

SCHEDULE 1: Terms and Conditions

1. Defined Terms

In these terms and conditions unless the context otherwise requires:

Administration Fee means the fee set out in the Cover Page payable by the Customer for the finalising of its account, preparing invoices, status reports and conducting an audit on the status of all Stored Material in readiness for delivery to the Customer (where applicable).

Agreement means this Agreement as constituted by these Terms and Conditions, the Cover Page and any other annexure, attachments and schedules and any subsequent written amendments.

Anniversary means each anniversary of the date of this Agreement.

Claim means a claim against any person any allegation, action, demand, cause of action, suit, proceeding, judgment, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Confidential Information means this Agreement and any information provided to one party by the other which is confidential or sensitive in nature.

Bin means 240, 120 or 60 litre bin(s) hired by Grace to the Customer for the placement of the Materials.

Bin Rental Fee means the bin rental fee charged by Grace from time to time in accordance with its Schedule of Rates set out in Schedule 5.

Bulk Services means any services (in addition to the Services) requested by the Customer that require the supply of industrial size bins and the destruction of Materials placed in those bins.

CDS means CDS - Confidential Destruction Solutions, a division of Grace.

Cover Page means the cover page to which this Schedule 1 is attached.

Customer means the person listed as the customer on the cover page and, where the context permits, includes the Customer Representative and any person appropriately authorised by the Customer.

Customer Data means all information, data, text, logos images, audio, movie clips and/or content in any form that the Customer provides to Grace in order to allow Grace to perform the Services.

Default Interest Rate means the rate of two (2) percent per annum above the standard rate published by the Commonwealth Bank of Australia for unsecured business overdraft facilities over \$100,000.00 from time to time.

Destruction means where destruction services are provided by Grace to the Customer.

Digital means where digital services are provided by Grace to the Customer.

Fee Fixed Rate Period means the "Fee Fixed Rate Period" as defined in the Cover Page.

Fees means the Storage Fee and Service Fee collectively and any other fees or charges payable by the Customer to Grace pursuant to this Agreement.

Grace means Grace Records Management (Australia) Pty. Ltd ACN 097 110 257, its subsidiaries and its successors and permitted assigns.

Grace IP means all IP in existence prior to the commencement of this Agreement belonging to Grace and all IP created or used by Grace in the performance of the Services, other than the Customer IP.

Hardcopy means where hardcopy record storage services are provided by Grace to the Customer.

IP means all intellectual property rights conferred by law and includes without limitation the protective rights attached to documents, processes, inventions, patents, registered designs, trademarks, copyrights, circuit layouts, software systems, computer software and hardware, and confidential information.

Initial Quantity means the highest level of Stored Materials stored by the Customer with Grace during the first ninety (90) day period commencing from the date of this Agreement. The Initial Quantity is to be increased by 5% in each subsequent 12 month period of the Term.

Materials means confidential business records and any other records permitted by Grace.

Privacy Policy means the privacy policy adopted by Grace from time to time.

Project Plan means the Project Plan set out in Schedule 6 of this Agreement or as agreed between the parties from time to time.

Retrieval Fee means any per box standard retrieval fee charged by Grace from time to time.

Services means the Services set out in Schedule 6 of this Agreement or as agreed between the parties from time to time.

Service Fee means the service fee charged by Grace from time to time in accordance with its Schedule of Rates set out in Schedule 5 or as currently set out on the Grace system for the Customer account. The service fee will remain fixed during the Fee Fixed Rate Period until the rate is altered in accordance with the Variation Formula set out in the Cover Page.

Software Fee means the software fee (including software licence and administration charges) payable by the Customer to Grace where third party's software are used as part of the Services or as a standalone service/product to the Customer.

Standard Price List means the Standard Price List set out in Schedule 5 of this Agreement.

Statement of Works means the Statement of Works set out in Schedule 6 of this Agreement or as agreed between the parties from time to time provided by Grace to the Customer which forms part of this Agreement.

Storage Fee means the storage fee charged by Grace from time to time in accordance with its Schedule of Rates set out in Schedule 5 or as currently set out on the Grace system for the Customer account. The storage fee will remain fixed during the Fee Fixed Rate Period until the rate is altered in accordance with the Variation Formula set out in the Cover Page.

Stored Material means any document or other material which the Customer request Grace to store for the Customer, whether at the time of this Agreement or subsequently.

Subcontractor IP means all IP in existence prior to the commencement of this Agreement belonging to Grace's subcontractor and all IP created or used by Grace's subcontractor in the performance of the Services, other than the Customer IP.

Fixed Term means the Term set out in the Cover Page.

Variation Formula means the "Variation Formula" set out in the Cover Page.

2. Agreement and Term

- (1) Grace and the Customer agree that Grace is to provide the Services to or on behalf of the Customer for the Term in accordance with the terms and conditions of this Agreement or as otherwise agreed between the parties in writing from time to time.
- (2) The parties agree that the Customer will be deemed to have accepted the terms and conditions of this Agreement upon either:
 - (a) the execution and return of this Agreement by the Customer to Grace; or
 - (b) if this Agreement is not returned in accordance with Clause 2(a), within one (1) month of the date of issue of this Agreement to the Customer and the continued use of the Services by the Customer.
- (3) The Customer must comply with the reasonable rules and directions of Grace in order to allow Grace to perform the Services in accordance with this Agreement.
- (4) Grace will not be liable for any failure or delay in the performance of the Services due to any cause beyond its reasonable control including but not limited to acts of war, acts of terrorism, acts of god, earthquake, flood, labour shortage or dispute or governmental act or failure.
- (5) Grace may seek to vary the nature and extent of the Services at any time upon giving reasonable notice in writing to the Customer.

(6) Unless otherwise agreed between the parties in writing, this Agreement will apply to any services performed by Grace for the Customer, even after the completion of the Services set out in the Project Plan / Statement of Works as detailed in Schedule 6 (where applicable).

(7) Where this Agreement is for a Fixed Term then it will be automatically extended for a further 12 months period PROVIDED THAT:

- (a) Grace has giving reasonable written notice to the Customer of the upcoming automatic renewal; and
- (b) the Customer has not given notice to Grace at least 30 days prior to the date of expiry of the Fixed Term (as extended) that it does not wish the Fixed Term to be extended.

Where the Customer gives notice to Grace in accordance with this clause then this Agreement will terminate 90 days from the date of the Customer's notice.

(8) Where this Agreement is for a Fixed Term and is terminated by the Customer prior to expiry of the Fixed Term (as extended) the Customer must pay:

- (a) the Bin Rental Fee (where applicable); and
- (b) any scheduled Service Fee, to Grace until expiry of the Fixed Term (as extended).

(9) Grace may terminate this Agreement at any time, without reason, upon giving 90 days' notice in writing to the Customer.

(10) On termination of this Agreement the Customer must pay to Grace the Administration Fee, the Retrieval Fee, and any transport fees or associated handling costs (if transport is not provided by Grace, then palletisation and labour costs will apply to the account on termination) (where applicable).

(11) Grace may provide the Customer with written notice of any changes to the terms and conditions of this Agreement from time to time. The Customer will be deemed to have read and accepted the new terms and condition of this Agreement if it continues to use the Services after the receipt of that notice.

3. Payment

- (1) The Customer must pay to Grace:
 - (a) the Storage Fee and Software Fee monthly in advance (where applicable); and
 - (b) the Service Fee monthly in arrears; and
 - (c) the Bin Rental Fee will be charged annually in advance for the Services (where applicable).
- (2) The Storage Fee and Service Fee must each be paid by the Customer to Grace within the time stipulated on the relevant invoice provided to the Customer for that amount, or if there is no such date on the invoice, within 14 days of the date of invoice issued by Grace.
- (3) The Fees will automatically increase upon expiry of the Fee Fixed Rate Period, or if no such period is specified, on each Anniversary.
- (4) The increase to the Fees referred to in Clause 3(3) above is to be calculated in accordance with the Variation Formula.
- (5) Grace may change the Standard Price List from time to time. Grace will provide the Customer with written notice of any change in the Standard Price List from time to time. Any changes to the Standard Price List will commence to apply twenty eight (28) days after Grace provides the Customer with notice of the new fees. If the Standard Price List does change, then this Agreement will be changed accordingly so that the new Standard Price List will replace the existing Standard Price List contained in Schedule 5 and the Services Fee will reflect the then current fees contained in the Standard Price List (where Standard Price List applies).
- (6) Where Stored Material is received or stored for part of a month only the Fees for that Stored Material is to be calculated proportionally to the period for which that material was subject to this Agreement (applies to Stored Material only).
- (7) Clause 3(6) does not apply to Stored Material that is retrieved by the Customer for the purpose of final retrieval or destruction. In the circumstances set out in the preceding sentence, the Customer must give 30 days' notice in writing to Grace of final retrieval or destruction (**Retrieval/Destruction Notice**) prior to the Fees for that Stored Material ceasing to accrue. The Fees will cease to accrue in accordance with this Agreement at the end of the month following the month in which the Retrieval/Destruction Notice was received by Grace from the Customer.
- (8) Where:
 - (a) the Customer provides instructions for the performance of Services;
 - (b) Grace acts on those instructions; and
 - (c) the Customer subsequently cancels the instructions or request for Services;
 - (d) the Customer remains liable to pay for the Services, such liability to be calculated by reference to the Fees.
- (9) Where the Customer has not paid an invoice within 14 days of the date of that invoice Grace may charge, and the Customer must pay to Grace, interest on the total unpaid amount (**Interest**). The Interest will be calculated:
 - (a) based on the Default Interest Rate;
 - (b) on the amount owed by the Customer to Grace; and
 - (c) daily and compounded monthly, until such time as the outstanding amount has been paid.
- (10) In consideration of Grace providing the Services, the Customer agrees that Grace may exercise a lien over the Stored Materials until payment of the Fees have been satisfied in accordance with this Agreement.

4. Minimum Contract Amount

The Customer acknowledges and agrees that this Agreement requires the Customer to acquire the Services from Grace for the Fixed Term due to Grace having to allocate its resources for the performance of the Services under this Agreement. The Customer must pay Grace a Minimum Contract Amount as set out in the Cover Page if the Customer terminates this Agreement prior to the expiration of the Fixed Term with Grace's prior written consent.

5. Intellectual Property

- (1) Any IP vested in the Customer prior to the provision of the Services remains vested in the Customer, notwithstanding the performance of the Services (Customer IP).
- (2) Any improvements to the Customer IP made by Grace during the performance of the Services vest in the Customer.
- (3) Title to the Grace IP remains vested at all times in Grace.
- (4) Title to any improvements in the Grace IP remains vested at all times in Grace (whether made by Grace or the Customer).
- (5) Title to the Subcontractor IP remains vested at all times in Grace's subcontractor.
- (6) Title to any improvements in the Subcontractor IP remains vested at all times in Grace's subcontractor (whether made by Grace's subcontractor or the Customer).

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6. Confidentiality

- (1) A party must not disclose Confidential Information disclosed to it by the other party except:
 - (a) with the prior written consent of the disclosing party;
 - (b) if it is required to do so by law; or
 - (c) in accordance with the terms of this Agreement.
- (2) A party may use, copy, reproduce or otherwise deal with the Confidential Information disclosed to it only in a manner that is related to the proper and lawful conduct and performance of its obligations under this Agreement.
- (3) On expiry or earlier termination of this Agreement each party must:
 - (a) return to the other party all hard copy documents comprising or containing Confidential Information which has been disclosed to them by the other party; and
 - (b) except where to do so would contravene any legal obligation, destroy all electronic files containing Confidential Information.
- (4) Unless otherwise agreed by the parties in writing the obligation of confidentiality set out in this Agreement operates indefinitely and does not terminate on the expiry or earlier termination of this Agreement.

7. Claims

- (1) Any matters set out in this Clause 7 are subject at all times to the law.
- (2) The Customer indemnifies Grace against any Claim:
 - (a) relating to the proper performance by Grace of its obligations under this Agreement; or
 - (b) resulting from the fraudulent, negligent or unlawful behaviour of the Customer or a breach of this Agreement by the Customer.
- (3) Grace is not liable or responsible for any type of incidental, indirect or consequential damages (including but not limited to lost revenue, lost profits, loss of technology, loss of document, loss of data or interruption or loss of service) with respect to the provision of the Services.
- (4) Grace may assign its rights and obligations under this Agreement at its absolute discretion and without the consent of the Customer.
- (5) The Customer may not assign its rights and obligations under this Agreement without the prior written consent of Grace.

8. Limitation of Grace liability

- (1) The Customer acknowledges that Grace is not a common carrier and accepts no liability as a common carrier.
- (2) The total liability of Grace to the Customer is limited to the lesser of the following where Stored Material is applicable:
 - (a) The value of the physical Stored Material without having regard to any writing, data codes, plans, drawings or any other form of information which may be contained in or on the Stored Material;
 - (b) The amount of all fees paid by the Customer to Grace in the preceding 12 month period from the date of the claim by the Customer.
- (3) Subject to any requirement of law to the contrary and Clause 8(2), Grace shall not be liable to the Customer for any damages in excess of all fees paid by the Customer to Grace in the preceding 12 month period from the date of the claim by the Customer or for any special, indirect, incidental or consequential damages including without limitation loss of profit, data, business or goodwill, whether or not Grace has been advised or are aware of the possibility of such damages and whether arising in Agreement, tort or otherwise.
- (4) In the event that Grace is shown to be in breach of any of our obligations pursuant to this Agreement or implied by law then to the extent permitted by law its liability shall be limited to using its best endeavours to (at its option) supply the Services again or paying the cost of having the Services supplied again.
- (5) These limitations of aggregate liability will not apply to contractual indemnification obligations provided in this Agreement. This clause will survive termination.
- (6) The limitations of liability in this Clause 8 will also apply to any liability of directors, officers, employees, agents and suppliers, who will be third party beneficiaries of this contractual limitation of liability and will be entitled to enforce this limitation directly against the other party.
- (7) Where the Australian Consumer Law applies, the Customer has the benefit of guarantees in relation to the goods and services which cannot be excluded.

9. Default

- (1) The Customer breaches this Agreement if:
 - (a) The Customer breaches a term of this Agreement and fails to rectify that breach within seven (7) days of receiving notice from Grace;
 - (b) The Customer becomes insolvent or subject to external administration;
 - (c) The Customer becomes subject to a resolution or order for it to be wound up or deregistered.
- (2) Where the Customer is in breach of this Agreement:
 - (a) the Customer may not exercise any right conferred upon it pursuant to the terms of this Agreement;
 - (b) Grace may suspend performance of the Services; and
 - (c) Grace may terminate this Agreement with immediate effect by serving notice in writing on the Customer.
- (3) Where Grace terminates this Agreement:
 - (a) The Customer must pay Grace the Service Fee for any Service performed by Grace prior to the date of termination; and
 - (b) Grace may recover from the Customer:
 - (i) the Service Fee for the balance of the Term;
 - (ii) the Interest; and
 - (iii) any other costs and expenses incurred by Grace as a consequence of: the Customers breach and the termination of this Agreement (including legal costs on a full indemnity basis).
- (4) Notwithstanding any other term of this Agreement the Customer indemnifies Grace against all loss, costs, expenses, claims, demand or liability of any nature arising as a consequence of:
 - (a) the Customer's breach of any term of this Agreement; and
 - (b) any action taken by Grace in accordance with the terms of this Agreement, where such action is taken as a consequence of the Customer's breach.

10. No Soliciting or interference

- The Customer (either directly or indirectly) during the term of this Agreement and for a term of two (2) years after the expiration or termination of this Agreement (**Restraint Period**), must not:
- (1) seek to procure or solicit any person who was, at any time during the Restraint Period, an employee or contractor of Grace to leave the employ of, or cease providing the services to Grace; or
 - (2) interfere, in any way, with the relationship between Grace and its employees, client, customers, contractors or suppliers.
- without the prior written consent of Grace which may be refused at its absolute discretion or granted on such terms as Grace thinks fit.

11. Disputes

- (1) If a dispute arises out of or relates to these terms and conditions or the breach, termination, validity or subject matter thereof, the parties expressly agree to negotiate to settle the dispute in good faith an amicable outcome with the assistance of a representative from each party.
- (2) If an agreement cannot be reached between the parties within fourteen (14) after negotiations, the parties agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre ("ACDC").
- (3) The mediation shall be conducted in accordance with the ACDC Guidelines for Commercial Mediation operating at the time the dispute is referred to ACDC. The terms of the Guidelines are hereby deemed incorporated into these terms and conditions.
- (4) In the event that the dispute has not settled within twenty-eight (28) days after appointment of the mediator, or such other period as agreed to in writing between the parties, the dispute shall be submitted to expert determination in Sydney administered by ACDC conducted in accordance with the ACDC Rules for Expert Determination operating at the time the dispute is referred to ACDC. The terms of the Rules are hereby deemed incorporated into these terms and conditions.
- (5) The expert shall not be the same person as the mediator.
- (6) In the event that the dispute has not settled after appointment of the expert, either party may commence legal proceedings.
- (7) This clause shall survive termination of these terms and conditions.

12. Survival

- (1) All the provisions of this Agreement, which are expressly or impliedly intended to have effect at or after the expiry or termination of this Agreement, shall survive such expiry or termination, and the parties shall perform their respective obligations under such provisions. The provisions of this Agreement shall survive its termination to the extent permitted by law
- (2) This Agreement shall be binding upon the heirs, executors, administrators and successors in title of the parties.

13. GST

- (1) The terms used in this clause are as defined in the GST Act.
- (2) Unless otherwise expressly stated, all Fees or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- (3) If GST is payable on any Supply, the payer must, upon receipt of a valid Tax Invoice pay to the Supplier an amount equal to the GST payable in respect of the consideration payable for that Supply.

14. Miscellaneous

- (1) This Agreement is governed by the laws of New South Wales. Each party submits to the exclusive jurisdiction of the Courts of New South Wales.
- (2) The rights contained in this Agreement are personal to the Customer and may not be assigned or transferred without the prior written consent of Grace.
- (3) The non exercise or delay in performance of a right under this Agreement does not constitute a waiver. Any failure or delay will not prevent a party from exercising that right or power in the future. A waiver of a right may only be made by notice in writing signed by the party waiving the right.
- (4) This Agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.
- (5) This Agreement may only be amended or varied by agreement in writing signed by both parties.
- (6) Any notice required or permitted to be given under this Agreement must be in writing and may be delivered personally or by pre-paid post or by facsimile or by electronic mail. In the case of posting notices will be deemed to have been delivered on the day of receipt, unless receipt is at a time after 5pm or on a date which is not a business day. In which event the date of deliver will be the next business day.
- (7) If any part of this Agreement is invalid or unenforceable, this Agreement does not include it. The remainder of this agreement continues in full force.
- (8) This Agreement may be executed in any number of counterparts.

15. Hardcopy Special Conditions

- (1) Notwithstanding anything herein expressed or implied, where Grace provides Hardcopy services either as part of the Services or as a standalone service/product to the Customer, then the Hardcopy Special Conditions shall apply.
- (2) The Customer acknowledges and agrees that the Hardcopy Special Conditions:
 - (a) form part of this Agreement;
 - (b) are not intended to replace these Terms and Conditions contained in this Schedule 1 but instead are additional obligations which the Customer must comply with;
 - (c) will prevail to the extent of any inconsistency between the Hardcopy Special Conditions and these Terms and Conditions contained in this Schedule 1.

16. Digital Special Conditions

- (1) Notwithstanding anything herein expressed or implied, where Grace provides Digital services either as part of the Services or as a standalone service/product to the Customer, then the Digital Special Conditions shall apply.
- (2) The Customer acknowledges that Grace may engage or use a third party's equipment, hosting/support services, software/product, software services and/or other services/products in its provision of Services.
- (3) The Customer agrees to enter into a separate support agreement with Grace where SAU DIGITAL support services are required.
- (4) The Customer acknowledges and agrees that the Digital Special:
 - (a) form part of this Agreement;
 - (b) are not intended to replace these Terms and Conditions contained in this Schedule 1 but instead are additional obligations which the Customer must comply with;
 - (c) will prevail to the extent of any inconsistency between the Digital Special Conditions and these Terms and Conditions contained in this Schedule 1.
- (5) In the event of any business partnership with Grace being terminated by either Grace or its business partner then Grace may terminate this Agreement or any services or software provided by Grace's business partner at any time by giving a written notice to the Customer confirming the termination. Upon termination, any equipment, hosting/support services, third party's software/product licence and software services provided by Grace's business partner will be deemed as no longer part of the Services provided by Grace, and should the Customer wish to continue to use such equipment,

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hosting/support services and software/product licence and services then it must contact Grace's business partner directly as directed by Grace. This includes but not limited to the Customer's future fee payments which must then be paid directly to Grace's business partner from the date of termination onwards.

17. Destruction Special Conditions

- (1) Notwithstanding anything herein expressed or implied, where Grace provides Hardcopy services either as part of the Services or as a standalone service/product to the Customer, then the Hardcopy Special Conditions shall apply.
- (2) The Customer acknowledges and agrees that the Hardcopy Special Conditions:
 - (a) form part of this Agreement;
 - (b) are not intended to replace these Terms and Conditions contained in this Schedule 1 but instead are additional obligations which the Customer must comply with;
 - (c) will prevail to the extent of any inconsistency between the Hardcopy Special Conditions and these Terms and Conditions contained in this Schedule 1.

Hardcopy Special Conditions

1. Defined Terms

Any capitalised terms in these Special Conditions will have the same meaning prescribed to them in Schedule 1 - Terms & Conditions.

2. Obligations of Grace

Grace must:

- (1) store the Stored Material at one of its facilities;
- (2) permit the Customer to access and collect the Stored Material (or any part of it) during ordinary business hours;
- (3) deliver the Stored Material (or any part of it) to an address notified by the Customer by the time specified in, and in accordance with the Statement of Works;
- (4) destroy the Stored Material (or any part of it) upon receipt of an appropriate authorisation from the Customer by the time specified in, and in accordance with the Statement of Works;
- (5) keep all information acquired by Grace confidential as a consequence of it providing the Services;
- (6) comply with the Privacy Policy; and
- (7) exercise reasonable care in providing the Services to the Customer.

3. Minimum levels of Stored Materials

Where

- (1) This Agreement is for a Fixed Term; and
- (2) The Customer:
 - (a) breaches or tries to terminate this Agreement before the expiry of the Fixed Term; or
 - (b) permits either the Initial Quantity of Stored Materials, or the present level of Stored Materials stored by Grace on behalf of the Customer (whichever is the greater) to decrease below 50%.

Then irrespective of whether Grace terminates this Agreement the Fees for the remainder of the Fixed Term are to be calculated by reference to the greater of:

 - (c) the Fees calculated by reference to the Initial Quantity; or
 - (d) the present level of Stored Materials stored by Grace on behalf of the Customer.

4. Warranties from the Customer

The Customer warrants that:

- (1) The Customer is the owner, or the authorised agent of the owner, of the Stored Material;
- (2) The Stored Material comprises only boxes, cartons, files, journals, binders, documents, correspondence, magnetic tapes, computer media, printed materials, audio tape, film or other material of a like or related nature;
- (3) Unless disclosed to Grace in writing, the Stored Material does not contain any materials which are or may become of a dangerous, corrosive, highly combustible, explosive, damaging or noxious nature not likely to encourage any vermin or pest.

5. Default

- (1) The Customer breaches this Agreement if:
 - (a) The Customer breaches a term of this Agreement and fails to rectify that breach within seven (7) days of receiving notice from Grace;
 - (b) The Customer becomes insolvent or subject to external administration;
 - (c) The Customer becomes subject to a resolution or order for it to be wound up or deregistered.
- (2) Where the Customer is in breach of this Agreement:
 - (a) The Customer may not exercise any right conferred upon it pursuant to the terms of this Agreement;
 - (b) Grace may suspend performance of the Services; and
 - (c) Grace may terminate this Agreement with immediate effect by serving notice in writing on the Customer.
- (3) Where Grace terminates this Agreement:
 - (a) Grace may deliver the Stored Materials to the address of the Customer set out in the Cover Page (where applicable);
 - (b) In the case of insolvency or termination pursuant to Clauses 5(1)(b) and (1)(c), Grace may deliver the Stored Materials to the receiver, administrator or liquidator of the Customer at Grace's scheduled rates and charges applicable from time to time (where applicable);
 - (c) The Customer may request delivery of the Stored Material but Grace is not required to comply with such request until the Customer has paid the amounts set out in Clause 5(3)(e) (where applicable);
 - (d) The Customer must pay Grace the Service Fee for any Service performed by Grace prior to the date of termination; and
 - (e) Grace may recover from the Customer:
 - (i) the Service Fee and Storage Fee (where applicable) for the balance of the Term;
 - (ii) the Administration Fee and Retrieval Fee (if applicable);
 - (iii) the Interest; and
 - (iv) any other costs and expenses incurred by Grace as a consequence of: the Customer's breach and the termination of this Agreement (including legal costs on a full indemnity basis).
- (4) Where Grace exercises the rights set out in Clause 5(3) Grace is to have no liability to the Customer in respect of theft, loss, damage or destruction of the Stored Materials once they have been delivered to the appropriate address.

- (5) Where the Customer breaches this Agreement Grace may, at its absolute discretion:
 - (a) notify the Customer that it intends to destroy the Stored Material (where applicable); and
 - (b) if, within 30 days of the notice referred to in Clause 5(5)(a) above, the Customer does not:
 - (i) pay all amounts owed to Grace in accordance with this Agreement;
 - (ii) provide an address to which the Stored Material may be delivered; and
 - (iii) pay the costs of the delivery at Grace's scheduled rates and charges applicable from time to time;

then Grace may, without any liability to the Customer, destroy the Stored Material.
- (6) Notwithstanding any other term of this Agreement the Customer indemnifies Grace against all loss, costs, expenses, claims, demand or liability of any nature arising as a consequence of:
 - (a) the Customer's breach of any term of this Agreement; and
 - (b) any action taken by Grace in accordance with the terms of this Agreement, where such action is taken as a consequence of the Customer's breach.

Digital Special Conditions

1. Defined Terms

Any capitalised terms in these Special Conditions will have the same meaning prescribed to them in Schedule 1 - Terms & Conditions save for the following:

SAU Digital Intellectual Property or Intellectual Property Rights means proprietary information and property owned by SAU or its Related Bodies Corporate including copyright, trademarks, patents and other intellectual property rights including copyright in software used to provide the Services and any publications and literature of SAU Digital.

ELO Digital Office AU/NZ Intellectual Property or Intellectual Property Rights means proprietary information and property owned by ELO Digital Office AU/NZ or its Related Bodies Corporate including copyright, trademarks, patents and other intellectual property rights including copyright in software used to provide the Services and any publications and literature of ELO Digital Office AU/NZ.

Related Bodies Corporate has the meaning given to it in the *Corporations Act 2001*.

Supplier means SAU Digital's, ELO Digital Office AU/NZ's and Grace's supplier of the Services.

2. Rights and obligations of the Customer

- (1) The provision of the Services is subject to the Customer providing Grace with the Customer Data and adequate instructions in order to enable Grace to fulfil its obligations under this Agreement.
- (2) All Customer Data must be provided by the Customer at no cost to Grace and the Customer grants Grace a fee free licence to use and reproduce any such data only for the purpose of allowing Grace to perform the Services.
- (3) The Customer warrants that it will not do, or allow to be done any of the following acts in providing the Customer Data to Grace under this Agreement:
 - (a) provide any material that defames, abuses, harasses, stalks, threatens or otherwise violates the legal rights of others;
 - (b) provide any material which may infringe any Laws (including any copyright or intellectual property laws);
 - (c) provide any material that is objectionable and includes but is not limited to child pornography, terrorism, violence or is obscene or racist;
 - (d) provide any material that is harmful or disruptive of another's computer, software or other property;
 - (e) access or use any systems provided by Grace in any manner that could damage, disable or overburden any of the Services; and/or
 - (f) resulting from the misuse of any aspect of the Services.

3. Customer Data

Notwithstanding anything herein expressed or implied, the Customer agrees for Grace to provide any Customer Data to Grace's subcontractors, business partners and third parties engaged by Grace for the purpose of allowing those parties to perform the Services under this Agreement.

4. SAU Digital (SAU)

- (1) The Customer acknowledges that Grace is a business partnership with SAU and Grace may provide SAU Equipment and hosting/support services either as part of the Services or as a standalone service/product to the Customer.
- (2) The Customer agrees to enter into a separate support agreement with Grace where SAU support services are required.
- (3) The Customer agrees that it has no ownership of any SAU equipment, SAU Intellectual Property or patents or software code developed by SAU and is bound by the rights of individual software EULAs, except where there is a separate agreement for development or software.
- (4) In the event of the SAU business partnership with Grace being terminated by either Grace or the SAU then Grace may terminate this Agreement or any services provided by SAU at any time by giving a written notice to the Customer confirming the termination. Upon termination, the SAU Equipment and hosting/support services will be deemed no longer part of the Services provided by Grace, and should the Customer wish to continue to use the SAU Equipment and hosting/support services then it must contact the SAU directly for all SAU related information. This includes but not limited to the Customer's future fee payments which is to be paid directly to the SAU from the date of termination onwards.

5. ELO Digital Office AU/NZ (ELO)

- (1) The Customer acknowledges that Grace is a business partnership with ELO and Grace may provide ELO support services and professional consulting services either as part of the Services or as a standalone service/product to the Customer.
- (2) The Customer agrees to enter into a separate support agreement with Grace where ELO services are required.
- (3) The Customer agrees that it has no ownership of any ELO Intellectual Property or patents or software code developed by ELO and is bound by the rights of individual software EULAs, except where there is a separate agreement for development or software.

SCHEDULE 1: Terms and Conditions

- (4) In the event of the ELO business partnership with Grace being terminated by either Grace or the ELO then Grace may terminate this Agreement or any services provided by ELO at any time by giving a written notice to the Customer confirming the termination. Upon termination, the ELO services will be deemed no longer part of the Services provided by Grace and should the Customer wish to continue to use the ELO services then it must contact ELO directly for all ELO related information. This includes but not limited to the Customer's future fee payments which is to be paid directly to ELO from the date of termination onwards.

6. No On-selling of Services

The Customer must not on-sell any of the Services to any third party in the capacity of a re-seller of Grace's services without the prior written consent of Grace.

7. Indemnity

- (1) The Customer agrees to indemnify Grace, its Related Body Corporates and its Suppliers against any and all claims, demands, proceedings and/or cause of action and all expenses, losses, damages, liabilities, fees and costs (on a solicitor and client basis), that Grace, its Related Body Corporates and its Suppliers may suffer, sustain or incur in connection with or arising out of or as a result whether directly or indirectly of any:
- breach of this Agreement by the Customer;
 - negligent, wilful or unlawful act, omission or misrepresentation of the Customer or its employee, officer, agent or contractor in connection with the performance of its obligations under this Agreement;
 - infringement or alleged infringement of any trademark, copyright or other intellectual property right which arises solely as a result of an act or omission by either the Customer or its employee, agent or contractor;
 - Any errors in or incomplete Customer Data disclosed to Grace or any failure by the Customer to disclose to Grace any Customer Data in accordance with this Agreement;
 - Any fraud by the Customer or any third person who uses the Services; except to the extent caused or contributed to by any act, neglect, omission or default of Grace.
- (2) Acknowledgments
- Both parties acknowledge and agree that neither party has any responsibility to each other their personnel in respect of remuneration, annual leave, sick leave, long service leave, public holidays, redundancy payments or superannuation.
- (3) This clause 6 shall survive expiry or termination of this Agreement.

8. Exclusion and Limitation of Liability

- (1) Grace do not exclude or limit the application of any provision of any statute (including the *Competition and Consumer Act 2010* and the *Telecommunications Act 1997*) where to do so would:
- contravene that statute; or
 - cause any part of this clause to be void.
- (2) Except to the extent clause 7(1) applies, Grace excludes all:
- statutory Liability;
 - tortious liability (except to the extent that loss or damage is a consequence of either parties gross negligence in which event the aggregate amount claimed must not exceed the value of the Services provided relating to that loss or damage);
 - conditions and warranties implied;
 - liability for all direct, economic, consequential or indirect losses, loss of profit, expenses, damages and costs incurred by the Customer, arising out of or relating to the Services, any failure to supply or delay in supplying the Services hereunder.
- (3) Grace's liability to the Customer for any breach of any implied provision of this Agreement is limited at Grace's option, to refunding the value of the Services in respect of which the breach occurred;
- (4) Grace can have no liability whatsoever to the Customer in the event of termination of this Agreement due to the termination of a relevant supply agreement by one of Grace's Suppliers.
- (5) This clause 7 shall survive expiry or termination of this Agreement.

9. Software

- (1) The Customer acknowledges that:
- for some Services, Grace may supply the Customer with access to SAU software where SAU has granted to Grace with a non-exclusive, non-transferable, non-sub-licensable licence to use the Software in order to provide the Services to Customer; and
 - the Intellectual Property Rights in the SAU software are and will remain the property of SAU (or its Supplier, as relevant) including any adaptation, modification or improvements.

10. Intellectual Property Ownership and Use

- (1) The Customer will obtain no right, title or interest in or to the SAU Intellectual Property. Where the Customer is permitted by Grace (i.e. with its prior written consent) to use any part of the SAU Intellectual Property, it must only use such SAU Intellectual Property as follows:
- the Customer must not make any copy of the SAU Intellectual Property and must not alter the whole or any part thereof in any way other than by the entry of data;
 - the Customer must not allow any other person to be in possession of a copy of the whole or any part of the SAU Intellectual Property; and
 - the Customer must maintain accurate records as to the whereabouts of all copies of the whole or any part of the SAU Intellectual Property provided to Customer and to all persons who have access to it and must make such records available to Grace at any reasonable time upon request.
- (2) This clause 9 shall survive expiry or termination of this Agreement.

11. eCloud Business Services Pty Ltd (eCloud)

- (1) The Customer acknowledges that Grace is a business partnership with eCloud and Grace may provide eCloud software and support services either as part of the Services or as a standalone software/service/product to the Customer.
- (2) The Customer acknowledges and agrees that all OASIS and NOVA software and their associated documentation, design, content, functionality and all other aspects associated with their operation will remain 100% the intellectual property of, and wholly owned by eCloud at all time.
- (3) In the event of the eCloud business partnership with Grace being terminated by either Grace or eCloud then Grace may terminate this Agreement or any software/product licence and services provided by eCloud at any time by giving a written notice to the Customer confirming the termination. Upon termination the eCloud software/product licence and services will be deemed no longer part of the Services provided by Grace, and should the Customer wish to continue to use the eCloud software/product licence and services then it must contact the

eCloud directly for all eCloud related information. This includes but not limited to the Customer's future fee payments which is to be paid directly to the eCloud from the date of termination onwards.

12. Payment

- (1) The Customer must pay to Grace:
- all software fees (including software licence an administration charges) in advance; and
 - the Service Fee monthly in arrears.

Destruction Special Conditions

1. Defined Terms

Any capitalised terms in these Special Conditions will have the same meaning prescribed to them in Schedule 1 - Terms & Conditions.

2. Obligations of Grace

Grace must

- pick-up and destroy the Materials upon receipt of an appropriate authorisation from the Customer;
- keep all information acquired by Grace confidential as a consequence of it providing the Services; and
- exercise reasonable care in providing the Services to the Customer.

3. Materials

The Customer acknowledges and agrees that the following requirements and conditions apply to the Materials:

- the Materials must be collected in the Bins which are either owned or supplied by Grace or owned by a third party and serviced by Grace under a contractual arrangement. Bins not owned or serviced by Grace will not be collected.
- the Materials must be collected by or delivered to Grace in boxes of standard archive size or specially designed bags for destruction (unless otherwise approved by Grace in writing).
- the Materials must consist primarily of paper or cardboard material. The Materials may contain metal clips, some plastic dividers and binders.
- photographic and/or electronic media must be separated, since the destruction process for this material is different and may be provided by a specialist provider, for example, the destruction of X-rays. Charges related to these materials will be calculated in addition to the Service Fee.
- the Bins are affixed with an instruction that identifies acceptable and nonacceptable Materials. Food scraps, inflammable products, office equipment, metal cans or plastic containers must not be placed in bins. Where this occurs, Grace reserves the right to charge the Customer for the cost to Grace to remove and dispose of these materials.

4. Authorisation

- All Services require authorisation by the Customer's Representative in writing.
- Should this authority be delegated to another or other persons, this must be advised to Grace in writing by the Customer's Representative via Grace's movement authorisation form, an updated client authorisation signature listing or correspondence on a business letterhead.
- In these circumstances, the Customer Representative may be asked by Grace to verify their identity to Grace's personnel prior to Grace providing the Services.

5. Bulk Services

- If requested by the Customer, Grace will provide the Bulk Services in addition to the Services.
- The Bulk Services will be charged in accordance with a quotation prepared by Grace and provided to the Customer.

6. Additional services

- If requested by the Customer, Grace will provide any additional services offered by Grace.
- The additional services will be charged in accordance with:
 - Grace's standard Schedule of Rates; and
 - performed in accordance with Grace's terms and conditions, which will be provided to the Customer upon the additional services being requested.

7. Destruction Certificates (applies to Destruction customers only)

- Destruction certificates will be issued for the Materials if requested by the Customer in writing.
- Where the Customer is required to meet state or commonwealth legislative Retention and Disposal requirements and specific formats for certificates or destruction reports are required, these must be advised to Grace in writing prior to commencement of the Services or as soon as notification is received.
- The Customer may observe the destruction process at Grace's premises. This may be arranged by making an appointment convenient to Grace and the Customer.