
EFTsure Service Terms 16th June 2017

1 About these EFTsure Service Terms

These EFTsure Terms (**Terms**) are published by EFTsure Pty Limited ABN 21 168 403 736 (**EFTsure, we or us**), an Australian owned and operated business that provides electronic payment authentication services to Australian businesses.

The EFTsure service (the **Service**) means the EFTsure payee verification service as described on our Website (as may be changed or updated from time to time by EFTsure via the Website).

These Terms:

- tell you who EFTsure is and what we do; and
- set out other (non-privacy and confidentiality related) terms on which we will provide the EFTsure Service to customers.

An associated document - the EFTsure Privacy Statement and Confidentiality Commitment:

- sets out other (non-privacy and confidentiality related) terms on which we will provide the EFTsure Service to customers;
- states our key commitments to each customer that entrusts us with recipient names and account numbers for verification. Our key commitments are:
 - (1) that EFTsure will maintain business confidentiality and will not disclose that a particular customer deals with particular persons and entities except for the purpose of conducting verification of payee details for that customer or otherwise at the request of that customer,
 - (2) that payee names and account details are only to be used or disclosed for the purposes and in the ways described in the EFTsure Privacy Statement and Confidentiality Commitment;
- sets out how we collect, use and disclose other personal information that we collect or that is entrusted to us.

These Terms and the EFTsure Privacy Statement and Confidentiality Commitment when the subject of an Order placed by a customer for the EFTsure Service form part of an agreement between EFTsure and that customer. Each document is important. Please take the time to read them.

The Service supports some of Australia's leading businesses by ensuring that payments made by our customers go to the right bank account of intended recipients. EFTsure does this by:

- verifying proposed recipient names and account numbers (provided to us by our customers for checking) as recorded by our respective customers as prospective payers. We do this by enquiry made by us of prospective recipients; and
- confirming the correct payee details to our customers as payers before payment is made to the recipient.

These Terms are binding on EFTsure and each customer as to provision and any use of the Service.

The Service will evolve over time based on customer feedback. These Terms are not intended to answer every question or address every issue raised by the use of the Service. EFTsure reserves the right to change these terms at any time, effective upon reasonable prior notice and the posting of modified terms. EFTsure will make every effort to communicate these changes to each customer (in these Terms, **You**), via email or notification via the Website. It is Your obligation to ensure that You have read, understood and agree to the most recent terms available on the Website.

By placing an Order for the Service You acknowledge that You have read and understood these Terms and have the authority to act on behalf of any person for whom You are using the Service.

These Terms were last updated on 29 February 2016.

2 Definitions

"Agreement" means these Terms of Use, the EFTsure Privacy Statement and Confidentiality Commitment, the Fee Schedule and any Order.

"Fee" means an amount payable for or in relation to performance of the Service or otherwise pursuant to this Agreement, including as specified in the Fee Schedule or an applicable Order.

"Fee Schedule" means the statement of applicable fees and charges for provision of the Service as set out on the Website (which EFTsure may change from time to time subject to reasonable prior notice).

"Intellectual Property Right" means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property right, anywhere in the world and whether or not registered.

Law includes any applicable law (including legislation), mandatory code of practice and mandatory industry standard or code (whatever called).

"Order" means an order agreed in writing between us and you for services to be provided by EFTsure to You, including delivery of any report or other deliverables as stated in that order.

"Website" means the Internet site at the domain www.EFTsure.com.au.

3 Ordering and provision of Service

- (a) Upon acceptance by EFTsure of an Order placed by You for provision of the Service, EFTsure will provide the Service to You. Your right to use the Service is non-exclusive, non-transferable, and limited by and subject to this Agreement.
- (b) An Order placed on EFTsure for the Services must be in the form specified by EFTsure. An Order will only vary these Terms and the Fee Schedule if the Order is expressly stated as intended to vary these Terms and the Fee Schedule and that Order is then accepted by EFTsure notwithstanding that express statement of variation. Otherwise a purposed variation of these Terms and the Fee Schedule by inconsistent terms of any Order will not take effect.

- (c) EFTsure relies upon a variety of means to verify payment details, including enquiry made by EFTsure of prospective recipients, cross-verification using records of previous verifications that EFTsure has conducted in relation to the proposed recipient, or cross-verification by matching multiple requests made by multiple customers. These methods are considered by EFTsure to be reliable to substantially reduce risks of error or fraud by third parties, but these methods do not fully address or fully eliminate all risks of error or fraud. Further, EFTsure cannot make enquiry of the payee's bank (because the payee's bank will not provide relevant details because of operation of banker's duty of confidentiality). There also remains risk of error or fraud at a payee's bank. The Service is provided by EFTsure with full disclosure to You as to these remaining risks and that these risks are not fully ameliorated through verification and cross-verification conducted by EFTsure. You agree that EFTsure excludes liability and is not liable in relation to any loss or damage that you suffer through any error or fraud that is not detected by EFTsure after EFTsure has acted reasonably and has undertaken the verification and cross-verification processes as described in this Agreement and the EFTsure Privacy Statement and Confidentiality Commitment.
- (d) EFTsure will use all reasonable commercial endeavours to maximise verification rates and to minimise the period taken for verification. However, EFTsure cannot assure any particular verification response rate, the period within which verifications will be conducted or the proportion of successful verifications.
- (e) EFTsure acting reasonably is entitled to rely and may rely upon a statement by a person purporting to exercise authority for a prospective payee as to verification of payment details for a prospective payee. Verification will be based upon the actual knowledge of EFTsure at that time based upon statements by person purporting to exercise authority for prospective payees as to verification of the respective payee's payment details. EFTsure is not required to make further enquiries as to either the actual or apparent authority of that person or otherwise in relation to any details concerning the prospective payee. You agree that EFTsure excludes liability and is not liable where it verifies details of a prospective payee in reliance upon a statement by a person purporting to exercise authority for a prospective payee, whether that statement was made in response to a verification enquiry made following a request by You or in response to any prior request made by any prior customer of EFTsure.
- (f) EFTsure will report as to verifications in such in any electronic or printed form as EFTsure elects to make available from time to time, including by provision of electronic tags or flags as to validated payee records provided in such form as EFTsure elects to make available from time to time.
- (g) Any product or output such as reports, tags or flags, data analyses, factors and tables made available or provided to You in any electronic or printed form in the course of provision of any service is, for the purposes of this Agreement, a **report**. You agree, in relation to any report, other communication or other deliverable that EFTsure provide to You that:
- (i) You may only rely only on our final report (whether in the form of tags or flags, data analyses, factors and tables or such other form as we may agree) and not on an interim communication or other advice or interim deliverables. If you wish to rely on an interim communication or other advice or interim deliverable, please let us know and, at your cost, we will prepare a report on which you may rely;
 - (ii) we are not responsible for updating reports, any interim communication or other advice or any interim deliverable that we provide, except on such refresh or recheck cycles as we may agree with You. Reports will only be

updated by provision of a further report on such refresh or recheck cycles as we may agree with You or otherwise at your request and then at your cost.

- (h) Any report provided to you may only be used for Your own use and use by your related bodies corporate in relation to payments to be made by You or those related bodies corporate for or in relation to Your own business and the business of those related bodies corporate, which must not include resale of our Service or provision of the benefit of our Service to any entity other than You and Your related bodies corporate.
- (i) You agree that You will not alter, obscure, remove, interfere with or add to any logos, trademarks, trade names, markings or notices used on or contained in any reports or other deliverables at the time they are delivered to You. You will ensure that all of our logos, trademarks, trade names, markings and notices are reproduced on all copies of any reports or other deliverables.
- (j) You agree that we may use and reproduce Your name and logo on our Website and in our marketing documentation as a customer of EFTsure. We agree that we will not suggest in any way that the fact that you are a customer of the Service implies that you sponsor or approve or endorse our Service in any way.
- (k) EFTsure relies on You to supply complete and accurate information relevant to provision of our Service and that we may use in relation to provision of our Service, without breaching any law or rights of any third party. You agree that in order to perform the Services and deliver the reports and any other deliverables to You and (subject at all times to us properly performing the verification service) we are entitled to rely on information provided by You and your right to provide that information to us without enquiry or further verification. Subject at all times to us properly performing the verification service and except the extent that we have expressly agreed in any Order to check or verify information provided by you, we will not check or verify that information in any way. You agree, as a fundamental term of this Agreement on which we rely, that any use by us of anything provided by you (or your employees, officers, contractors, representatives or agents and any members of your group) to assist us to perform the Service or deliver reports or other deliverables will not infringe any right of privacy or other legal right of any party or breach any Law. You indemnify us and agree to keep us indemnified against loss or damage that we suffer or incur arising out of your materials infringing or breaching any Law.
- (l) Subject to paragraph (k) above:
 - (i) we agree that performance of the Service and delivery of reports or other deliverables will not infringe any Law; and
 - (ii) we will indemnify You and agree to keep You indemnified against loss or damage to the extent reasonably attributable to our performance of the Service infringing or breaching any Law or delivery of reports or other deliverables infringing or breaching any Law.
- (m) You agree to have in place reasonable safeguards, precautions and security procedures to protect our services, deliverables and software from access of use by an unauthorised user and to protect our information technology systems, including implementing reasonable procedures to guard against viruses and unauthorised interception, access, use or loss of electronic communications between You and us.
- (n) EFTsure agrees to have in place reasonable safeguards, precautions and security procedures to protect Your services from access of use by an unauthorised user and to protect Your information technology systems, including implementing

reasonable procedures to guard against viruses and unauthorised interception, access, use or loss of electronic communications between You and us.

- (o) You acknowledge that:
 - (i) EFTsure has no responsibility to any person other than You. Nothing in this Agreement confers, or purports to confer, a benefit on any person other than You.
 - (ii) It is Your sole responsibility to determine that the Services meet the needs of Your business and are suitable for the purposes for which they are used.
 - (iii) EFTsure does not warrant that access to and use of the Service will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Service, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Services. EFTsure is not in any way responsible for any such interference or prevention of Your access or use of the Service.
- (iv) Without limiting your rights under any Law, EFTsure gives no further or express warranty or guarantee about the Service. Without limiting the foregoing, EFTsure does not warrant that the Service will meet Your requirements or that it will be suitable for any particular purpose. To avoid doubt but subject to Law including statutory guarantees which cannot be excluded (but limited to the extent permitted in respect of those statutory guarantees), EFTsure excludes all implied guarantees, conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

4 Your Obligations

- (a) **Payment:** You agree to pay to us the charges set out in any the Fees Schedule and any applicable Order, plus any applicable goods and services tax (**GST**) and other taxes on provision of services and other deliverables, within fourteen (14) days after the date of our invoice issued for those charges.
- (b) We may at our election, charge you:
 - (i) **Expenses:** at cost, for our reasonable expenses and also disbursements for goods and services purchased on your behalf. Travel on your behalf is reimbursable by you in accordance with our standard policies, which we will provided to you at your request and include economy class for air travel within Australia and business class or equivalent for overseas air travel; and
 - (ii) **interest on late payment:** interest on overdue amounts at an annual rate of two (2) per cent over the Reserve Bank of Australia base rate as at the date payment was due and not made.
- (c) You may also purchase certain value-added services. If you elect to use such services, you agree to pay in advance the required Fees as specified in the Fees Schedule.
- (d) Any consideration or payment obligation stated or referred to in this Client 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 Client 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. The Supplier must provide to the Recipient a GST tax invoice as required by the relevant legislation.

- (e) The Fees are exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with the supply and use of our Services (including GST). Without limiting the foregoing, you will be liable for any new taxes, duties or charges imposed subsequent to the date of Order in respect of provision of the Service.
- (f) You must provide us with accurate and complete payment information and you must keep this information up-to-date at all times.
- (g) We may:
 - (i) increase the Fees at any time by giving you at least 30 days prior notice;
 - (ii) alter the amount we deduct from your credit card or debit card if the Fees change in accordance with this Agreement; and
 - (iii) deduct any other payment owed to us under this Agreement.

5 Access conditions:

- (a) You must ensure that all usernames and passwords required to access the Service are kept secure and confidential. You must immediately notify EFTsure of any unauthorised use of Your passwords or any other breach of security. EFTsure will then reset Your password. You must take all other actions that EFTsure reasonably deems necessary to maintain or enhance the security of EFTsure's computing systems and networks and Your access to the Services.
- (b) As a condition of these Terms, when accessing and using the Service, You must:
 - (i) not attempt to undermine the security or integrity of EFTsure's computing systems or networks or, where the Service is hosted by a third party, that third party's computing systems and networks;
 - (ii) not use, or misuse, the Service in any way which may impair the functionality of the Service or Website, or other systems used to deliver the Services or impair the ability of any other user to use the Service or Website;
 - (iii) not attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access or to the computer system on which the Services are hosted;
 - (iv) not transmit, or input into the Website, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or information or data in violation of any law (including data or other material protected by copyright or the law relating to confidential information and trade secrets which You do not have the right to use); and
 - (v) not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Service or to operate the Website except as is strictly necessary to use either of them for normal operation.

- (c) Use of the Service may be subject to limitations including but not limited to number of verifications in any period or other transaction volumes and as to the number of calls that You are permitted to make against EFTsure's application programming interface. Any such limitations will be as stated in an Order or our Fees Schedule.

6 Intellectual Property and information that you submit to us

- (a) Title to, and any and all Intellectual Property Rights in the Service, the Website and any documentation relating to the Service remains the property of EFTsure (or its licensors).
- (b) Title to, and any and all Intellectual Property Rights in, information that you submit to us remains Your property but may be used and disclosed in accordance with the Privacy Statement and Confidentiality Commitment. Further, Your access to information that you submit to us is contingent on full payment of our charges when due.
- (c) You grant EFTsure a licence to use, copy, transmit, store, and back-up information that you submit to us for the purposes of provision of the Service and for any other purpose that is in accordance with the Privacy Statement and Confidentiality Commitment.
- (d) You must maintain copies of information that you submit to us. EFTsure adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of information that you submit to us. EFTsure expressly excludes liability for any loss of information that you submit to us no matter how caused.
- (e) If You enable third-party applications for use in conjunction with the Service, You acknowledge that EFTsure may allow the providers of those third-party applications to access information that you submit to us as required for the interoperation of such third-party applications with the Services. EFTsure shall not be responsible for any disclosure, modification or deletion of information that you submit to us resulting from any such access by third-party application providers.

7 Limitation and Exclusions of Liability

- (a) To the maximum extent permitted by law, we are not liable for any losses or claims that You or your related bodies corporate may incur in relation to use of the Service, except to the extent that these losses or claims are suffered by You and directly arise from our breach of this Agreement.
- (b) Nothing in this Agreement excludes, restricts or modifies any guarantee, term, condition, warranty, or any right or remedy, implied or imposed by any legislation which cannot lawfully be excluded or limited, including the Australian Consumer Law which contains guarantees that protect the purchasers of goods and services in certain circumstances.
- (c) 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**) and we are able to limit Your remedy for a breach of the Non-Excludable Provision, then our liability for breach of the Non-Excludable Provision is limited to one or more of the following at our option:
 - (i) 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
- (ii) in the case of services, supplying of the services again, or payment of the cost of having the services supplied again.
- (d) Subject to paragraphs (e), (f) and (g) and our obligations pursuant to any Non-Excludable Provision, and to the maximum extent permitted by law, our maximum aggregate liability for all claims under or relating to this Agreement or the Service whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to the lesser of:
- (i) the Fees paid by you in the preceding 12 months; or
 - (ii) AUD \$10,000.
- (e) Subject to our obligations under the Non-Excludable Provisions, and to the maximum extent permitted by law, we are not liable for, and no measure of damages will, under any circumstances, include:
- (i) special, indirect, consequential, incidental or punitive damages; or
 - (ii) damages for loss of profits, revenue, goodwill, anticipated savings or loss, damage or corruption of data (including any data or information that is inputted by You), whether in contract, tort (including negligence), in equity, under statute or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of such loss or damage.
- (f) Our liability to You is diminished to the extent that acts or omissions of You or any person for whom you are responsible or other third parties contribute to or cause the loss or liability.
- (g) You indemnify us against any claim, proceedings, loss, damage, fine, penalty, interest and expense arising out of or in connection with breach of this Agreement by You in respect of Your access to and use of the Service and non-compliance with Laws by You or any person for whom you are responsible.

8 Termination

- (a) Provision of the Service will continue for the period covered by an Access Fee paid in advance.
- (b) At the end of each billing period these Terms will automatically continue for another period of the same duration as that period, provided You continue to pay the prescribed Access Fee when due, unless either party terminates these Terms by giving notice to the other party at least 30 days before the end of the relevant payment period.
- (c) If You terminate these Terms You shall be liable to pay all relevant Fees on a pro-rata basis for each day of the then current period up to and including the day of termination of these Terms.
- (d) If You:
 - (i) breach any of these Terms (including, without limitation, by non-payment of any Fees) and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;

- (ii) breach any of these Terms and the breach is not capable of being remedied (which includes (without limitation) or any payment of Fees that are more than 30 days overdue); or
- (iii) You or Your business become insolvent or Your business goes into liquidation or has a receiver or manager appointed of any of its assets or if You become insolvent, or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction,

EFTsure may take any or all of the following actions, at its sole discretion:

- (A) terminate this Agreement and Your use of the Service;
 - (B) suspend for any definite or indefinite period of time, Your use of the Service.
- (e) For the avoidance of doubt, if payment of any invoice for Fees due is not made in full by the relevant due date, EFTsure may: suspend or terminate Your use of the Service and the authority for You to use the Service.
 - (f) Termination of this Agreement is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement:
 - (i) You will remain liable for any accrued charges and amounts which become due for payment before or after termination; and
 - (ii) You must immediately cease to use the Services and the Website.

9 Help Desk

- (a) In the case of technical problems You must make all reasonable efforts to investigate and diagnose problems before contacting EFTsure.
- (b) If You still need technical help, please check the support provided online by EFTsure on the Website or failing that email us at [support@eftsure.com.au].

10 Service availability:

- (a) Whilst EFTsure intends that the Services should be available 24 hours a day, seven days a week, it is possible that on occasions the Services or Website may be unavailable to permit maintenance or other development activity to take place.
- (b) If for any reason EFTsure has to interrupt the Services for longer periods than EFTsure would normally expect, EFTsure will use reasonable endeavours to publish in advance details of such activity on the Website.

11 General

- (a) If any part of these Terms is held to be unenforceable, the unenforceable part is to be given effect to the greatest extent possible and the remainder will remain in full force and effect. This clause has no effect if the deletion alters the basic nature of this Agreement or is contrary to public policy.

- (b) This Agreement is governed by the laws of New South Wales, Australia. You irrevocably submit to the exclusive jurisdiction of the courts of New South Wales, Australia.
- (c) A person who is not a party to this Agreement has no right to benefit under or to enforce any term of these Terms.
- (d) The provisions of this Agreement constitute the entire agreement between us and you in relation to the Service and supersede all other (prior or contemporaneous) communications or displays whether electronic, oral, or written, between us and you in relation to the Service.
- (e) Your use of the Service is conducted electronically. You agree that we may communicate with you electronically for all aspects of Your use of the Service, including sending you electronic notices.
- (f) No waiver, delay or failure by us to take any action shall constitute or be construed as a waiver of that or any other term, condition, option, privilege or right we may have.
- (g) Neither of us will be liable for any delay or non-performance of our obligations under this Agreement to the extent to which that delay or non-performance arises for any act or omission beyond their reasonable control which could not reasonably be planned for or avoided. This clause does not apply to any obligation to pay money. Each of us agrees to promptly notifying the other in writing of the cause of the delay or non-performance and the likely duration of the delay or non-performance. Provided that the affected party uses its reasonable endeavours to limit the effect of that delay or non-performance on the other party, the affected party's obligations to perform, to the extent affected by the cause, will be suspended during the period that the cause persists. If performance is not resumed within a reasonable period after the cause of the delay or non-performance ceases to operate the other party may terminate this Agreement immediately by written notice to the affected party.
- (h) A provision of this Agreement, or any right referenced in it, may only be waived by written notice signed by the party granting the waiver. Waiver of a breach of this Agreement does not waive any other breach.
- (i) We are your independent contractor. Neither party is a partner, agent, employee, joint venturer, fiduciary or legal representative of the other party. Neither party has authority to bind the other in any way.
- (j) All notices, consents or other communication must be in writing addressed to the parties and will be taken to have been given if:
 - (i) personally delivered, on delivery;
 - (ii) mailed, on the expiration of three (3) business days after posting;
 - (iii) sent by email when the recipient sends an acknowledgment of receipt of the email.
- (k) Neither one of us may assign, sub-license or otherwise transfer the benefit of this Agreement without the other's prior consent.