



Terms and Conditions

AGREEMENT

By clicking the "I accept" button or otherwise accepting this Agreement through a Customer document that incorporates these Terms and Conditions, you agree to follow and be bound by the terms and conditions of this Agreement. If You are entering into this Agreement on behalf of a company or other legal entity, you represent that You have the authority to bind such entity to this Agreement and, in such event, "You" and "Your" as used in this Agreement shall refer to such entity.

1. Agreement Definitions

1.1 Definitions

"Customer Data" means the input of data, answers and other personal information as requested from time to time by IBC and provided by the Customer

"Confidential Information" means (i) any trade secrets embodied in any information relating to, but not limited to, the commercial activities, product pricing, technologies, business processes, client relationships, strategic information, pricing information, and any other information related to the conduct of each party's business; (ii) any information designated industry in writing by either party, by appropriate legend, as confidential; (iii) any information which if first disclosed orally is identified as confidential at the time of disclosure; and (iv) the terms and conditions of this Agreement.

"End User Agreement" means the terms and conditions under which a customer agrees to participate in or receive any assessments part of IBC.

"Fees" means the fees outlined in the Customer document.

"Intellectual Property Rights" means all copyright, know-how, inventions, processes, Confidential Information, trademarks, designs, and patents (whether registered, unregistered or applied for), source code, software and all other intellectual property, proprietary rights or other rights related to intangible property which are used, developed, comprising, embodied in, or practiced in connection with IBC.

"Customer Document" refers to the Customer document signed by You whereby You have licensed Solutions and setting out the subscription term, fees and any other terms agreed between You and Industry Best Construction

"Personal Information" has the meaning given to it by the *Privacy Act 1988* (Cth).

"IBC" means Industry Best Construction Pty Ltd ABN 54629648308

"Industry Best Construction Reports" means reports containing data and information generated from use of IBC (including but not limited to Customer Data).

"Reseller" means persons authorised by Industry Best Construction to license IBC.

"Solutions" means those solutions within IBC as selected in the Customer document by You.

"Subscription Term" has the meaning given to it in the Customer document.



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“**System**” means Industry Best Construction (or its licensors' or suppliers') proprietary recruiting, development, testing and assessment tools, and all other software, information, URLs and links, questions, tests, tools, data, databases, designs, algorithms, user interface designs, architecture, class libraries, objects and documentation, network design, know-how and other information or materials supplied or provided by Industry Best Construction.

“**System Data**” means the Customer Data, feedback, information and reports provided by IBC based on Customer Data

“**Users**” means those individuals authorised by You or on Your behalf to use IBCs.

“**You**” and “**Your**” means the individual or entity that has ordered Solutions from executing an Customer document.

“**Your Data**” means to the data inputted into IBC by You and Your Users.

“**Website**” means the Internet site through which IBCs are hosted and accessed.

2. Reseller Orders

- (a) This Agreement applies whether you purchase Solutions directly from Industry Best Construction or through a Reseller. If You purchase through a Reseller, IBCs You have ordered shall be as stated in the Customer document placed by You with the Reseller, and Reseller is responsible for the accuracy of any such order. Resellers are not authorised to make any promises or commitments on Industry Best Construction 's behalf, and Industry Best Construction is not bound by any obligations to You other than what Industry Best Construction specifies in this Agreement.
- (b) Your right to use IBCs is governed by this Agreement however Your primary contact will be Your Reseller including with respect to customer support. Where agreed with the Reseller, certain aspects of customer support such as specific Customer support may be referred to and handled by Industry Best Construction.

3. Rights Granted

3.1 Right to Use Solutions

- (a) For the duration of the Subscription Term and while Your Fees are paid as set out in this Agreement You have the non-exclusive, non-assignable, royalty free, worldwide limited right to use Industry Best Construction solely for Your internal business operations and subject to the terms of this Agreement.
- (b) Upon the termination of this Agreement or the end of Subscription Term, your right to access or use Industry Best Construction shall terminate.



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4. Fees

4.1 Fees

You will pay all Fees specified in Customer document each month.

4.2 Invoicing and Payment.

- (a) You will be invoiced by Industry Best Construction for the Fees stated in your ordering form on the 1st of every month.
- (b) Unless otherwise agreed by Industry Best Construction, all Fees shall be paid in advance at the time and intervals stated in the Customer document. Where Fees are not paid by the applicable due date set out in the Customer document Industry Best Construction may suspend Your access of IBC until payment is received in full.

5. Solutions

5.1 Availability

Industry Best Construction will use commercially reasonable efforts to make IBCs available 24 hours a day, 7 days a week.

5.2 No guarantee

Industry Best Construction:

- (a) does not guarantee the uptime of IBC; and
- (b) will not be liable for any damages caused by Your inability to access IBC as a result of network or server downtime, transmission problems or otherwise.

5.3 Maintenance

- (a) Industry Best Construction may perform scheduled maintenance on the Webapp an mobile app at certain times for planned and unplanned maintenance.
- (b) In addition, Industry Best Construction may in its sole discretion need to perform emergency or unscheduled maintenance. These maintenance activities may cause interruptions to access to IBC.
- (c) Industry Best Construction will use reasonable efforts to inform You in advance of any such service.

6. Your Responsibilities and Access Conditions

6.1 Networks Needed to Use IBC

You are responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use IBCs, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like.



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6.2 Your Responsibility for Your Users

- (a) You are responsible for:
 - (i) each of Your User's compliance with this Agreement;
 - (ii) identifying and authenticating all Users, for approving access by such Users to IBC, for controlling against unauthorised access by Users, and for maintaining the confidentiality of usernames, passwords and account information.
 - (iii) all activities that occur under Your and Your Users' usernames, passwords or accounts or as a result of Your or Your Users' access to IBCs, and agree to notify the Industry Best Construction immediately of any unauthorised use; and
 - (iv) all of Your Data inputted into IBC by Users as though it were uploaded by You.
- (b) Industry Best Construction is not responsible for any harm caused by Users, including individuals who were not authorised to have access to IBCs but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in Your local identity management infrastructure or the Your local computers.

6.3 Access Conditions

You will not:

- (a) attempt to undermine the security or integrity of IBC's computing systems or networks or, where IBC is hosted by a third party, that third party's computing systems and networks.
- (b) use, or misuse, IBC in any way which may impair the functionality of IBC or Website, or other systems used to deliver IBCs or impair the ability of any other user to use IBC or Website.
- (c) 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 IBC is hosted; and
- (d) 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 Your Data in violation of any law.
- (e) you are not permitted to have concurrent logins.

7. Trials

7.1 Free Trial

- (a) Industry Best Construction may, at its absolute discretion, allow you or any customer to have a free trial period at the commencement of the Subscription Term (**Trial**).
- (b) The Trial will last for a period of 60 days, or such other period as agreed by Industry Best Construction (**Trial Period**).
- (c) The provisions in this clause 7 apply during the Trial Period.



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7.2 Application of this Agreement During Trial

During the Trial Period, all terms of this Agreement apply as normal. For the purpose of any terms relating to the payment of Fees, it is assumed that all Fees are paid in full by the Client until the expiry of the Trial Period.

7.3 Term of Trial

- (a) Notwithstanding any other clause of this Agreement, either party may terminate this Agreement without cause during the Trial Period.
- (b) If this Agreement is not terminated in accordance with clause 7.3(a), the Subscription Term will immediately commence on the expiry of the Trial Period.
- (c) If the Subscription Amount and Subscription Period have not been agreed prior to the expiry of the Trial Period:
 - (i) your access to the System and Solution will be suspended on expiry of the Trial Period until a Subscription Amount and Subscription Period is agreed;
 - (ii) Industry Best Construction may terminate this Agreement if a Subscription Amount and Subscription Period is not agreed within days after the expiry of the Trial Period; and
 - (iii) The Subscription Term will commence upon the Subscription Amount and Subscription Period being agreed.
- (d) Upon the Subscription Term commencing in accordance with this clause:
 - (i) the Fee will become payable in accordance with clause 4; and
 - (ii) this clause 7 will no longer apply.

8. Intellectual Property, Acknowledgements and Privacy

8.1 Intellectual Property Rights in IBC

- (a) Notwithstanding anything in this Agreement to the contrary, Industry Best Construction owns and will retain all rights, title and interest in the Intellectual Property Rights in IBC, all System Data and all copies, modifications and derivative works thereof.
- (b) You must not:
 - (i) make IBC Data available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license or materials from IBC);
 - (ii) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of IBC; or



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- (iii) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, or otherwise commercially exploit or make IBC available to any third party other than as expressly permitted under the terms of this Agreement.

8.2 Derived Data

Industry Best Construction has the right to collect and analyse data and other information relating to the provision, use and performance of various aspects of IBC and related systems and technologies (including, without limitation, information concerning Your Data and data derived therefrom), and Industry Best Construction will be free to use such information and data to improve and enhance IBC and for other development, diagnostic and corrective purposes in connection with IBC and other Industry Best Construction offerings.

9. Intellectual Property, Acknowledgements and Privacy

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- (b) You must not:
 - (i) make IBC Data available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license or materials from IBC);
 - (ii) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of IBC; or
 - (iii) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, or otherwise commercially exploit or make IBC available to any third party other than as expressly permitted under the terms of this Agreement.

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- (b) You must not:
 - (i) make IBC Data available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license or materials from IBC);
 - (ii) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of IBC; or
 - (iii) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, or otherwise commercially exploit or make IBC available to any third party other than as expressly permitted under the terms of this Agreement.

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Industry Best Construction has the right to collect and analyse data and other information relating to the provision, use and performance of various aspects of IBC and related systems and technologies (including, without limitation, information concerning Your Data and data derived therefrom), and Industry Best Construction will be free to use such information and data to improve and enhance IBC and for other development, diagnostic and corrective purposes in connection with IBC and other Industry Best Construction offerings.

11. Acknowledgement of Nature of Industry Best Construction Reports

You acknowledge and agree that:

- (a) the information obtained from IBC is persuasive rather than conclusive and should always be used in conjunction with other available information;
- (b) due to the inherent limitations of assessment systems generally IBC may not properly or fully assess the capability of every person and You must not rely on the Industry Best Construction Reports, or any other output derived from IBC as statements of fact or as the exclusive basis for making any decisions in Your business.
- (c) You are solely responsible to use Industry Best Construction Reports in an ethical manner and in accordance with any relevant laws, regulations and codes of ethics.

12. Warranties

12.1 Warranties

- (a) Industry Best Construction gives no warranty about IBC. Without limiting the foregoing, Industry Best Construction does not warrant that IBC will be error free or will operate without interruption or will perform in the manner intended by You, meet Your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied 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.
- (b) We do not guarantee 100% availability of the System and may, at any time and for any reason, restrict or prevent your access to or use of the System and/or any part of it and/or deactivate your account without the need for prior notice. We will do so immediately if we detect any fraud, you violate these Terms, the law, you cause damage to the System, any Customer or any third party. We



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reserve the right to modify or cancel the System or any feature or part of it (including the way in which the algorithm matches Specialists with Customers), at any time, for any reason, without advance notice. We are not responsible in any way for any loss or inconvenience that may be caused to you due to such changes.

12.2 Exclusion of Implied Warranties

To the extent permitted by law, all implied conditions or warranties are excluded, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

13. Limitation of Liability and Indemnity

13.1 Limitation of Liability

Industry Best Construction will not be liable to You for any loss of any kind as a result of Your use of IBC and you agree to indemnify and hold harmless Industry Best Construction from any loss or damage suffered or incurred by You as a result of Your use of IBC.

You are solely responsible for any damage or loss caused to a customer, whether caused by you or by anyone on your behalf resulting from your actions or lack of action and/or negligence.

We are not and will not be liable for any direct or indirect damage caused to you and/or any Customer and/or any third party caused by you or your use of the System. You agree that, by using the System, you assume full responsibility for any damage that may be caused.

You will indemnify and keep us, our managers, employees, shareholders, officers, operators, partners, agents and/or representatives harmless against all liabilities, claims, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with:

- a. Any claim made against us by a Customer or a third party for death, personal injury or damage to property while you were performing the works under a Service Call;
- b. Negligent performance or non-performance, including delays, or poor performance of the works;
- c. A breach of these Terms or the Privacy Policy;
- d. Any claim made by a Customer which relates to your acts or omissions;
- e. Any claim made for actual or alleged infringement of a third party's rights (including intellectual property rights) arising out of or in connection with your use of the System;
- f. Any costs, fees or expenses incurred by us (including but not limited to legal fees) in connection with us commencing legal proceedings against you to recover sums owed to us.

Nothing in this clause shall restrict or limit your general obligation at law to mitigate any loss you may suffer or incur because of an event that may give rise to a claim under this indemnity.

13.2 Indemnity - Intellectual Property Right Infringements

If use by You and IBC, results in You being subject to a claim for infringement of any Intellectual Property Right of a third-party Industry Best Construction agrees to indemnify You against any claims, demands, damages, costs and expenses made against or suffered by You as a result of any such claim or action.



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14. Termination

14.1 Termination for breach

If:

- (a) a party commits a material breach of this agreement and fails to remedy that breach within 30 days of receiving notice from the other party requiring it to do so;
- (b) If monthly invoice is not paid within 30 days from invoice received.
- (c) a party commits a material breach of this agreement which cannot be remedied,

then the other party may terminate this agreement by written notice to that party, in which case this Agreement will terminate immediately.

14.2 Effect of termination

- (a) Termination of this Agreement does not affect the accrued rights or remedies of a party.
- (b) Upon Termination Industry Best Construction may suspend You and Your User's access to IBC.
- (c) Upon Termination You will pay to Industry Best Construction all charges and Fees accrued and outstanding in accordance with clause 4.

15. Privacy

- (a) As a condition to using IBCs, You agree to the terms of the Industry Best Construction Privacy Policy issued or updated during the term of this Agreement.
- (b) In collecting, holding and processing Personal Information through IBC, each party must comply with the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines as amended from time to time.
- (c) You must obtain all necessary consents from the relevant individual to enable Industry Best Construction to collect, use, hold and process Personal Information in accordance with this Agreement.

16. General

16.1 GST

- (a) Unless otherwise stated, all amounts are GST exclusive, and You must pay to us the GST component in respect any supply that We make under this Agreement at the same time as payment for the supply to which it relates.

16.2 Confidentiality

- (a) By virtue of this Agreement, the parties may have access to each other's Confidential Information.



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- (b) A party's Confidential Information does not include information that:
 - (i) is or becomes a part of the public domain through no act or omission of the other party;
 - (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party;
 - (iii) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or
 - (iv) is independently developed by the other party.
- (c) Each party agrees to hold each other's Confidential Information in confidence for a period of 5 years from the date of disclosure.
- (d) Each party agrees to disclose Confidential Information only to those employees or agents who are required to protect it against unauthorised disclosure in a manner no less protective than under this Agreement.

16.3 Assignment

No party may assign its interest in this Agreement without the consent of the other party, except that a party may assign or novate its interest in this Agreement to any company within its group of companies without the other party's consent.

16.4 Force Majeure

Neither party will be liable to the other for any failure to comply with this Agreement where the failure is due to circumstances which are not directly within the party's control, including acts of terrorism, natural disaster, industrial action, or a failure of a supplier, public utility or common carrier, provided the affected party diligently commences and continues its obligations under this Agreement promptly upon the removal of such cause.

16.5 Entire Agreement

This Agreement constitutes the full and complete understanding between the parties with respect to its subject matter.

16.6 Further Assurances

Each party must promptly sign all documents and do all things that another party from time-to-time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

16.7 Independent Contractor

The relationship created by this Agreement is that of principal and independent contractor and that this Agreement is not intended to constitute, create, give effect to, or otherwise recognise an employment relationship, joint venture, partnership or formal business entity of any kind.

16.8 Waiver

A right created under this Agreement may not be waived except in writing, signed by the party granting the waiver.



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16.9 Notices

All notices and other communications provided for or permitted under this Agreement or otherwise shall be sent by certified or registered mail with postage prepaid, by hand delivery or by facsimile or email transmission to each party's respective contact details as set out in the Customer document.

16.10 Customer Reference

You agree:

- (a) that Industry Best Construction may identify You as a recipient of services and use Your logo in sales presentations, marketing materials, press releases and other similar activities; and
- (b) to develop a customer profile for use by Industry Best Construction to help future Industry Best Construction clients better understand Industry Best Construction solutions.

16.11 Governing Law

This Agreement is governed by and construed in accordance with the laws of Victoria and the parties submit to the non-exclusive jurisdiction of Victoria.



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ANNEXURE A – SERVICE LEVEL AGREEMENTS

Service Level Agreements

INCIDENTS

Incident Priority	Target Resolution	Acknowledge & Confirm	Initial Update	Cyclic Update	Business Hours or Elapsed Time
P1 (during standard Business Hours)	8 Hrs	1 Hr	2 Hrs	4 Hrs	Business Hours
P1 (out of standard Business Hours)	24 Hrs	4 Hrs	8 Hrs	12 Hrs	Elapsed Time
P2	16 Hrs	2 Hrs	4 Hrs	8 Hrs	Business Hours
P3	24 Hrs	4 Hrs	8 Hrs	12 Hrs	Business Hours

The INCIDENTS table above provides an overview of the -

Target Resolution (time taken to resolve the issue)

initial Acknowledge & Confirm (from Customer Support)

Initial Update (progress report from Customer Support)

Cyclic Update (from Customer Support at these hourly intervals)

Within standard Business Hours and Elapsed Time (out of standard Business Hours) for P1 Incidents only



**REQUESTS
(Technical Requests)**

Request Priority	Target Resolution	Acknowledge & confirm	Initial Update	Cycle Update	Within Standard Business Hours
P4	3 Days	0.5 Days	1 Day	1.5 Days	Business Hours
P5	4 Days	1 Day	1.5 Days	2 Days	Business Hours
P6	5 Days	2 Days	2.5 Days	2.5 Days	Business Hours

The REQUESTS table above provides an overview of the:

Target Resolution (time taken to resolve the issue)

initial Acknowledge & Confirm (from Customer Support)

Initial Update (progress report from Customer Support)

Cyclic Update (from Customer Support at these hourly intervals)

Within standard Business Hours only



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Business as usual (BAU) requests (non-technical requests)

Request Priority	Target Resolution	Acknowledge & Confirm	Initial Update	Cyclic Update	Within Standard Business Hours
P7	5 Days	1 Day	1.5 Days	2.5 Days	Business Hours
P8	6 Days	1.5 Days	2.5 Days	3 Days	Business Hours
P9	7 Days	2 Days	3 Days	3.5 Days	Business Hours

The BAU REQUESTS table above provides an overview of the -

Target Resolution (time taken to resolve the issue)

initial Acknowledge & Confirm (from Customer Support)

Initial Update (progress report from Customer Support)

Cyclic Update (from Customer Support at these hourly intervals)

Within standard Business Hours only