



'Excellence in business data solutions'

Corporate Terms and Conditions

Important Note:

All information provided in this document is provided in confidence.

By receiving this document the recipient acknowledges that this response remains the confidential information and copyright of iseek.

This document must not be disclosed to any third party without iseek's written consent.

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These Corporate Terms and Conditions, the Master Services Agreement, the Service Schedule(s) and the Order(s) for Service will together form agreement between iseek and You (**the Agreement**). By completing the Order for Service You agree to be bound by the Agreement. If there are any inconsistencies between the documents that form the Agreement, the order of precedence is these Corporate Terms and Conditions the Master Services Agreement, the Service Schedule(s) and then the Order(s) for Service.

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1 The Services

1.1 Installation

- a) We will use best endeavours to carry out any Works within the timeframe that We agree with You which may be set out in the Service Schedule or the Order for Service.
- b) The Charges for any Works are based on the information You have provided to isseek. If that information is inaccurate or an unforeseen event occurs, We may charge You for any additional cost We incur in completing the Works provided that, if reasonably practicable, We notify You of such additional costs before they are incurred and agree them with You.
- c) You will promptly provide Us with reasonable and safe access to Your premises and assistance from Your employees to allow Us to carry out the Works.
- d) You warrant that You have obtained all necessary permissions to enable Us to undertake the Works and for You to confer on Us all rights under the Agreement.

1.2 Services

- a) The Service Schedule(s) and related Order for Service(s) set out the nature of the Services that We will provide to You.
- b) Whenever We provide You with a Service, We will:
 - (i) provide the Service with care and skill;
 - (ii) use best endeavours to begin providing the Service within a reasonable time or by any service commencement date set out in the relevant Service Schedule or Order for Service; and
 - (iii) ensure the Service substantially conforms to any specifications that We provide.
- c) We may replace an existing Service with another service by giving You 30 days prior notice, where the Charges for the new service are not greater than the Charges for the Service being replaced and the functionality of the new service is substantially the same as or better than the Service being replaced, as reasonably determined by Us.

1.3 Service Levels

If a Service Schedule sets out Service Levels for a Service then We will endeavour to provide that Service in accordance with those Service Levels. Our liability for a failure to meet a Service Level will be as set out in that Service Schedule and You acknowledge this is Your only remedy in relation to a failure by Us to meet a Service Level or for any interruption or failure of a Service.

1.4 Equipment

If required for a Service, We may supply Equipment to You. You may request upgrades or new versions of Equipment and We will advise You of the availability and any additional costs associated with the upgrade or new version.

1.5 Repairing Faults

- a) We will arrange for the repair of any fault in Our Network (up to and including the Network Boundary) or in Our Equipment which adversely affects the Service. We are not responsible for rectifying any fault in the Service where the fault arises in or is caused by a third party network, Your equipment or any other equipment or facilities beyond the Network Boundary.
- b) The Charges cover the cost of Us repairing faults in the Service during our normal service hours of 7.30am to 6.30pm (AEST) on Business Days unless such faults are caused, or contributed to, by You, Your employees, contractors or other users of the Service supplied to You.
- c) If You want Us to investigate or repair any faults or defects not covered by the Charges then We may charge You additional charges for the work carried out. Such additional charges will be agreed with You before being incurred.

1.6 Our Group

You should be aware that the Services may be provided by any member of Our Group and, as such, any reference to, “We”, “Us” “iseek” or “our” in the Agreement refers to whichever member(s) of Our Group that is providing the Services to You. Where this occurs, neither You nor We are relieved of our obligations under the Agreement.

2 Your Responsibilities

2.1 General Responsibilities

Whenever We provide a Service to You, You will:

- a) comply with the Agreement and all applicable laws, regulations, standards and codes;
- b) if We are supplying You with internet Services, comply with our Acceptable Use Policy (as amended from time to time);
- c) provide Us with information that We reasonably require to provision and supply the Services to You;
- d) not resupply or resell the Service without our prior written consent;
- e) follow our reasonable directions about the use of the Service;
- f) ensure that all information You give Us is correct, current and complete;
- g) use the Service for lawful purposes and without being a nuisance to anyone;
- h) never interfere with the reasonable use of the Service by our other customers;
- i) be solely liable for all information and data carried over Our Network or a third party network as a result of Your use, or deemed use, of the Service;

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- j) report to Us as soon as possible any unauthorised use of the Service;
 - k) be responsible for any of Your agents, employees, contractors or other service providers who have access to the Service;
 - l) provide a suitable environment for Us to supply the Services. If You fail to do so We will not be liable for any failure to provide the Services as a result.

2.2 Our Equipment and Network

- a) Ownership of Our Equipment remains with Us or our suppliers (as the case may be). You assume all risks associated with Our Equipment from the date You pick up Our Equipment or it is delivered to You.
- b) We may modify or replace Our Equipment provided that there is no adverse impact on the Service during Your normal business hours.
- c) For Your own safety, and so that the Service is not disrupted, You must:
 - (i) arrange for Our Equipment to be installed in a suitable place;
 - (ii) as We may specify, protect Our Equipment from radio or electrical interference, power fluctuations, abnormal environmental conditions, theft and any other risks and ensure it is not damaged and remains in good condition;
 - (iii) only locate and/or use Our Equipment at the agreed site location and not part with possession except to return that equipment;
 - (iv) not enter into any agreement or other dealing that might affect our ownership of Our Equipment and comply with all reasonable instructions We give You to protect our ownership of Our Equipment;
 - (v) give Us reasonable access to Your premises for the purpose of repairing, maintaining or developing Our Network or Our Equipment, or for any other reasonable purpose related to the Service;
 - (vi) only permit Our Equipment to be repaired, serviced, moved or disconnected by Us or our authorised contractors unless We otherwise permit in writing;
 - (vii) obtain our written approval prior to connecting or changing a connection to Our Equipment or Our Network;
 - (viii) follow our reasonable directions or those of our contractors or the manufacturer when connecting anything to Our Network or Our Equipment or otherwise operating Our Equipment and ensure it is installed to our specifications and complies with any applicable Australian standards;
 - (ix) never use Our Equipment for purposes for which it is not designed; and

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- (x) pay our charges for repairing or replacing any part of Our Network or Our Equipment which is lost or damaged by You, Your agents, employees, contractors or other users of the Service supplied to You. If You become aware of any malfunction in, loss of, or damage to, Our Equipment, You must notify Us immediately in writing. There is no charge where damage occurs through normal wear and tear.
 - d) Where third party equipment or network is used to provide the Service, You must comply with any requirements of such third party in relation to that equipment or network.
 - e) We recommend that You arrange suitable insurance cover for any loss, damage or liability You may incur arising from the Agreement.

2.3 Software

- a) Where We provide You with any software to use:
 - (i) We remain the owner or licensee of the software;
 - (ii) You may use the software only for the purposes for which it is provided under the Agreement;
 - (iii) Your right to use the software may not be assigned or otherwise transferred to anyone else without our prior written consent;
 - (iv) You will not change or interfere with the software in any way;
 - (v) You will not use the software to recreate or reverse engineer any source code or copy any part of the software except for the purposes of our approved backup or testing procedures; and
 - (vi) You will comply with any further requirements We impose in relation to the software or, where relevant, any requirements of the owner or licensor of the software.
- b) We may at any time install upgrades or new versions of the software and You shall co-operate to the extent necessary for Us to be able to do so.

2.4 Purchased Equipment

- a) If required for the provision of the Service, We will sell to You the Purchased Equipment and in return, You will pay to Us the Charges set out in the applicable Order for Service or Service Schedule.
- b) We will supply any Purchased Equipment to the location set out in the applicable Order for Service or as we otherwise agree in writing.
- c) Risk for damage to, or loss of, the Purchased Equipment passes to You on delivery of the Purchased Equipment. Title to the Purchased Equipment does not pass to You until the Charges for the Purchased Equipment have been paid in full. Until then, You retain it as the fiduciary agent and bailee of Us and must protect the Purchased Equipment in accordance with clause 2.2 as though it was Our Equipment.

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- d) Where Charges for Purchased Equipment have not been paid in full by the due date, We may reclaim possession of the Purchased Equipment and You irrevocably authorise Us to enter any premises to enable Us to reclaim possession of the Purchased Equipment.
 - e) We will make reasonable efforts to assign to You supplier warranties provided in respect of the Purchased Equipment but otherwise give no warranties regarding the Purchased Equipment.

2.5 Indemnity

You indemnify and will keep Us indemnified for any Loss suffered or incurred by Us due to a breach of the Agreement by You except where such Loss is directly due to a negligent act by Us. Your liability under this indemnity is not limited by clause 5.1(c) or clause 5.1(e).

2.6 Authorisation

Provided that We act reasonably, We are entitled to assume that any request in connection with the Service We receive from You, Your agents, employees or contractors, or from the premises where the Service is being supplied or accessed, is authorised by You.

2.7 Responsibility for Your Equipment

You are responsible for implementing and maintaining the security of Your network and equipment. You are liable to pay all Charges in connection with use of a Service resulting from a breach of Your security. This includes use of the Service not authorised by You, for example, as a result of viral infection of any computer or related equipment on Your network, attacks from the Internet, denial of service attacks, PABX hacking, account/password misuse, SPAM and misuse of the Service by third parties including Your employees and contractors.

2.8 Interception of Service

You acknowledge that We, or our authorised delegate, may:

- a) intercept the Services or the data being transmitted over the Services if You fail to comply with the Agreement or any applicable laws or to enable Us to comply with our obligations at law; and
- b) investigate any misuse of the Services by You including in conjunction with any law enforcement agencies.

3 Charges and Invoices

3.1 Charges

- a) You must pay the Charges in each invoice issued by Us by the due date on the relevant invoice or, if no due date is specified, within 30 days of the invoice date.
- b) If You do not pay an invoice in full by the due date, We may charge You a default charge on the unpaid amount on a daily basis from the due date until payment is made at the rate of no more than 3% above the Commonwealth Bank Corporate Overdraft Reference Rate published on the first day of the month of the due date.

3.2 Invoicing

- a) If You consider there is a mistake in any invoice, You must notify Us within 12 months of the date of the relevant invoice with full details. We will investigate the matter and report back to You as soon as practicable. If the matter cannot be resolved, the procedure under clause 8 must be followed. If We have made a mistake, We will adjust a later invoice or issue a credit note.
- b) Where You receive the Service from more than one member of Our Group, then in some cases, each member may bill You individually for the Service it has provided and You must make payment to the bill issuer.
- c) A member of Our Group which has agreed to provide You with a Service may delegate the invoicing for that Service to another member of Our Group. If this happens, You agree that You will pay the invoices in accordance with the terms of the Agreement as if they had been received from the member of Our Group which is providing You with the Service.
- d) We may require You to lodge some form of security as a condition of Us providing the Service to You. We may also set a spend limit for the provision of Service to You from time to time, as notified to You.
- e) You must pay our Charges by electronic funds transfer or other means specified on the invoice. If an invoice specifies that payment by credit card is acceptable and You pay Us by credit card then We may charge an additional fee to You that will not exceed any fee We incur for processing Your credit card payment. If any payment is dishonoured or rejected, We reserve the right to charge You a reasonable administration fee.

3.3 Changes to Charges

- a) We may vary the Charges if:
 - (i) We continue to provide the Service after the end of any Minimum Period, unless otherwise stated in the applicable Order for Service; or
 - (ii) You have requested a change to the Service to be provided and We have agreed to that change.
 - (iii) You have requested additional services or Project work to be carried out by Us.
- b) In relation to Colocation Services, We may vary charges by passing through any costs that to the extent such increase may occur as a result of the introduction of a Carbon Pricing Mechanism, statutory charges and or any other taxes or permit costs that may be imposed by the State and or Federal Government during the period of contract, provided we have given you at least 60 days prior notice.
- c) The Colocation Service charges maybe varied in accordance with clause 16 of the Colocation Service Schedule.
- d) In relation to Telco Services, We may vary charges to the extent such increase is due to the introduction of or a change to statutory charges and or taxes imposed

by the State and or Federal Government, provided we have given you at least 60 days prior notice. The notice will give details of the change to the charges, which we must pay, as varied by our Suppliers or any other network operator for Services we provide to You.

3.4 Cancellation Charge

- a) You will be liable to pay a Cancellation Charge if:
- (i) You terminate all or any Individual Services or the Agreement before the end of the Minimum Period other than in accordance with clause 9.2(a); or
 - (ii) We terminate all or any Individual Services or the Agreement prior to the end of the Minimum Period in accordance with clause 9.2.
- b) Except as expressly set out in a Service Schedule the Cancellation Charge is the sum of:
- (i) an amount equal to 75% of the Total Monthly Charge multiplied by the number of months, or part thereof, between the date of termination and the end of the Minimum Period; and
 - (ii) reimbursement to Us of any rebates, credits, technology funds, refunds or discounts, including but not limited to service credits on the full amount of our standard charges, provided to You during the Agreement.
- c) You agree that the Cancellation Charge is a reasonable estimate of our likely financial loss if any Individual Services are terminated prior to the end of the Minimum Period.
- d) We may invoice You for all or part of that Cancellation Charge payable by You under this clause 3.4. You will pay any Cancellation Charge by the due date on the invoice or, if no due date is specified, within 14 days of the invoice date.

3.5 GST

Unless otherwise expressly stated in the relevant Service Schedule and/or Order for Service, the Charges are exclusive of GST. You must pay Us, in addition to the Charges, an amount equal to any GST payable on the supply of the Service. That additional amount is payable at the same time as any part of the Charges is payable. We will issue a tax invoice to You for the supply of the Service at or before that time.

4 Service Disruption

- a) We may temporarily suspend or restrict any Service:
- (i) if We believe it necessary to do so to comply with any law or an order or request of any Regulator;
 - (ii) to protect any person, equipment or Our Network and/or to attend to any emergency;
 - (iii) during any scheduled maintenance period;

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- (iv) if the Service is an Internet Service, in the event that You breach the terms of our Acceptable Use Policy; or
 - (v) if the Service is used in an excessive or unusual way (though We are not obliged to do so and You remain liable to pay for any Charges incurred for any excessive or unusual usage).
- b) Unless otherwise stated in a Service Schedule, We will endeavour to:
- (i) give You at least 5 business days notice of scheduled maintenance that is likely to affect Your Service; and
 - (ii) not carry out any scheduled maintenance between 08.00 – 18.00 on Business Days unless we agree.

5 Liability

5.1 Limitation of Liability

- a) To the extent permitted by law We exclude all statutory or implied conditions or warranties. We do not warrant that Services will be free of interruptions, delays or faults.
- b) To the extent permitted by law our liability in relation to the Agreement under any term, condition, warranty, undertaking, inducement or representation that by law cannot be excluded or that is not otherwise excluded by the Agreement, is limited at our option to:
 - (i) in the case of services: the cost of the resupply or payment of the cost of resupplying the services; and
 - (ii) in the case of goods: the replacement of the goods, the repair of the goods, the payment of the cost of replacing the goods or acquiring equivalent goods or the payment of the cost of having the goods repaired.
- c) To the extent permitted by law Your total liability in respect of all claims in connection with the Agreement (whether in contract, negligence or any other tort, under any statute or otherwise) will be the sum of the Charges paid or payable by You under the Agreement in the 12 month period preceding the date of the event that gave rise to the last claim, save in respect of Your indemnity obligations or Your obligations to pay Charges under the Agreement.
- d) To the extent permitted by law our total liability in respect of all claims in connection with the Agreement (whether in contract, negligence or any other tort, under any statute or otherwise) will be the sum of the Charges paid or payable by You under the Agreement in the 12 month period preceding the date of the event that gave rise to the last claim.
- e) Subject to clause 3, neither party will be liable to the other (under the law of contract, tort, equity or otherwise):

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- (i) for any damages of any kind arising out of or in connection with the Agreement that are indirect or consequential (meaning not arising in the ordinary course as a direct, natural or probable consequence of the act or omission complained of); or
 - (ii) for any loss of data, loss of revenue, loss of sale, loss of profits, loss of business or any other economic loss or any loss of goodwill; regardless of the cause of such damages or whether the other party had been advised of the possibility of such damage.
- f) The amount that either of us has to pay the other will be reduced to the extent that the event giving rise to the obligation to pay has been caused or contributed to by the other.

5.2 Events Beyond Reasonable Control

Neither party will be liable for failing to meet its responsibilities under the Agreement (except Your obligation to pay Charges for Services You have received) because of a Force Majeure Event.

6 Property Rights

6.1 Our Network and Our Equipment

Except as otherwise provided in the Agreement, acquiring Services from Us does not give You any ownership or other property rights in Our Network or Our Equipment.

6.2 Intellectual Property

- a) Any Intellectual Property owned by either party prior to entry into the Agreement, or developed independently of the Agreement by either party, will continue to be owned by that party.
- b) We either own the Intellectual Property in the Service provided to You or, where We use any Intellectual Property belonging to anyone else, We have a licence to do so.
- c) None of Our Intellectual Property is transferred to You and, unless specifically authorised by the Agreement, You cannot and will not use or reproduce such Intellectual Property for any purpose outside the Agreement.
- d) All Intellectual Property in any improvements or changes to any Service devised or made by anyone during the time We are providing the Service belongs to Us.
- e) You agree to indemnify, defend, and hold Us harmless from all Loss incurred or suffered by Us arising from any claims (including third party claims) or demands against Us where such Loss was caused by any infringement or alleged infringement of any person's Intellectual Property by You when using the Service. The indemnity is reduced to the extent that the Loss is caused by a negligent act by Us.

7 Information

7.1 Confidential Information

- a) Subject to clause 7.1(b), each party must always keep the other party's Confidential Information confidential.
- b) We both agree to:
 - (i) use the Confidential Information of the other party only to the extent required for the purpose it was provided;
 - (ii) not copy or reproduce any of the Confidential Information of the other party in any way;
 - (iii) disclose the other party's Confidential Information only to employees and contractors who need access to the information and who have agreed to keep it confidential;
 - (iv) disclose the other party's Confidential Information only to its legal advisers and insurance providers if those persons undertake to keep such information confidential; and
 - (v) not disclose the other party's Confidential Information to any person not referred to in this clause except with the other party's prior written consent or if required by law, any stock exchange or any Regulator.
- c) A party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party's request unless required by law to retain it.
- d) Confidential Information excludes:
 - (i) information generally available in the public domain (without unauthorised disclosure under the Agreement);
 - (ii) information received from a third party entitled to disclose it;
 - (iii) information that is independently developed.

7.2 Personal Information

- a) During Your relationship with Us, We may collect information from You or from a credit provider or credit reporting agency ("**Personal Information**").
- b) You agree that We may:
 - (i) hold the Personal Information and share it with our employees, contractors and other agents or where relevant other credit providers but only where this is necessary to enable Us to provide You with the Services, send You invoices, check Your creditworthiness, check that Your responsibilities are being met or otherwise to administer and enforce the Agreement. If this Personal Information is not provided to Us, We may be unable to provide the Service to You.

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- (ii) share with other network operators any information needed to provide certain services to You, or to enable You to send or receive messages of any kind through those networks.
 - (iii) use any information about You for statistical purposes, so long as You are not identified.
 - (iv) use any information about You for the purposes set out in our privacy policy which can be viewed on our website
- c) We are required by law to provide Your name, address, service numbers and other public number details to a database known as the Integrated Public Number Database (“**IPND**”). This obligation applies to all our customers, including those customers who request an unlisted number. However, unlisted service information is marked and controlled in the IPND so that it is only used for an approved purpose to those approved data users such as directory information organisations or for the assistance of emergency service organisations or law enforcement agencies. You must contact Us if You wish to have any of the information We supply to the IPND altered in any way.

7.3 Electronic Addresses, Numbers and Other Codes

- a) We will arrange for appropriate electronic addresses, numbers and other codes to be allocated for You to use depending on the Services.
- b) Subject to any third party agreements to which We are a party (e.g. portability agreements), all addresses, numbers and other codes allocated to You remain our property. For that reason, You may not sell, lease, licence or otherwise deal with any addresses, numbers and codes allocated to You.
- c) If it is necessary to do so, We may, by giving You one month’s notice or a shorter timeframe if required by law, change or replace any electronic address, number or other code allocated to You.

7.4 Public Addressing Identifiers

The Service may use identifiers such as a telephone number, IP address or domain name (“**Public Addressing Identifiers**”). You must comply with the requirements of any Regulator or other body which administers Public Addressing Identifiers. You acknowledge and agree that:

- (i) We do not control the allocation of Public Addressing Identifiers;
- (ii) We are not liable to You if We are required to change any Public Addressing Identifier as a result of any direction given by a Regulator or other body which administers Public Addressing Identifiers;
- (iii) on cancellation of the Service or any relevant Individual Service, Your right to use any related Public Addressing Identifier may cease.

8 Resolving Disagreements

8.1 General Disputes

- a) Where a dispute arises between the parties, it will be referred to the isseek account manager for resolution. If they cannot resolve the dispute within 10 Business Days, either party may escalate it to the respective group managers. If the dispute is not resolved within 10 Business Days of such escalation, either party may take such action or proceedings as it sees fit.
- b) If You do not have an isseek account manager and a dispute arises between us, You should contact Us immediately on 1300 661 668 for resolution. If this dispute is not resolved within 20 Business Days either party may take such action or proceedings as it sees fit.
- c) Notwithstanding any other term of the Agreement, nothing in this clause will prevent either party from seeking urgent interlocutory relief.

8.2 Billing Disputes

- a) In the event of a Billing Dispute arising You must:
 - (i) pay all undisputed amounts in the invoice to which the Billing Dispute relates by the due date;
 - (ii) notify Us in writing of the Billing Dispute within 14 days of receipt of the invoice and provide Us with particulars of the disputed amount; and
 - (iii) provide requested additional information to Us within 14 days of receipt of Our request for further information.
- b) If You do not comply with clause 8.2(a) or We do not consider the Billing Dispute to be bona fide we may (after first giving you 2 Business Days notice) suspend or terminate the Agreement as it applies to the Individual Service that is the subject of the Billing Dispute or commence legal proceedings.

9 Term and Termination

9.1 Term of an Individual Service

Each Individual Service will, subject to clause 9.2:

- a) remain in effect for the Minimum Period; and
- b) unless otherwise stated in the applicable Order for Service or Service Schedule, on expiry of the Minimum Period, continue unless and until terminated by either party by giving to the other party at least 20 Business Days prior written notice.

9.2 Termination

- a) Either party may terminate:
 - (i) an Individual Service on written notice where the other party has materially breached the Agreement as it relates to that Individual Service and, if that breach is capable of remedy, has failed to remedy the

breach within 20 Business Days of receipt of written notice from the non-defaulting party requiring the breach to be remedied; or

- (ii) the Agreement immediately on written notice where the other party suffers an Insolvency Event.

b) We may terminate the Agreement subject to providing You with written notice:

- (i) if We reasonably determine that You have failed our credit check requirements or that You are no longer credit worthy; or
- (ii) in whole or in part, if You materially breach the Agreement and, if that breach is capable of remedy, You have failed to remedy such breach within 20 Business Days of receipt of our written notice requiring the breach to be remedied; or
- (iii) if We are required to do so by law.

9.3 Suspension Rights

If You are in material breach of the Agreement (including by non-payment of our Charges when due) We have the right to suspend performance of any or all of our obligations under the Agreement if You fail to comply with our written notice requiring You to remedy such breach by the date specified in such notice.

9.4 Automatic Termination

- a) Each Service Schedule and Individual Service will terminate automatically on termination of the Agreement or the Minimum Period as described in the OFS for that Service.
- b) If termination of the Agreement by Us under clause 9.2 (excluding clause 9.2(b)(iii)) results in an Individual Service terminating prior to the expiration of the Minimum Period for that Individual Service, You must pay Us the Cancellation Charge.

9.5 Recovery of Our Equipment

- a) On termination of an Individual Service under the Agreement, You agree to return Our Equipment to Us.
- b) If, following 30 days from the date of termination of the Individual Service, You fail to return Our Equipment, You agree that, we may invoice you a Charge for the as new replacement value of the Equipment and You agree to pay that amount to us within 14 days of the date of the invoice.

9.6 Post-Termination

The parts of the Agreement which are by their nature intended to survive termination will do so, including clauses 2.5, 3, 5, 6, 7, 9, 10 and 11.

10 Notices and Invoices

- a) All notices and invoices must be in writing and may be sent by letter, fax or e-mail to the address and contact person on the front of the Order for Service, as updated from time to time.

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- b) Any notice or invoice sent by post to that contact address will be assumed to have been delivered two Business Days after it is posted. Any notice sent by fax to that contact number will be assumed to have been delivered once a correct transmission confirmation slip is received.

11 General

- a) Each party will comply with the other party's reasonable requirements for security, health and safety when working at each other's premises. Where practical, these requirements will be communicated to the other party in writing.
- b) You cannot assign Your rights and responsibilities under the Agreement without our prior written consent.
- c) The Agreement may only be varied by written agreement signed by both parties.
- d) We may have subcontractors or other agents meet any of our responsibilities under the Agreement. We will remain liable to You for meeting all those responsibilities.
- e) No legal partnership, employer/employee, principal/agent or joint venture relationship is created or evidenced by the Agreement.
- f) The Agreement is the entire agreement between You and Us in relation to its subject matter.
- g) You acknowledge that You have relied on Your own judgment to evaluate the suitability of the Services for the purpose for which You require them. You do not rely on any statement, representation or promise by Us that is not expressly set out in the Agreement.
- h) No failure, delay or indulgence by either party in exercising any power or right conferred by the Agreement on that party will operate as a waiver of that power or right.
- i) If a provision of the Agreement is void, voidable, unenforceable or the invalid part severed, the remainder of the Agreement will not be affected.
- j) You authorise Us to complete any blank spaces in Your Order for Service(s).
- k) We may pay commission in connection with the Agreement.
- l) The Agreement will be governed by the laws of Queensland. Both parties agree to submit to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from such courts.
- m) Headings are for convenience only and do not affect interpretation.
- n) The singular includes the plural and conversely.

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- o) A gender includes all gender
 - p) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - q) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
 - r) A reference to a clause or schedule is a reference to a clause of, or a schedule to, the Agreement.
 - s) A reference to an agreement or document (including a reference to the Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by the Agreement or that other agreement or document.
 - t) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
 - u) A reference to dollars and \$ is to Australian currency.
 - v) The meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions.

12 Definitions

In our Corporate Terms and Conditions:

Account means Your account with Us for the supply of Services.

Billing Dispute means a dispute relating to a Charge and/or invoice issued by Us.

Business Day means any day excluding Saturday, Sunday, a bank or public holiday in the place where the obligation is required to be performed.

Cancellation Charge means the early termination charge calculated in accordance with clause 3.4(b).

Charge means the charge (exclusive of any taxes or duties) in respect of a Service or any Purchased Equipment as set out in the relevant Order for Service and/or Service Schedule.

Confidential Information means information of a confidential nature whether oral, written or in operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information and pricing details.

Customer or **You** or **Your** is as described on the Order for Service.

Equipment means either Our Equipment or Purchased Equipment or both, as the context requires.

Force Majeure Event means an event or cause beyond the reasonable control of the party claiming force majeure including, without limitation, acts or omissions of third party network operators or suppliers, fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes or lockouts.

GST means GST within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Individual Service(s) means a particular service as described in the relevant Service Schedule and Order for Service.

Insolvency Event means where an administrator, liquidator, receiver, manager and receiver or any other administrator is appointed over the assets of the business of the entity, or if the entity enters into any composition with its creditors.

Intellectual Property means any intellectual or industrial property anywhere in the world including, but not limited to, any registered or unregistered copyright, patent, trade mark, design rights, trade secret or Confidential Information relating to the Service or any licence or other right to use, or to be the registered proprietor of, any of the above.

Loss means all losses, damages, liabilities, claims and expenses (including legal fees on a solicitor and client basis).

Minimum Monthly Commitment has the meaning given to it in the relevant Order for Service.

Minimum Period means the minimum period for provision of an Individual Service as set out in the Order for Service.

Network Boundary means the ethernet port on the router at the Customer premises.

Order for Service means written applications completed and signed by both parties which specify the Services that You request that We supply.

Our Equipment means any equipment that We or our suppliers provide to You as part of a Service but excluding Purchased Equipment.

Our Network means the telecommunications network operated, controlled or used by Us.

Project means any work that is not covered by an Order for Service (OFS) and is required on an ad hoc basis. Project work will be priced on scope.

Purchased Equipment means any equipment which You purchase from Us under the Agreement.

Regulator means the Australian Competition and Consumer Commission or any other relevant government regulator.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Service means the service(s) ordered by You and agreed to be supplied by Us under the Agreement.

Service Levels means the levels of service (if any) in respect of a Service as set out in a Service Schedule.

Service Schedule means a schedule to this General Terms and Conditions which sets out, amongst other things, a description of the Service(s), any Service Levels and any other relevant information.

Total Monthly Charge is the amount described as such in the OFS.

We or Us or our or Our Group or iseek means iseek Communications Pty Limited ABN 36 094 230 467 and/or its Related Bodies Corporate, as the case may be.

Works means any design, installation, commissioning works or other works required to enable provision of the Service.