

	EFTSURE AFRICA (“eftsure”)
	SERVICE TERMS
	VERSION: 07122021
	EFFECTIVE DATE: 07/12/2021

## 1. About these eftsure Service Terms

These eftsure Service Terms (**Terms**) are published by eftsure Africa (Pty) Ltd (Registration Number: 2018/515630/07) (“eftsure”), a South African owned and operated business that provides electronic payment authentication services to South African businesses.

eftsure provides services enabling the verification of payee information. Ancillary to these services eftsure provides a secure portal which allows you to collect, collate and retain information from third parties.

Should you choose to use eftsure the service provided to you will be described in an eftsure proposal (“Proposal”) that will be communicated to you electronically and if acceptable will require your active affirmation of the acceptance of the Proposal.

On your acceptance of the Proposal an agreement incorporating the rights and obligations of the parties as described in these eftsure Service Terms and the eftsure Privacy Statement and Policy will govern the provision of the Service. These documents are collectively referred to as “the Agreement”. Please ensure that you have read all of these documents.

**By accepting the Proposal you are deemed to have read these terms and understood the agreement concluded between you and eftsure.**

eftsure’s key commitments to you are:

- not to disclosure who you deal with, except in the course and for the purpose of conducting verification of payee details for you and with your consent;
- payee names, account details and personal information are to be used or disclosed only for the purposes and in the manner described in the eftsure Privacy Statement and Policy;

The eftsure service supports South African businesses by promoting certainty that payments are made into bank accounts of intended payees. eftsure does this by, without limitation:

- verifying proposed payee names and account numbers provided to eftsure by its customers;
- confidential enquiries made by eftsure to prospective payees; and
- providing confirmation to eftsure customers of the results of the verification of the payee’s information and account details.

The eftsure Privacy Statement and Policy describes how eftsure processes personal information. The eftsure Privacy Statement and Policy is accessible at [www.eftsure.co.za](http://www.eftsure.co.za).

The Service supports South Africa's businesses by enabling the businesses to make payments to the bank accounts of intended payees. This is achieved by verifying the Customer's proposed payee names and account numbers (provided to eftsure by its Customers) as prospective payers. eftsure further confirms the verified payee details to its Customers before the Customer makes payment to the intended payee. We will, from time to time, enhance our services supplementary to what is described in this Agreement and on our website and will notify you when these enhancements become effective.

Effective from the end of each period covered by any Fee paid in advance, eftsure may change the Fee. If you do not agree with this modification, you may then terminate this Agreement by giving eftsure prior written notice.

eftsure reserves the right to modify or amend the Agreement. If eftsure amends the Agreement you will be notified by email or on the eftsure website of the amendment and unless you notify eftsure of any objection you may have to the amendment within the 30 (thirty) day period ("notification period") you will be deemed to have accepted the amended terms.

If the amendment is material to the service provided by eftsure to you, you may terminate the Agreement with eftsure within the notification period.

## 2. Definitions

Words defined elsewhere in documents forming part of this Agreement have the meaning there given and in addition:

**"Acceptance"** means an affirmative action confirming that the terms of the Agreement have been read by you and expressing your intent to be bound by the Agreement.

**"Agreement"** means a proposal prepared by eftsure, these Terms of Service and the eftsure Privacy Statement and Policy.

**"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 Proposal.

**"Intellectual Property Right"** means any and all intellectual property including, without limitation, the trademarks, service marks, trade names, domain names, designs, patents, petty patents, utility models and like rights, in each case whether registered or unregistered and including applications for the grant of any of the aforementioned; copyright (including, without limitation, rights in computer programs and data bases and moral rights), inventions, designs, know-how, confidential information, trade secrets, and all rights in and to any of the aforementioned, and all rights or forms of protection having equivalent or similar effect to any of the aforementioned, which may subsist in any country in the world"

**"Law"** includes any applicable South African law.

**"Report"** means reports provided by eftsure to its Customers confirming whether the payee information and account details are correct. Reports will include additional information as may be necessary.

**"Website"** means the Internet site at the domain [www.eftsure.co.za](http://www.eftsure.co.za).

### 3. Ordering and provision of Service

If you wish to use the Service please will you contact our agents at [sales@eftsure.co.za](mailto:sales@eftsure.co.za).

An eftsure agent will assist you in determining which of the products offered by eftsure are most appropriate to you and should constitute the Service.

An eftsure Proposal will be prepared and addressed to you online. Should the Proposal be acceptable to you, you will by an affirmative action be able to accept the Proposal.

If agreed between the parties, the Proposal may be prepared on paper and signed by you. Your signature (or that of your authorised representative) indicates your acceptance of the terms stipulated in the Proposal, these Terms of Service and the eftsure Privacy Statement and Policy.

Your acceptance of the Proposal online constitutes an electronic signature in terms of the Electronic Communications and Transactions Act and results in a binding agreement between eftsure and you, incorporating these eftsure Service Terms and eftsure's Privacy Statement and Policy.

Following your acceptance of eftsure's Proposal, 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.

### 4. Description of Service

While eftsure will take all commercially reasonable measures to ensure the correctness of details provided to you that are considered by eftsure to be reliable and substantially reduce risks of error or fraud that may be perpetrated by third parties, it cannot guarantee that no error or fraud will occur.

You further acknowledge that the service provided by eftsure, while mitigating the risk of false payee information being used by you, cannot eliminate the risk.

You agree that eftsure is not liable to you for any loss or damage that you may suffer resulting from an error or fraud not detected by eftsure, provided that eftsure has acted reasonable and has undertaken the verification and cross-verification processes as described in this Agreement.

eftsure will take all reasonably commercial measures to minimise the period of verification of payee information. You acknowledge that eftsure cannot assure the period taken for a verification of information as requested by you or the proportion of successful verifications made by it.

eftsure, acting reasonably, is entitled and may rely upon statements by persons purporting to exercise authority for a prospective payee, verifying information about the prospective payee.

The verifications conducted by eftsure will be based upon:

- The actual knowledge of eftsure;
- Third party independent data sources;
- Statements by persons purporting to exercise authority for prospective payees (without verifying the apparent authority of the person).

You agree that eftsure may also rely on prior requests made of payees or obtained from other customers to verify a prospective payee's information.

eftsure will report the verification of prospective payee information in the manner or media as it may elect from time to time, including by way of electronic tags or flags indicating verified payee information.

You agree that you will only rely on eftsure's final Report and not upon any interim communication or other information that may be provided.

The Reports provided by eftsure are for your exclusive use. You are not entitled to disclosure or provide the Reports to any third party, whether free of charge or for reward.

## 5. Customer Obligation

You agree that all information provided by you to eftsure will be complete and accurate and that you are lawfully entitled to do so.

eftsure is entitled to rely on the accuracy of information provided by you to it.

You indemnify and hold eftsure harmless against any loss or damage that it may suffer arising from its use of the information provided to you.

You acknowledge that where you have provided information to eftsure it is your obligation to update the information if changes occur.

## 6. eftsure Undertakings

The security of your business and personal information is important to us. We undertake appropriate, reasonable technical and organisational measures to safeguard the integrity and confidentiality of the business and personal information processed by us.

We safeguard against the loss or damage to or unauthorised destruction as well as unlawful access to the information processed by us.

In safeguarding information provided to eftsure by you we have due regard for generally accepted information security practices.

eftsure warrants that the eftsure Service is lawful.

eftsure indemnifies you against any loss or damage caused by it in the provision of the Service, provided that eftsure's total liability to you will not exceed the fees paid by you to eftsure during the 12 (twelve) month period immediately preceding your loss or damage.

You acknowledge that:

- I. eftsure's responsibilities in terms of this Agreement are owed exclusively to you and that no third party has any rights against or can seek any recourse against eftsure.
- II. It is your sole responsibility to determine that the Services that are proposed and accepted by you meet your needs and are suitable.

- III. eftsure does not warrant that access to and the use of the service will be uninterrupted or error free.
- IV. eftsure has contracted with third parties who provide services and infrastructure upon which the eftsure Service is dependent and has sought to ensure that the appropriate service level agreements bind the service providers.
- V. You may rely on third parties providing services relating to your information and communications technology that are not guaranteed to be available at all times. eftsure is not responsible for the interruption of services within a third party's control.
- VI. eftsure does not provide any implied guarantees, conditions or warranties and these are expressly excluded, as may be permitted by Law.
- VII. Without limitation eftsure does not warrant the merchantability, fitness for purpose, title and non-infringement in the Services.
- VIII. The only warranties or guarantees that you may rely on are those that are expressly stated in this Agreement.

**You agree that eftsure excludes liability and is not liable where eftsure, acting reasonably, 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.**

## 7. Payment Obligations

- a. You agree to pay to eftsure the Fees set out in the Proposal and any applicable order placed on eftsure by you, together with Value Added Tax (VAT) in terms of the Value Added Tax Act 89 of 1991 and any similar tax that has an impact on the supply of services and other deliverables, before the due date of eftsure's invoice issued for those charges.
- b. eftsure may increase the Fees as described in paragraph 1 of these terms, unless increases in fees are stipulated in the Proposal, in which event the stipulations in the Proposal will prevail.
- c. eftsure may deduct any other payment owed to eftsure under this Agreement.
- d. eftsure may, at eftsure's election, charge you for:
  - I. **Expenses:** at cost and subject to your prior approval for eftsure incurring relevant expenses and disbursements, eftsure's reasonable expenses and disbursements for goods and services purchased on your behalf. Travel on your behalf is reimbursable by you in accordance with eftsure's standard policies; and
  - II. **interest on late payment:** interest on overdue amounts at a rate of 2% (two percent) above the prime lending rate charged by First National Bank from time to time calculated monthly in arrears.
- e. 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 Proposal

or otherwise as eftsure and you may agree in writing (including electronic communication) from time to time.

- f. All Fees or payment obligations stated or referred to in this Agreement are exclusive of VAT and any other statutory levies and taxes as may be levied thereon in South Africa in connection with the supply and use of the eftsure Service, which shall be added to all invoices at the statutory rate applicable from time to time.

## 8. Access to Service

- a. You must ensure that all usernames and passwords required to access the Service are kept secure and confidential. All persons to whom access is granted must be made aware of this obligation in writing. You must immediately notify eftsure of any unauthorised use of usernames and passwords or any breach of security safeguards that may affect access to and use of the eftsure Service.
- b. Subject to its own security measures eftsure will assist you in resetting the passwords, but is not be liable for any harm, cost, liability or other expense that may be suffered or incurred resulting from unauthorised access to or use of the Service.
- c. In processing the information of third parties, which will include personal information, both you and eftsure are required by Law to secure the integrity and confidentiality of the information by taking appropriate reasonable technical and organisational measures to prevent its unauthorised access, loss, damage or destruction. You must implement and maintain the security measures directed by eftsure and should you fail to do so, eftsure will be entitled to terminate this Agreement.
- d. When accessing and using the Service, you, and all users authorised by 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);
  - V. not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any Intellectual Property (or part thereof), including the 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;

- VI. may not permit, encourage or assist (directly or indirectly) any person to do or attempt to do any of the foregoing; and
  - VII. ensure that every person who is given access to the Service is aware of and has signed a written undertaking to comply with the stipulations governing the security of the use of the Service and their access to the Service.
- e. Use of the Service may be subject to limitations including but not limited to the 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 stipulated in eftsure's Proposal.

## 9. Intellectual Property Rights and information that You submit to eftsure

- a. You acknowledge that all right, title and interest in and to the Intellectual Property Rights in relation to the Services, including in relation to the Website and the Reports vests exclusively in eftsure and that you have no claim of any nature in and to eftsure's Intellectual Property Rights.
- b. Title to, and any and all intellectual property rights in information that vests in you that you may provide to eftsure will remain your property. The rights of data subjects in their personal information will continue to vest in the data subjects.
- c. Subject to the rights of data subjects, you grant eftsure a perpetual, irrevocable, royalty-free licence to use, copy, transmit, store, and back-up information that you submit to eftsure for the purposes of the provision of the Service and for any other purpose that is in accordance with eftsure's Data Protection Policy. Privacy Statement and Confidentiality Commitment.

## 10. Limitation and Exclusions of Liability

- a. To the maximum extent permitted by Law, eftsure is not liable for any losses or claims that you may incur in using the Service.
- 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 Consumer Protection Act, 68 of 2009 ("CPA").
- c. eftsure's maximum aggregate liability for all claims under or relating to this Agreement or the Service whether in contract, delict (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 immediately preceding 12 months; or
  - II. ZAR R 10,000 (ten thousand rand).
- d. eftsure is 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 damage to data 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.
- e. eftsure's 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.
- f. You indemnify eftsure 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.

## 11. Termination

- a. Provision of the Service will continue for the period covered by any Fee paid in advance.
- b. At the end of each period covered by any Fee paid in advance, this Agreement will automatically continue for another period of the same duration as that period, if you pay the then current Fee in advance when due, unless either party terminates this Agreement by giving notice to the other party as provided in the Proposal.
- c. If you terminate this Agreement 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 this Agreement.
- d. If you:
  - I. breach this Agreement (including, without limitation, by non-payment of any Fees) and do not remedy the breach within 14 (fourteen) days after receiving notice of the breach if the breach is capable of being remedied;
  - II. breach this Agreement and that breach is not capable of being remedied (which includes (without limitation) or any payment of Fees that are more than 30 days overdue);
  - III. are placed under curatorship or be liquidated/sequestered (whether provisionally or finally), or enter into a compromise with any of your creditors, or become subject to any similar insolvency event in any jurisdiction, or
  - IV. do anything that in eftsure's sole and absolute discretion harms or may cause harm to eftsure's Intellectual Property Rights or eftsure's good name and reputation;

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

- A. terminate this Agreement and your right of 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 Service.

## 12. Help Desk

- a. eftsurre provides support to you but you have certain responsibilities before requesting support.
- b. You will appoint a person who will be the primary point of contact for support, both internally within your organisation and to communicate support queries to eftsurre.
- c. The contact person will make all reasonable efforts to investigate and diagnose procedural and technical difficulties with the use of eftsurre before contacting eftsurre at support@eftsure.co.za.
- d. The contact person appointed by you must be familiar with and understand your internal processes and the services provided by eftsurre enabling internal support to be provided where necessary and the ability to identify where any problem experienced is a result of an organisational or technical failure by eftsurre.
- e. If the contact person believes that the problem arises from a technical or organisational failure by eftsurre the problem must be reported to eftsurre with sufficient information to allow persons providing support to identify the problem and assist in its resolution.
- f. If the problem could have been remedied internally, alternatively results from the improper use of eftsurre's service, eftsurre will be entitled to charge you for the support provided.

## 13. Service availability

- a. Whilst eftsurre intends that the Services should be available 24 (twenty-four) hours a day, 7 (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 eftsurre must interrupt the Services for longer periods than eftsurre would normally expect, eftsurre will use reasonable endeavours to publish in advance details of such activity on the Website.
- c. Necessary maintenance which may render the eftsurre service unavailable will be planned to take place over non-peak periods (after 20:00 during weekdays or over the weekend).
- d. If unscheduled maintenance is required for whatever reason eftsurre shall make all commercially reasonable efforts to ensure that the interruption of the eftsurre service is minimised.

## 14. General

- a. If any part of this Agreement 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 South Africa. You irrevocably submit to the exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.
- c. A person who is not a party to this Agreement has no right to benefit under or to enforce any term of this Agreement.
- d. Provisions of this Agreement constitute the entire agreement between eftsure and you in relation to the Service and supersede all other (prior or contemporaneous) communications or displays whether electronic, oral, or written, between eftsure and you in relation to the Service.
- e. Your use of the Service is conducted electronically. You agree that eftsure may communicate with you electronically for all aspects of your use of the Service, including sending electronic notices to you.
- f. No waiver, delay or failure by eftsure to take any action shall constitute or be construed as a waiver of that or any other term, condition, option, privilege or right eftsure may have.
- g. Neither eftsure nor you will be liable for any delay or non-performance of eftsure's 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 eftsure and you agree 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. eftsure is your independent contractor. Neither party is a partner, agent, employee, joint venture, 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:
  - l. personally delivered at the physical address of the party as described in (k);

- II. sent by email when received by the recipient at the email address chosen by the recipient.
- k. The parties choose the following physical and email addresses:
  - I. Eftsure chooses:  
Physical address: The Link, 173 Oxford Road, Rosebank, Johannesburg, Gauteng Province, 2196  
email address: legal@eftsure.co.za
  - II. You choose the physical and email addresses provided to eftsure in the proposal or as may be updated in writing after the acceptance of the proposal.
- l. Neither eftsure nor you may assign, sub-license or otherwise transfer the benefit of this Agreement without the other's prior consent.
- m. For the avoidance of doubt, the parties confirm that (i) an electronic version of this Agreement is deemed to be in writing; and (ii) that the term "writing" shall include emails.