

## ***Eftsure Terms of Service version 3.0 (24 April 2024)***

### **1. Structure of this Agreement**

- 1.1 **Agreement structure** - Your agreement with Eftsure consists of:
- (a) the Commercial Terms;
  - (b) these Eftsure Terms of Service; and
  - (c) any applicable Service Addendum as set out in the Commercial Terms,

(together, this “**Agreement**”). This Agreement constitutes the entire agreement between the parties, and supersedes all previous agreements or understandings between the parties, in connection with its subject matter.

- 1.2 **Order of Precedence** – Unless expressly stated otherwise, if there is any inconsistency or conflict between:
- (a) the Commercial Terms;
  - (b) these Eftsure Terms of Service; and
  - (c) any applicable Service Addendum as set out in the Commercial Terms,

the document listed higher in the list above will prevail to the extent of the inconsistency or conflict.

### **2. Term**

- 2.1 **Term of Agreement** – This Agreement commences on the date set out in the Commercial Terms (“**Commencement Date**”) and continues:
- (a) for the initial period set out in the Commercial Terms (“**Initial Period**”); and
  - (b) subject to Section 2.2, automatically for successive periods thereafter as set out in the Commercial Terms (each, a “**Renewal Period**”) in which case You will be required to pay all applicable Fees for the Renewal Period in accordance with this Agreement, (“**Term**”).

- 2.2 **Notice of non-renewal** - Either party may elect not to renew this Agreement by giving not less than sixty (60) days’ notice prior to the expiry of:
- (a) the Initial Period; and
  - (b) any Renewal Period.

### **3. Provision of Services**

- 3.1 **Eftsure services** - Eftsure must provide:
- (a) the Setup Services to You (if applicable) as soon as practicable after the Commencement Date (or any other date the parties agree in writing); and
  - (b) the Eftsure Services to You during the Term.
- 3.2 **Grant of Your rights** - Eftsure grants You a non-exclusive, non-transferable, revocable right to permit Your users to:
- (a) access and use the Eftsure Services; and

- (b) access, use and reproduce the Documentation,

as required for You to get the full benefit of the Eftsure Services in: (i) Australia and New Zealand if You are contracting with Eftsure AU; or (ii) the United States of America (USA), if You are contracting with Eftsure US.

### **4. Standard of Service**

- 4.1 **Service Standards** - Eftsure must:

- (a) provide the Eftsure Services with due care and skill and diligence and in accordance with this Agreement;
- (b) ensure that the provision of the Eftsure Services does not infringe any applicable laws (including privacy laws);
- (c) where a Service Addendum specifies service levels for a particular Eftsure Service, use all commercially reasonable endeavours to provide the applicable Eftsure Services in accordance with such service levels;
- (d) ensure that the Eftsure Service substantially conforms to applicable Documentation provided or made available to You in relation to that Eftsure Service;
- (e) implement good industry practices, policies and procedures to prevent loss of Your Data; and
- (f) maintain reasonable safeguards, precautions and security procedures to protect the Eftsure Services from access or use by an unauthorised user and to protect Eftsure’s information technology systems, including implementing reasonable procedures to secure and guard Eftsure technology against viruses and unauthorised interception, access, use or loss of electronic communications between You and Eftsure.

- 4.2 **Limitations**

- (a) Unless otherwise agreed in writing by Eftsure, You must only use the Eftsure Services in: (i) Australia and New Zealand if You are contracting with Eftsure AU; or (ii) the USA if You are contracting with Eftsure US.
- (b) The use of the Eftsure Service by You may be subject to additional limitations. Any such limitations will be as stated in the Commercial Terms.
- (c) Notwithstanding any other Section of this Agreement, if You exceed or are reasonably likely to exceed the limitations during an Initial Period or Renewal Period, Eftsure may, by providing You with written notice, require that You engage in, and You must engage in, good faith discussions to agree:
  - (i) new limitations to reflect Your requirements for the remainder of

- the Initial Period or Renewal Period;  
and
- (ii) a reasonable increase in the Eftsure Service Fees to reflect the revised limitations.
- (d) Where the parties agree on limitations and Fees under Section 4.2(c):
- (i) the new limitations will apply from the date agreed by the parties and Eftsure may issue You with an invoice for the change in Fees as agreed above for the remainder of the Initial Period or relevant Renewal Period; and
  - (ii) the limitations and Fees for any subsequent Renewal Period will reflect the agreement of the parties above.
- (e) Where the parties are unable to agree limitations and Fees under Section 4.2(c):
- (i) the limitations and Fees will remain unchanged; and
  - (ii) You must immediately adjust Your usage so that You are compliant with the limitations set out in the Commercial Terms.

## **5. Your Responsibilities**

- 5.1 **Access technology** – You are responsible for:
- (a) obtaining and maintaining any software, internet connectivity, equipment and other technology necessary to access an Eftsure Service (including any third-party integration) (“**Access Technology**”); and
  - (b) ensuring that your Access Technology meets Eftsure’s reasonable technical requirements as notified from time to time.
- 5.2 **Security** - You must:
- (a) ensure that all usernames and passwords required to access an Eftsure Service are kept secure and confidential;
  - (b) maintain reasonable safeguards, precautions and security procedures to protect the Eftsure Services from access or use by an unauthorised user and to protect Eftsure’s information technology systems, including implementing reasonable procedures to secure your Access Technology and guard against viruses and unauthorised interception, access, use or loss of electronic communications between You and Eftsure;
  - (c) immediately notify Eftsure of any actual or suspected unauthorised use of Your accounts or unauthorised access to or use of the Eftsure Services; and
  - (d) take all other actions that Eftsure reasonably deems necessary to maintain or

enhance the security of Eftsure Services and Your access to the Eftsure Services.

You are responsible for any use of Eftsure Services through Your account, whether by You or a third party and whether authorized by You or not.

5.3 **Terms of use** - You must and must ensure that Your users do not:

- (a) attempt to undermine the security or integrity of Eftsure’s computing systems or networks or any third party’s computing systems and networks;
- (b) use the Eftsure Service in any way which may impair the functionality of the Eftsure Service for You or any other person (including, but not limited to, an unreasonable number of API requests in a short period of time) or which may breach an applicable law;
- (c) attempt to gain unauthorised access to any materials or computer systems other than those to which You have been given express permission to access under this Agreement;
- (d) transmit or upload anything:
  - (i) that may damage any other person’s computing devices or software; and/or
  - (ii) that may be offensive, or material, information or data in violation of any applicable law;
- (e) attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Eftsure Service except as permitted under this Agreement; or
- (f) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Eftsure Services or Documentation to any third party, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service.

## **6. Fees and invoicing**

6.1 **Fees and invoicing** – Your Fees are specified in the Commercial Terms. Eftsure will invoice You for the Fees as follows:

- (a) Setup Fees will be invoiced upon execution of the Commercial Terms by You; and
- (b) subject to Section 4.2 and the Commercial Terms, Eftsure Service Fees will be invoiced annually in advance on the first day of the Initial Period or Renewal Period (as applicable),

and You must pay each invoice issued under this Agreement within fourteen (14) days after the date of the invoice.

6.2 **Expenses** – To the extent that Eftsure incurs any out of pocket expenses in delivering the Setup

Services or 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.

6.3 **Late payments** – If any amount payable under this Agreement is not paid within 30 days of the relevant due date, Eftsure may, in its sole discretion:

- (a) charge interest on any overdue amounts from the due date, calculated daily at the lesser of:
  - (i) if You are contracting with Eftsure AU, the Reserve Bank of Australia cash rate plus 5%;
  - (ii) if You are contracting with Eftsure US, 1.5% per month; and
  - (iii) the maximum rate permitted by law; and/or
- (b) suspend Your access to or use of the Eftsure Services,

until the outstanding amount is paid. If Eftsure suspends Your access to or use of the Eftsure Services pursuant to Section 6.3(b), any Fee discount specified in the Commercial Terms will no longer apply to Your Fee with effect from the date of the suspension.

Nothing in this Section 6.3 limits Eftsure's right to terminate this Agreement pursuant to Section 12.2 or 12.3 as a result of Your failure to pay any amount when due.

6.4 **Fee increases** – Eftsure may increase the Eftsure Service Fee as follows:

- (a) subject to Section 6.4(b), Eftsure may increase the Eftsure Service Fee on each Review Date by giving You at least 90 days prior written notice of the change before the Review Date;
- (b) *This Section 6.4(b) applies only if You are contracting with Eftsure US.* If the first Review Date is during the Initial Period, any increase of the Eftsure Service Fee may not exceed 7% each year.

You acknowledge that any Fee discount specified in the Commercial Terms, applies for the Initial Term only.

## 7. Taxes

7.1 **GST** – *This Section 7.1 applies only if You are contracting with Eftsure AU.* Any consideration or payment obligation stated or referred to in this Agreement does not include GST. If GST is imposed on any Supply, as that term is defined in the *A New Tax System (Goods and Services Tax)*

*Act 1999 (Cth) ("GST Law")*, other than a Supply which is GST free under subsection 38-190 of the GST Law, made by any party ("**Supplier**") to any other party ("**Recipient**") under or in connection with this Agreement, the consideration for that Supply is increased by an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of that Supply. Supplier must provide to Recipient a GST tax invoice as required by the relevant legislation.

7.2 **Other taxes** - Fees are exclusive of taxes, duties and charges imposed or levied in Australia, the USA or any other country in connection with the supply and use of the Eftsure Service, including but not limited to GST and 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. Without limiting the foregoing, You will be liable for any new taxes, duties or charges imposed after the date of first provision of the Eftsure Service in respect of provision of the Eftsure Service.

## 8. Confidentiality

### 8.1 Use and disclosure of Confidential Information

- A Receiving Party must, with respect to any Confidential Information disclosed by the Disclosing Party:

- (a) protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care).
- (b) use the Confidential Information:
  - (i) only in connection with the Receiving Party's performance of this Agreement; and
  - (ii) as otherwise set out in this Agreement;
- (c) only disclose the Confidential Information:
  - (i) as set out in this Agreement, or with the prior written consent of the Disclosing Party; and
  - (ii) restrict disclosure of the Confidential Information within the Receiving Party's organisation to personnel and consultants who need to know that Confidential Information in connection with the Receiving Party's rights and obligations under this Agreement.

8.2 **Compliance by personnel** - The Receiving Party will, before providing any personnel or consultant with access to Confidential Information of the Disclosing Party, 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. The Receiving Party shall

be liable for any actions of its personnel or consultants with respect to the Disclosing Party's Confidential Information.

- 8.3 **Required disclosures** - If a party is required to disclose any of another party's Confidential Information pursuant to any applicable law, that party must not disclose the Confidential Information without first giving the other 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.

## **9. Intellectual Property and Your Data**

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- 9.1 **Ownership of Your Data** - As between Eftsure and You, You own all right, title and interest (including Intellectual Property Rights) in and to Your Data. Eftsure has no ownership interest in Your Data, and its rights to Your Data are limited to the licence granted in this Agreement.

- 9.2 **Licence of Your Data** - You grant Eftsure and its Affiliates a perpetual, non-exclusive, irrevocable, fully-paid up licence to use, disclose, copy, transmit, store, back-up and modify Your Data solely in connection with:

- (a) the provision of the Eftsure Services to You;
- (b) where You enable third-party applications to interoperate with the Eftsure Service, allowing the providers of third-party applications to access Your Data as required for that interoperation; and
- (c) as otherwise set out in a Service Addendum, which for clarity, may include the cross-verification of supplier data and onboarding.

This licence includes the right of Eftsure to permit its subcontractors to exercise any right granted under the licence, solely for the purposes set out in paragraphs (a) to (c) above.

- 9.3 **Eftsure Services and Documentation** - You agree that 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 and the Documentation. Your rights to access and use the Eftsure Services and the Documentation are limited to those expressly granted under this Agreement.

- 9.4 **Detection of fraud** - You acknowledge that when Eftsure detects fraud while providing the Eftsure Services to its customers, it is beneficial for all customers of Eftsure, as well as the wider community, to understand how the fraud was perpetrated. If Eftsure identifies fraud while providing the Eftsure Services to You, You consent to Eftsure:

- (a) providing the name of the relevant supplier, account number, BSB and any other equivalent information in jurisdictions other than Australia, to Your financial institution as well as the financial institution of the relevant supplier; and

- (b) using Your name and the details of the fraud identified by Eftsure to educate and warn the community as to how frauds are being perpetrated, and for other marketing purposes.

- 9.5 **Privacy laws & privacy policy** - Both parties must comply with all applicable privacy laws. Eftsure will handle any personal information contained in Your Data in accordance with this Agreement and its Privacy Policy.

- 9.6 **Consents** - You must ensure that You have obtained any consents as may be necessary or desirable to enable You to disclose Your Data to Eftsure so that Eftsure may provide the Eftsure Services in accordance with this Agreement.

## **10. Indemnities**

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### **10.1 Eftsure indemnity**

- (a) Eftsure must defend any claims made against You that Your use of the Eftsure Services or Documentation in accordance with this Agreement infringes the Intellectual Property Rights of a third party and indemnify You against any costs or damages finally awarded against You, or agreed by Eftsure in settlement of the claim.
- (b) Eftsure will not indemnify You, under paragraph (a) to the extent that the infringement or claim of infringement is caused or contributed to by:
  - (i) Your use of the Eftsure Services and Documentation other than in accordance with this Agreement;
  - (ii) modification of the Eftsure Services or Documentation other than by or on behalf of Eftsure;
  - (iii) Your failure to install or use corrections or enhancements that have been made available by or on behalf of Eftsure;
  - (iv) Your use of the Eftsure Services in combination with any product or information not owned or developed by Eftsure, except to the extent contemplated in the Commercial Terms;
  - (v) any information, software, direction, specification or materials provided by You or any third party (including Your Data); or
  - (vi) any wilful, wrongful or negligent act or omission of You in the use of the Eftsure Services.

- 10.2 **Your indemnity** - You indemnify Eftsure against any loss, damage, cost or expense ("**Loss**") suffered or incurred by Eftsure to the extent such Loss results from:

- (a) Your provision of Your Data to Eftsure or use by Eftsure of Your Data in accordance with this Agreement; or

- (b) any claim that Your use of the Eftsure Services other than in accordance with this Agreement or Your provision of, or use by Eftsure of, Your Data in accordance with this Agreement infringes a third party's rights (including Intellectual Property Rights).
- 10.3 **Indemnity procedures** – The party seeking to recover under an indemnity under this Agreement, in relation to a third-party claim, must:
- (a) promptly notify the indemnifying party of the claim;
  - (b) cooperate in good faith with the indemnifying party, at the indemnifying party's expense;
  - (c) provide full authority to the indemnifying party to defend or settle the claim; and
  - (d) not make any admissions in relation to the claim without the prior written consent of the indemnifying party.
- 10.4 **Settlement of indemnified claims by indemnifying party** – The indemnifying party may not, without indemnified party's prior written consent, which shall not be unreasonably withheld, settle or compromise any claim or consent to the entry of any judgment regarding which indemnification is being sought hereunder 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. Liability**
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- 11.1 **Disclaimer** – In addition to any other provisions in a Service Addendum, to the extent permitted by law:
- (a) Eftsure excludes liability for any loss of Your Data as Eftsure does not operate a data storage service and You 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 third-party application providers under Section 9.2(b);
  - (c) except as expressly provided in this Agreement, Eftsure does not make any warranties in respect of the Eftsure Services, including that access to and use of the Eftsure Services will be uninterrupted or error free; and
  - (d) Eftsure excludes all implied guarantees, conditions or warranties, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.
- 11.2 **Downtime** – You acknowledge that, on occasions, the Eftsure Services may be unavailable in order to permit maintenance or other development activity to take place. If, for any reason, Eftsure is required to interrupt the Eftsure Services for longer periods than Eftsure would normally expect, Eftsure will use commercially reasonable endeavours to publish details of such downtime on the Eftsure website in advance.
- 11.3 **Non-excludable provisions** – *This Section 11.3 applies only if You are contracting with Eftsure AU.* To the extent permitted by law, if any guarantee, term, condition or warranty is implied into this Agreement under the Australian Consumer Law or any other applicable legislation (a “**Non-Excludable Provision**”), then Eftsure's liability for breach of the Non-Excludable Provision is limited to one or more of the following at Eftsure's option:
- (a) in the case of goods, replacement of the goods or the supply of equivalent goods, the repair of the goods, payment of the cost of replacing the goods or of acquiring equivalent goods, or payment of the cost of having the goods repaired; or
  - (b) in the case of services, supplying of the services again, or payment of the cost of having the services supplied again.
- 11.4 **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 profits, loss of business, depletion of goodwill or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising in connection with this Agreement.
- 11.5 **Mutual liability cap** – To the extent permitted by law, a party's total liability, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the Agreement is limited to the total Fees paid or payable during the 12 months immediately before the date on which the cause of action arose.
- 11.6 **Mutual liability cap exceptions** – The liability cap in section 11.5 will not apply to:
- (a) Your obligation to pay the Fees;
  - (b) personal injury or tangible property damage caused by a party; and
  - (c) the indemnity in Section 10.2.
- 11.7 **Proportionate liability reduction and mitigation** - The liability of a party, whether in contract (including under an indemnity), tort, (including negligence), under statute, or otherwise, will be reduced by the extent, if any, to which the other party contributed to the loss. 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), under statute or otherwise.

## **12. Termination**

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- 12.1 **Cooling off period termination** – *This Section 12.1 applies only if You are contracting with Eftsure AU.* If the Initial Term is twelve (12) calendar months or less, You may, at any time during the first month of the Initial Period (“**Cooling Off Period**”), terminate this Agreement by providing written notice to Eftsure. Where You terminate this Agreement in accordance with this clause and You provide Eftsure with a written request to refund any Fees paid by You (including any Setup Fee and Eftsure Service Fees) then Eftsure will refund such Fees as soon as reasonably practicable after the effective date of termination.
- 12.2 **Mutual termination rights** - Either party may terminate this Agreement immediately by notice in writing to the other party if the other party:
- materially breaches any term of this Agreement and such breach is not capable of remedy;
  - materially breaches any term of this Agreement and such breach is capable of remedy and the breaching party fails to rectify that breach within thirty (30) days of receiving a notice from the other party requiring it to do so; or
  - becomes insolvent or goes into liquidation or voluntary administration or has a receiver or manager appointed to any of its assets, or makes any arrangement with its creditors, or becomes subject to any similar insolvency event in any jurisdiction.
- 12.3 **Eftsure termination rights** - Eftsure may terminate this Agreement by providing You with written notice if You have failed to pay an amount due under this Agreement more than 30 days after the due date.
- 12.4 **Eftsure suspension rights** – Without limiting any other provision of this Agreement or Eftsure’s other rights, where Eftsure has a termination right under this Agreement, Eftsure may elect to suspend Your access to or use of the Eftsure Services.
- 12.5 **Effect of expiry or termination** - On the date of expiry or effective termination of this Agreement:
- You will remain liable for any accrued charges and amounts which become due for payment before or after termination;
  - You must immediately cease using (and must procure that all of Your users immediately cease using) the Eftsure Services; and
  - You must within thirty (30) days of termination send to Eftsure, or otherwise dispose of in accordance with Eftsure’s directions, all of Eftsure’s Confidential Information relating to the Eftsure Services

(including the Documentation) then in Your (or Your users’) possession or control.

- 12.6 **Survival** – Sections 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**

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- 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 all commercially reasonable endeavours 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** – Except as set out in this Section, neither party may assign, novate, sub-license or otherwise transfer the benefit of this Agreement without the other’s prior written consent. Notwithstanding the above, Eftsure may assign, novate, sub-license or otherwise transfer the benefit of this Agreement to:
- a bona fide purchaser of all or a substantial part of Eftsure’s assets; or
  - an Affiliate of Eftsure,
- by providing prior written notice to You.
- 13.3 **Variation** -
- Unless expressly stated in this Agreement, this Agreement may not be varied unless such variation is in writing and signed by each party.
  - Eftsure may amend any applicable Service Addendum by giving You at least 30 days prior notice.
  - If Eftsure amends a Service Addendum and that amendment has a material detrimental impact on You, then You may terminate this Agreement immediately by notice in writing to Eftsure.
  - Where You terminate this Agreement in accordance with Section 13.3(c) and You provide Eftsure with a written request to refund any Eftsure Service Fees paid by You that relate to the unexpired portion of the Term, then Eftsure:
    - will refund such Eftsure Service Fees to You as soon as reasonably practicable after the effective date of termination; and
    - may retain any Eftsure Service Fees paid by You for Eftsure Services provided to You up to the effective date of termination.

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 the Eftsure Service implies that You sponsor, approve or otherwise endorse the Eftsure Service in any way.

13.5 **Notices**

- (a) Any notice required or authorised to be given or served on a party under this Agreement must be in writing and delivered personally, by pre-paid registered letter or by email addressed to the relevant party.
- (b) Notice will be deemed given on the date of personal delivery; if posted, within the three days of mailing; and if sent by email, one business hour after the time that the sender's information system recorded that the email (including any attachments) left that information system, unless within eight business hours, the sender is informed (by automatic notice or otherwise) that the email has not been received by the recipient.

13.6 **Governing Law** - If You are contracting with Eftsure AU, this Agreement is governed by the laws of New South Wales, Australia. The parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales, Australia. If You are contracting with Eftsure US, this Agreement is governed by the laws of the state of Delaware, USA. The parties irrevocably submit to the exclusive jurisdiction of the courts of Salt Lake City, Utah, USA.

13.7 **Counterparts** - This Agreement may be executed in counterparts. All executed counterparts constitute one document.

13.8 **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.

13.9 **Relationship** - The parties are independent contractors and nothing in this Agreement creates a relationship of principal/agent, partnership or joint venture.

13.10 **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**

14.1 These meanings apply unless the contrary intention appears:

- (a) **Access Technology** is defined in Section 5.1.

(b) **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.

(c) **Commencement Date** is defined in Section 2.1.

(d) **Commercial Terms** means a document setting out the commercial details of your procurement of the Eftsure Services and Setup Services executed by You.

(e) **Confidential Information** of a Disclosing Party means the following information, regardless of its form and whether the Receiving Party becomes aware of it before or after the date of this Agreement:

- (i) information that is by its nature is confidential;
- (ii) information that is designated by the Disclosing Party as confidential; and
- (iii) information the Receiving Party knows, or ought to know, is confidential;

and:

- (iv) in the case of Eftsure, includes Your Fees and the Eftsure Services (including any Documentation); and
- (v) in the case of You, includes Your Data, subject to Section 14.1(e)(x),

but in all cases excludes information that:

- (vi) is in the public domain, not by breach of this Agreement by the Receiving Party or any of its permitted disclosees;
- (vii) is known by the Receiving Party at the time of disclosure;
- (viii) the Receiving Party creates (whether alone or jointly with any third person) independently of the Disclosing Party;
- (ix) is lawfully obtained by the Receiving Party from a third party other than through a breach of confidence; or
- (x) relates to a supplier and is stored in the Eftsure Service. For clarity, the fact that a supplier is a supplier to a particular Eftsure customer, is confidential, however the supplier data stored in the Eftsure Service is not confidential.

(f) **Cooling-off period** is defined in Section 12.1.

(g) **Documentation** any technical documentation, user guides and training

- materials provided by Eftsure with respect to the Setup Service and/or Eftsure Service from time to time.
- (h) **Disclosing Party** means a party to this Agreement who discloses or makes available Confidential Information to the Receiving Party.
- (i) **Eftsure** means the Eftsure entity set out in the Commercial Terms.
- (j) **Eftsure Service** means the ongoing services provided by Eftsure as further described in a Service Addendum.
- (k) **Eftsure Service Fees** means the amount set out in the Commercial Terms payable for the Eftsure Service.
- (l) **Fees** means:
- (i) the Setup Service Fees; and/or
  - (ii) the Eftsure Services Fees.
- (m) **Initial Period** is defined in Section 2.1(a).
- (n) **Intellectual Property Rights** 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, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.
- (o) **Non-Excludable Provision** is defined in Section 11.3.
- (p) **Privacy Policy** means the document located at: (i) [eftsure.com/en-au/privacy-policy/](https://eftsure.com/en-au/privacy-policy/) if You are contracting with Eftsure AU; or (ii) [eftsure.com/privacy-policy/](https://eftsure.com/privacy-policy/) if You are contracting with Eftsure US.
- (q) **Service Addendum** means a document published by Eftsure which sets out details of, and additional terms and conditions applicable to, specific Eftsure Services.
- (r) **Receiving Party** means a party to this Agreement who obtains the Confidential Information of the other party to this Agreement.
- (s) **Renewal Period** is defined in Section 2.1(b).
- (t) **Review Date** has the meaning given in the Commercial Terms.
- (u) **Setup Service** means the implementation services described in the Service Addendum.
- (v) **Setup Service Fee** means the amount set out in the Commercial Terms payable for the Setup Service.
- (w) **Term** is defined in Section 2.
- (x) **You & Your** means the entity that has executed the Commercial Terms.
- (y) **Your Data** means data provided by You or Your users for the purpose of receiving the Eftsure Services and all results from processing such data.