

# Ebix Trades Monitor Terms and Conditions

**Ebix Trades Monitor** means Ebix Australia Pty Ltd (ACN 061 035 167, ABN 70 061 035 167)

## 1. Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise:

**Account Application** means the Account Application signed by the Customer

**Agreement** means the contract between Trades Monitor and the Customer that is set out in the Account Application and these Terms and Conditions.

**Cash Target Rate** means the percentage (or maximum percentage) specified by the Reserve Bank of Australia as the cash target rate.

**Commencement Date** is the commencement date in the Account Application.

**Contractors** mean persons/entities who contract to provide services.

**CPI** is the Consumer Price Index for Sydney on the date published by the Australian Bureau of Statistics for the date referred to in clause 5 of **Schedule 3**.

**Customer** means the person identified as the Customer in the Account Application.

**Effective Date** means the agreed date of completion of Milestone 3, in **Schedule 4**.

**Fee** means the fee shown in the Account Application.

**GST** has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999*.

**GST Law** has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999*.

**Law** includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether State, Federal or otherwise.

**Payment** means any amount payable under or in connection with the Agreement including any amount payable by way of indemnity, reimbursement or otherwise and includes the provision of any non-monetary consideration.

**Services** mean the services and / or products to be supplied by Trades Monitor under this Agreement as set out in **Schedule 1**.

**Site** means a business, company, a freehold property, a strata scheme (including a strata corporation, a strata company, community association, or a body corporate or owners corporation that is incorporated by registration of a plan of subdivision) or a lot or unit in a strata scheme.

**Tax Invoice** has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999*.

**Term** means the term described in the Account Application and commencing on the Effective Date.

**Total Fees Payable** means the total fee payable by the Customer calculated in accordance with **Schedule 3**.

**Trades Monitor** means Ebix Australia Pty Ltd (ABN 70 061 035 167) t/a Ebix Trades Monitor or Trades Monitor

## 1.2 Interpretation

In these Terms and Conditions, unless the context otherwise requires:

- (a) Words importing the singular include the plural and vice versa;
- (b) Words importing a gender include any gender;
- (c) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (d) A reference to any thing includes a part of that thing;
- (e) References to parts, clauses, parties, annexures, exhibits and schedules are references to parts and clauses of, and parties, annexures, exhibits and schedules to, the Agreement and form part of the Agreement;
- (f) A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (g) A reference to a party to any document includes that party's successors and permitted assigns;
- (h) A reference to *include* or *including* means *includes, without limitation, or including, without limitation, respectively*;
- (i) A reference to any agency or body, if that agency or body ceases to exist or is reconstituted renamed or replaced or has powers or functions removed (*defunct body*), means the agency or body which performs most closely the functions of the defunct body;
- (j) Where the day on or by which anything is to be done is not a working day, that thing must be done on or by the preceding working day; and
- (k) To the extent that there is any inconsistency between the schedules and attachments to the Agreement with the rest of the Agreement, the schedules and attachments shall prevail.

## B2. Appointment and Duties of Parties

- 2.1 Trades Monitor is appointed by the Customer to provide the Services identified in **Schedule 1** and accepts that appointment.
  - 2.2 The Customer must do the things in **Schedule 2** when reasonably required by Trades Monitor.
- ### 3. Termination
- 3.1 The Customer may terminate the Agreement at any time by giving Trades Monitor 30 days' written notice stating that they intend to terminate the Agreement on a specified date.
  - 3.2 Trades Monitor may terminate the Agreement at any time by giving the Customer 90 days' written notice that they intend to terminate the Agreement on a specified date.
  - 3.3 Termination of the Agreement will not affect any right or remedy of the Customer or Trades Monitor in respect of a breach of the Agreement.
  - 3.4 Where the agreement does not terminate on the expiry date or is not otherwise terminated during the term in accordance with Clauses 3.1 or 3.2, the agreement will automatically continue for successive terms unless and until terminated.

## **4. Payment**

- 4.1** The Customer agrees to pay Trades Monitor for the performance of the Services in accordance with **Schedule 3**.
- 4.2** The first Tax Invoice for Payment (of the activation costs) will be issued and will be payable on the completion of Milestone 3 in **Schedule 4**. After that, Tax Invoices will be issued for each year of the term in advance and will be issued annually on each anniversary of the Effective Date.
- 4.3** At least 14 days prior to the anniversary of the Effective Date, the Customer must advise Trades Monitor of the number of Sites under its management for the purposes of invoicing.
- 4.4** Trades Monitor will submit a Tax Invoice to the Customer for the Total Fee Payable in accordance with **Schedule 3**.
- 4.5** Trades Monitor may charge interest on unpaid Total Fees Payable if the Customer defaults in Payment. The Customer will have defaulted in Payment when a Tax Invoice has been provided to the Customer by Trades Monitor and that Tax Invoice remains wholly or partly outstanding 30 days after the Tax Invoice was provided to the Customer.
- 4.6** The rate of interest that may be charged on overdue payments is the rate that is equal to the Cash Target Rate, as at the relevant date, increased by 2 percentage points.
- 4.7** In the event that a Customer defaults in Payment, Trades Monitor may immediately cease the provision of Services to the Customer.

## **5. Privacy**

### **5.1 The parties must:**

- (a) Not communicate confidential information about a person without the prior approval of the person;
- (b) Take all reasonable steps to protect the confidential information it holds from misuse and loss and from unauthorised access, modification or disclosure; and
- (c) Restrict access to confidential information to those staff and personnel who require such information, and only to the extent necessary, to meet its obligations under the Agreement.

### **6. The Customer must:**

Restrict to its employees and principal's information provided by Trades Monitor, unless otherwise authorised by the Contractor or permitted in accordance with the Privacy Law.

## **7. Miscellaneous**

### **7.1 Entire Agreement**

The Agreement represents the entire agreement between the parties in relation to its subject matter and supersedes all previous agreements, understandings and negotiations of the parties in relation to this Agreement.

### **7.2 Variation**

Trades Monitor may vary these Terms and Conditions from time to time and an updated version of the varied Terms and Conditions will be published on its website. The Customer will be deemed to have been given notice of any variation 7 days after Trades Monitor publishes the changes on its website and notifies the customer of the variation.

### **7.3 Trades Monitor Indemnity**

To the extent permitted by law, the Customer indemnifies Trades Monitor in respect of any liability for any loss, damage, costs or expenses, however caused, which may arise directly or indirectly in respect of any breach of this Agreement by the Customer or any negligence of the Customer.

## **7.4 Customer Indemnity**

To the extent permitted by law, Trades Monitor indemnifies the Customer in respect of any liability for any loss, damage, costs or expenses, however caused, which may arise directly or indirectly in respect of any breach of this Agreement by Trades Monitor or any negligence of Trades Monitor.

## **7.5 Applicable Law**

The law of this document is the law of the State of New South Wales. The parties irrevocably submit themselves to the exclusive jurisdiction of the Courts of New South Wales.

## **7.6 Costs**

Each party must pay its costs and expenses in respect of the negotiation, preparation and execution of the Agreement.

## **7.7 Severance**

If any provision of this Agreement is held to be invalid or unenforceable in any way, the remaining provisions will not be affected, and the Agreement will be interpreted so as to most nearly give effect to the intentions of the parties.

## **8 Insurance**

Trades Monitor will maintain professional indemnity insurance for an amount in respect of any claim or event of not less than \$10 million.

## **9. Disputes**

**9.1** If a dispute arises out of or relating to this Agreement (including any dispute about the meaning, performance, validity, subject matter, breach or termination of this Agreement) (Dispute), any court or arbitration proceedings shall not be commenced by or against either party, their successors or assigns, relating to the Dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

**9.2** The party claiming that a Dispute has arisen under or in relation to this Agreement must give written notice to the other party to the Dispute, specifying the nature of the Dispute.

**9.3** Parties must not commence proceedings (except in the case of urgent interlocutory proceedings) in respect of a dispute before 28 days have expired since the date of service of a notice, under Clause 10.3.

**9.4** The parties must seek to resolve the dispute in good faith. Without limiting that obligation, the parties may seek to resolve the dispute with the aid of an independent third party such as a mediator.

**9.5** Where the parties agree to the use of a mediator to resolve the dispute the parties are to jointly appoint the mediator. In the event that the parties are unable to agree on the appointment of a mediator then the President of the Law Society of New South Wales (on the application of either party) shall nominate the person who will select the mediator and determine the mediator's remuneration.

**9.6** The parties to the mediation will be jointly responsible for the fees of the mediation and each party shall bear its own costs.

**9.7** A legal representative acting for any of the parties may participate in the mediation.

## **10. Notices**

**10.1** Any notice delivered under this Agreement will be in writing and may be served by post, facsimile or electronic transmission or by hand to the party's address for service of notices that is included on the Account Application.

**10.2** Either party may change their postal, e-mail or office address by written notice to the other party.

- 10.3** A notice or document is deemed to have been received:
- a) If it is delivered by hand, at the time of delivery;
  - b) If it is delivered by post, the next business day;
  - c) If delivered by e-mail, the next business day, unless the sender receives notification that that e-mail failed.

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## SCHEDULE 1

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### Stage 1

#### Services to be provided by Trades Monitor

1. Trades Monitor will provide the Customer with a sample "Letter of Authority" that will be emailed to Contractors upon request explaining the purpose of the compliance checks
2. Trades Monitor will contact each Contractor based on the information supplied by the Customer and request for them to register their information relevant to their trade or profession. Alternatively, information can be provided via email or post
3. When requested, Trades Monitor will provide the Customer with a report of Contractors it has not been able to contact after at least 2 attempts.
4. Trades Monitor will confirm and verify, to the best of its ability, that all of the information provided to the Contractor, is current, correct and related to the name of the legal entity. Trades Monitor will also verify the business structure of the entity i.e. individual/sole trader, partnership, company or trust.
5. Trades Monitor will obtain and retain current Certificates of Currency for each relevant insurance held by the Contractor.
6. Trades Monitor will monitor and verify that each Contractor's licences and insurances remain current, to the extent of the contact cycle, while they are on the Customer's database.
7. Trades Monitor will record the limit of liability of each Contractor's public liability insurance certificate in the database.
8. Trades Monitor will provide Log in details that allows the Customer access for the purpose of maintaining secure access to the database.
9. Trades Monitor will provide a 24 hour, seven day internet service that allows the Customer to access all available data on their Contractors. This service will be password protected so only the Customer will have access to their own database Contractor information.
10. Trades Monitor will supply instruction and training material for the Customer and other persons nominated by the Customer, upon request.
11. If Trades Monitor receives advice from a Customer that they no longer wish to use a Contractor, then Trades Monitor will remove that Contractor from the Customer's Contractor list if it will not affect or damage the Customer's file.

## Stage 2

### **Additional Services provided by Trades Monitor if requested by the Customer**

1. Upon completion of Stage 1 and at no additional cost to the Customer, Trades Monitor can re-contact all the Customer's nominated Contractors giving them the opportunity to be assessed to the current Occupational Health and Safety standard. All fees are payable by the Contractor if they choose to be audited and go through the assessment process. The fee covers the cost of the auditing/assessment process, providing a help desk to assist your Contractors in meeting the Occupational Health and Safety Standard, and the additional responsibility Trades Monitor assumes in aligning them to this level.
2. Trades Monitor informs the Contractors in its letter to them, that if they have already undertaken an Occupational Health and Safety audit from another company to the level of ISO45001:2018, they may simply provide evidence of this to Trades Monitor, and Trades Monitor will add them to our register and inform our clients of their current Occupational Health and Safety accreditation. There is no fee from Trades Monitor in this situation.
3. The information on whether a Contractor has been accredited will be available through Trades Monitor's application.
4. Trades Monitor will provide a non-compliant Contractor with the steps needed to gain compliance status and assist them throughout that process.

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### **SCHEDULE 2**

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The Customer must:

1. Supply Trades Monitor with an electronic download of data from their software system that includes the name, ABN and contact details.
2. Supply Trades Monitor with Stage 1 and Stage 2 letters (as appropriate) for Trades Monitor to use in contacting the Customer's Contractors.
3. Supply Trades Monitor by e-mail with the name/s and contact details of any new Contractors that the Customer requires to have compliance details obtained and verified in a usable format.
4. Advise Trades Monitor, prior 14 days of the Effective Date, and prior to each anniversary of the Effective Date, of the number of Sites/Plans under its management, or contractors, where applicable.

## SCHEDULE 3

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### FEES

1. On the completion of Milestone 3 in **Schedule 4**, Trades Monitor will provide the Customer with a Tax Invoice for the Total Fees Payable.
2. Thereafter, on each annual anniversary of the Effective Date for the duration of the Term Trades Monitor will provide the Customer with a Tax Invoice for the Total Fees Payable for 12 months in advance.
3. On receipt of each Tax Invoice the Customer must pay the fees within 7 days.
- 4. Calculating the Total Fees Payable**
  - 4.1 If the Customer chooses service option 1 (strata only) on the Account Application, the Total Fees Payable shall be calculated by multiplying the Fee by the number of plans with the expectation that a reasonable number of contractors are to be monitored compared to the number of plans provided to Ebix. Initially, the number of plans shall be the number notified by the Customer in accordance with Milestone 3 in **Schedule 4**. Thereafter, the number of Sites/Plans shall be notified in accordance with Clause 5 (Schedule 3) of these Terms and Conditions.
  - 4.2 If the Customer chooses fee option 1 (commercial only) in the Account Application, the Total Fees Payable shall be calculated by multiplying the Fee by the number of Contractors. The number of Contractors shall be notified by the Customer in accordance with Milestone 3 in **Schedule 4**. Thereafter, the number of Contractors shall be the maximum number of Contractors in the 12 months preceding each anniversary of the Effective Date.
  - 4.3 If the Customer chooses service option 2 and/or or 3 in the Account Application, the Total Fees Payable shall be the fixed annual fee stated in the Account Application.
5. On each annual anniversary of the Effective Date the fees, including a fixed annual fee referred to in paragraph 4.3 of this Schedule, shall be increased by the CPI. Where it results in a decimal amount, then this amount must be rounded up to the nearest whole dollar.

**SCHEDULE 4**

**MILESTONES**

<b>MILESTONE</b>	<b>TARGET DATE</b>
<p><b>Milestone 1</b></p> <ul style="list-style-type: none"> <li>○ Signed Agreement</li> <li>○ Letter of Authority is provided to Trades Monitor</li> <li>○ Under Service Option 1, Customer to provide Trades Monitor with the number/details of Sites (Plans) for invoicing purposes.</li> </ul>	<p>Commencement Date</p> <p>Commencement Date</p> <p>Commencement Date</p>
<p><b>Milestone 2</b></p> <ul style="list-style-type: none"> <li>○ Trades Monitor to activate system and provide portal access details</li> <li>○ List of Contractors/export file provided to Trades Monitor</li> <li>○ Trades Monitor to send list of queried contractors to Customer for review</li> <li>○ The Customer returns its review of queried Contractors to Trades Monitor</li> </ul>	<p>1 week after Commencement Date</p> <p>1 week after Commencement Date</p> <p>3 weeks after commencement date</p> <p>4 weeks after Commencement Date</p>
<p><b>Milestone 3</b></p> <ul style="list-style-type: none"> <li>○ Trades Monitor to do an audit and proceed with invoicing</li> <li>○ Customer to pay the fees within 7 days of receipt of the Tax Invoice</li> </ul>	<p>4-6 weeks after Commencement Date</p> <p>4-6 weeks after Commencement Date</p>