To the extent permitted by law, neither party is liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, for any loss of, or damage to, good name, reputation, opportunity, increased financing costs, savings or failure to realize savings, turnover or failure to realize turnover, revenue or failure to realize revenue (including future loss of revenue) or profits or failure to realize profits, or for any loss of business, depletion of goodwill or similar losses, or loss or corruption of data or information, or pure economic loss, or for any other special, indirect or consequential losses, costs, damages, charges or expenses, howsoever arising in connection with this Agreement.

11.3 Mutual liability cap

- (a) Subject to Section 11.4, any non-excludable applicable law and either party's liability for any indemnity under a Service Addendum, and to the extent that a party's liability is not otherwise limited or excluded under this Agreement, a party's total liability whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with this Agreement is limited, in the aggregate, to the total Subscription Service Fees paid or payable by You during the first 12 months of the Term ("Mutual Cap").
- (b) The Mutual Cap will not be increased in any circumstances, including as a result of any recovery made by either party. Upon the Mutual Cap being exhausted, and subject to

Section 11.4, any non-excludable applicable law and the parties' liability for any indemnity given under a Service Addendum, neither party will have any further liability to the other party in connection with this Agreement regardless of when the liability is discovered and whether or not previously notified.

11.4 Mutual liability cap exceptions

Section 11.3 will not apply to:

- (a) Your obligation to pay the Fees;
- (b) personal injury or tangible property damage caused by a party; or
- (c) the indemnity in Section 10.2 or any matter referenced by that provision.

11.5 No liability for other wrongdoers

The liability of a party for any loss or damage, whether in contract (including under an indemnity), tort (including negligence or breach of statutory duty), under statute, or otherwise, will be reduced by the extent, if any, to which the other party contributed to the loss or damage. A party is not liable under this Agreement for the acts and omissions of the other party or any other wrongdoer to the extent permissible under any applicable legislation applying to the apportionment of liability.

11.6 Obligation to mitigate

Each party must take appropriate and commercially reasonable actions to mitigate damages and losses that might otherwise be recoverable from the other party arising out of, or in connection with, this Agreement, whether in contract (including under an indemnity), tort (including negligence or breach of statutory duty), under statute or otherwise.

12. Termination

12.1 Termination rights

Without affecting any other right or remedy available to the parties (and without limiting Your termination right under Section 13.3(e)), either party may only terminate this Agreement (and any such termination will take immediate effect) by notice in writing to the other party, if the other party:

- (a) where that other party is You, fails to pay any amount due for payment under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) without limiting Section 12.1(a), commits a Material Breach that is:
 - (i) not capable of remedy; or
 - (ii) capable of remedy, but the defaulting party fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
- (c) suffers an Insolvency Event.

12.2 Effect of expiry or termination

Each party agrees that:

- (a) termination of this Agreement does not affect any rights, remedies, obligations or liabilities of either party that have accrued up to the date of termination;

- (b) without limiting Section 12.2(a), if this Agreement is terminated, You will remain liable thereafter for any accrued charges and amounts that become due for payment before or after termination;
- (c) upon termination of this Agreement and thereafter, You must immediately cease using (and You must procure that all Users immediately cease using) the Eftsure Services;
- (d) if this Agreement is terminated, each party must, upon request by the other party, promptly send to the other party, or otherwise dispose of, pursuant to the other party's directions, all of the other party's Confidential Information relating to the Eftsure Services then in its possession or control, except the first mentioned party is entitled to retain the other party's Confidential Information to the extent that information is stored in any audit logs or backup records of the first mentioned party or that the first mentioned party is required to retain under applicable law; and
- (e) if this Agreement is terminated, and within a reasonable period following Eftsure's receipt of a written request from You, Eftsure:
 - (i) will delete all copies of Your Data displayed on and made accessible to You, via any software interface made available to You as part of the Eftsure Services, which You have requested Eftsure to delete ("Purgeable Data"), subject to Section 12.2(e)(ii); or
 - (ii) may, to the extent any Purgeable Data contains personal information, de-identify that personal information, where required by applicable law,

except Eftsure or Eftsure's Affiliates will under no circumstances be required to delete or otherwise return to You any copies of Your Data stored on any of Eftsure's databases, audit logs, backup records, or that Eftsure or any Eftsure Affiliate is required to retain under applicable law.

12.3 Survival

Sections 7, 8, 9, 10, 11, 12 and 13 survive termination (for any reason) or expiry of the Agreement, as does any other Section which by its nature survives termination or expiry and any rights and remedies that accrued before termination or expiry.

13. General

13.1 Force majeure

The non-performance or delay in performance by a party of any obligation in this Agreement is excused during the time and to the extent that such performance is prevented by a circumstance or event beyond its reasonable control ("Force Majeure Event"), provided that the party affected by the Force Majeure Event uses commercially reasonable efforts to perform, as soon as possible, its obligations under this Agreement, including by the use of reasonable workarounds and interim measures. This Section 13.1 does not apply to any obligation to pay money.

13.2 Assignment and other dealings

- (a) Except as set out in this Section 13.2, neither party may assign, novate, sub-license or otherwise transfer the benefit of this Agreement without the other party's prior written consent. Notwithstanding the foregoing provisions, but subject to Section 13.2(b), either party may assign or novate its rights or obligations under this Agreement to:
 - (i) a bona fide purchaser of all or a substantial part of its assets; or

- (ii) any of its Affiliates,
- by providing prior written notice to the other party.
- (b) Any transfer, assignment or novation of this Agreement by You to a third party is subject to, in advance of any such event, You providing all information and documents required by Eftsure for Eftsure to satisfy itself that the third party is:
 - (i) trading;
 - (ii) is not a competitor of Eftsure; and
 - (iii) is capable of performing its obligations under this Agreement.

13.3 Variation

- (a) Except to the extent expressly specified to the contrary in this Agreement (including, this Section 13.3), this Agreement may not be varied unless such variation is in writing and signed by each party.
- (b) Eftsure may propose to vary this Agreement, including any applicable Service Addendum, by giving You at least 30 days' prior written notice ("Proposed Variation Notice").
- (c) If any variation, proposed by Eftsure in a Proposed Variation Notice, has a detrimental impact on You, then You may, within 21 days from the date of Your receipt of the Proposed Variation Notice, notify Eftsure in writing that You object to the Proposed Variation Notice ("Objection Notice").
- (d) In response to the Objection Notice, Eftsure may, by written notice to You:
 - (i) withdraw the Proposed Variation Notice;
 - (ii) not withdraw the Proposed Variation Notice; or
 - (iii) change the Proposed Variation Notice. In the event that Eftsure changes the Proposed Variation Notice, the original Proposed Variation Notice will be deemed to have been withdrawn, and the changed Proposed Variation Notice will be deemed to constitute a new Proposed Variation Notice under this Agreement.
- (e) In the event that You issue an Objection Notice in accordance with Section 13.3(c), but Eftsure does not withdraw or change the Proposed Variation Notice under Section 13.3(d), You may terminate this Agreement by notice in writing to Eftsure prior to the expiry of the 30 day period referred to in Section 13.3(b).
- (f) If You terminate this Agreement in accordance with Section 13.3(e) and You provide Eftsure with a written request to refund any Fees paid by You that relate to the unexpired portion of the Initial Period or current Renewal Period (as applicable), then Eftsure:
 - (i) will, subject to Section 13.3(f)(ii), refund such Fees to You as soon as reasonably practicable after the effective date of termination; and
 - (ii) may retain any Fees paid by You for the Eftsure Services that have been provided, or made available, to Users, up to the effective date of termination, except to the extent that Eftsure is required to refund any such Fees under non-excludable applicable law.
- (g) If You do not issue an Objection Notice in accordance with Section 13.3(c) or You do not provide Eftsure with notice to terminate this Agreement in accordance with Section 13.3(e), the variations that are the subject of the Proposed Variation Notice will take effect upon

expiry of the 30 day period referred to in Section 13.3(b) and the parties will be bound to those variations.

13.4 Marketing

- (a) You agree that Eftsure may use and reproduce Your name and logo on its website and in its marketing documentation to describe You as a customer of Eftsure.
- (b) Eftsure agrees that it will not suggest in any way that the fact that You are a customer of an Eftsure Service implies that You sponsor, approve or otherwise endorse any Eftsure Service in any way.

13.5 Entire agreement and pre-contractual matters

- (a) This Agreement is the entire agreement between You and Eftsure about its subject matter and supersedes all other proposals, arrangements, representations, understandings, negotiations, discussions and agreements between You and Eftsure in respect of its subject matter.
- (b) By entering into this Agreement, You acknowledge and agree that:
 - (i) You have not relied on any statement, proposal, representation, assurance or warranty made or given by Eftsure, whether orally or in writing, except statements, proposals, representations and assurances expressly set out in this Agreement and any non-excludable applicable law;
 - (ii) You have not relied on any materials or information provided by Eftsure to You (other than the terms, conditions, warranties and representations expressly set out in this Agreement and any non-excludable applicable law) in entering into this Agreement; and
 - (iii) all pre-contractual materials and information (other than the terms, conditions, warranties and representations expressly set out in this Agreement and non-excludable applicable law) provided by Eftsure to You has only been provided to You on a no-reliance basis.

13.6 Notices

- (a) Any notice required or authorized to be given or served on a party under this Agreement must be in writing and will be deemed delivered in writing if:
 - (i) delivered in person, and such notice will be deemed to have been received by the recipient upon delivery;
 - (ii) sent by pre-paid registered letter, and such notice will be deemed to have been received by the recipient 10 Business Days after posting of that letter by the sender; or
 - (iii) sent by email addressed to the relevant party, and such notice will be deemed to have been received by the recipient at the exact time on which it is received by the recipient's information system, except such notice will not be taken to have been received by the recipient if the sender of the email containing the notice receives a message within 1 day of sending the notice that such email has not been delivered to the recipient.
- (b) Any party may change its address for notice by giving written notice to the other party in accordance with this Section 13.6.

13.7 Governing law

This Agreement is governed by the laws in force in the state of Delaware, USA and the parties each irrevocably submit to the exclusive jurisdiction of the courts of Salt Lake City, Utah, USA in connection with any proceedings concerning this Agreement.

13.8 Execution

This Agreement may be executed by Your execution of the Commercial Terms, either in hard copy or electronically. Execution of the Commercial Terms by You (whether in hard copy or electronically) signifies Your intention to be bound by this Agreement.

13.9 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

13.10 Relationship

The parties are independent contractors and nothing in this Agreement creates a relationship of employer and employee, principal and agent, partnership or joint venturers. Neither party has authority to bind the other party or hold itself out in any manner contrary to this Section.

13.11 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.

14. Glossary and interpretation

14.1 Glossary

In addition to the capitalized terms defined in parentheses within this Eftsure Terms of Service, the following capitalized terms used in this Eftsure Terms of Service will be construed to have the meaning set out below:

- (a) Affiliate: of a party means any other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such party. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity.
- (b) API: means Eftsure’s REST application programming interface, as further described in the relevant Documentation.
- (c) Business Day: means a day that is not a weekend or federal holiday in the USA if You are contracting.
- (d) Commercial Terms: means a document expressly labelled therein as “Commercial Terms” prepared by Eftsure and that is executed by You, setting out, among other things, the commercial details of Your procurement of the Eftsure Services and any special conditions that modify and override Sections of this Eftsure Terms of Service and/or any applicable Service Addendum.
- (e) Confidential Information: means any information (regardless of its form) disclosed, or made available, by the Disclosing Party to the Receiving Party, provided that information:

- (i) is by its nature confidential;
- (ii) is designated by the Disclosing Party as confidential;
- (iii) the Receiving Party knows, or ought to know, is confidential; or
- (iv) in the case of Eftsure's Confidential Information, involves:
 - (A) Your Fees; and
 - (B) subject to Section 14.1(e)(v), any data or material provided by Eftsure to You regarding Eftsure's payee onboarding or verification processes or the results from such processes (howsoever provided to You), except to the extent that such information or documents consist of Your Data,

but excludes in all cases, information:

- (v) in the public domain or information that is readily ascertainable by the public, but not by breach of this Agreement by the Receiving Party or any of its permitted disclosees;
 - (vi) that is known by the Receiving Party at the time of disclosure of the information from the Disclosing Party;
 - (vii) that the Receiving Party creates (whether alone or jointly with any third person) independently of any information or documents that it has received from the Disclosing Party;
 - (viii) that is lawfully obtained by the Receiving Party from a third party other than through a breach of any confidentiality obligations; or
 - (ix) in Your Data (or any part thereof), except for any trade secrets, commercial ideas, inventions or know-how that are contained in Your Data and the fact that a payee is Your payee.
- (f) Disclosing Party: means a party to this Agreement who discloses or makes available Confidential Information to the Receiving Party.
 - (g) Documentation: means any technical documentation, user guides, Eftsure's API fair usage guidelines, training materials, and Eftsure's "help desk" materials, whether in electronic form or otherwise, provided by, or on behalf of, Eftsure with respect to the Eftsure Services or the API from time to time (including, updated versions of such documentation).
 - (h) Eftsure Authorized Reseller: means any third party that has been authorized by Eftsure to market, sell, and/or distribute the Eftsure Services, or act as a payment agent of Eftsure, in accordance with the terms of a separate reseller agreement between Eftsure and such third party.
 - (i) Eftsure Services: means the Setup Services and the Subscription Services provided by Eftsure under this Agreement.
 - (j) Eftsure Terms of Service: means this document.
 - (k) Eftsure, we, us and our: means the Eftsure entity set out in the Commercial Terms.
 - (l) Entitlements: mean any
 - (i) limitations to the Eftsure Services;
 - (ii) additional features, benefits or functions of the Eftsure Services (that are not otherwise specified in the relevant Service Addendum); or

- (iii) any modifications to any service descriptions in the relevant Service Addendum or modifications or restrictions to Your, Your Affiliates' and any Users' right to access and use the relevant Eftsure Services,

as expressly stated in Appendix 1 to the Commercial Terms.
- (m) Fees: means
 - (i) the Setup Service Fees; and
 - (ii) the Subscription Service Fees.
- (n) Insolvency Event: means the occurrence of one or more of the following events in relation to a party:
 - (i) a party ceases to carry on business or is dissolved or an application is made for its dissolution;
 - (ii) a party is unable to pay its debts as and when they fall due, or is deemed to be insolvent or bankrupt;
 - (iii) a receiver, a liquidator or provisional liquidator, or an administrator is appointed to a party, or an application is lodged or an order is made or a resolution is passed for the winding up or reduction of capital of that party; or
 - (iv) any act done or event that occurs under the applicable law of any jurisdiction that is analogous, or has substantially similar effect, to any of the events specified in the above paragraphs (i) through to (iii).
- (o) Intellectual Property Rights or IPR: means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, Confidential Information, Your Data, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organization 1967.
- (p) Material Breach: means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit of which the terminating party would otherwise derive from:
 - (i) a substantial portion of this Agreement; or
 - (ii) any of the obligations set out in Sections 5, 6, 7, 8, 9 or 10,

and when deciding whether any breach is material, the parties must disregard whether the breach occurs or has occurred by accident, mishap, mistake or misunderstanding.
- (q) Personnel: means a party's officers, employees, contractors and agents and, in the case of Eftsure, Eftsure's service providers and subcontractors. Eftsure is not Your Personnel and You are not Eftsure's Personnel for the purposes of this Agreement despite this definition.
- (r) Privacy Policy: means Eftsure's privacy policy (as updated from time to time), which is located at eftsure.com/privacy-policy/.
- (s) Receiving Party: means a party to this Agreement who obtains the Confidential Information of the other party to this Agreement.
- (t) Review Date: means the first day of each Renewal Period.

- (u) Service Addendum: means a document that sets out details of, and additional terms and conditions applicable to, specific Eftsure Services.
- (v) Setup Service Fees: means the amount set out in the Commercial Terms payable for the Setup Services.
- (w) Setup Services: means the implementation services described in any applicable Service Addendum and any other services that are expressly specified in any applicable Service Addendum to fall within the scope of this definition. For the avoidance of doubt, this definition does not include Subscription Services.
- (x) Status Page: means the “system status” page (or other equivalent page) on Eftsure’s website, which displays the historical and current uptime of the Eftsure Services.
- (y) Subscription Service Fees: means the amount set out in the Commercial Terms payable for the applicable Subscription Service.
- (z) Subscription Services: means the ongoing services to be provided by Eftsure described in a relevant Service Addendum and any other services that are expressly specified in a Service Addendum to fall within the scope of this definition. For the avoidance of doubt, this definition does not include Setup Services.
- (aa) User: means:
 - (i) Your officers, employees, contractors and agents; and
 - (ii) the officers, employees, contractors and agents of Your Affiliates, authorized by You or Your Affiliates (as applicable) to access and use the Eftsure Services.
- (bb) You & Your: means the entity that has executed the Commercial Terms.
- (cc) Your Affiliates: means any Affiliates of You that are: (i) expressly named in the Entitlements as being an entity (other than You) permitted to access and use the Eftsure Services; or (ii) otherwise named as a user entity or equivalent (other than You) on the Portal Account.
- (dd) Your Data: means information or documents provided by You, Your Affiliates or any Users for the purpose of accessing or using the Eftsure Services.
- (ee) Your Other Software: means Your or Your Affiliates’ third party enabled compatible technology, that is, any compatible accounting, billing or onboarding software tool or middleware application (including, an enterprise resource planning platform).

14.2 Interpretation

- (a) Unless the context otherwise requires:
 - (i) a reference to “a party” means You or Eftsure (as the context dictates) and a reference to “the parties” means You and Eftsure;
 - (ii) a reference to a “Section”:
 - (A) in these Terms of Service, is to a section of these Terms of Service, except as expressly specified otherwise; and
 - (B) in a Service Addendum, is a reference to the section of the Service Addendum, except as expressly specified otherwise;

- (iii) headings are for convenience only and do not affect the construction of the Agreement;
 - (iv) a provision of this Agreement will not be interpreted against a party because that party prepared or was responsible for the preparation of the provision, or because the party's legal representative prepared the provision;
 - (v) references to currency or "\$" refers to US dollars, except as specified otherwise in this Agreement;
 - (vi) a reference to a statute or regulation includes amendments thereto;
 - (vii) a reference to a person includes a reference to an individual, a partnership, a company, a joint venture, a government body, a government department and any other legal entity;
 - (viii) the words "such as," "including," "particularly," "for example," and similar expressions are not words of limitation and will be interpreted as if the words "but not limited to" immediately followed them in each case; and
 - (ix) a reference to the singular includes the plural and vice versa.
- (b) All other capitalized terms that are not defined in this document have the same meaning given to those terms in any Service Addendum forming part of the Agreement, or the Commercial Terms, as applicable.