

IMPORTANT - READ CAREFULLY:

Your use of the SAM – Stories Art Money - Platform is expressly conditioned on your acceptance of these terms and conditions

END USER LICENCE AGREEMENT

1 What Are These Terms?

1.1 This Agreement

These terms form part of a legally binding agreement (**Agreement**) between you and Desart Inc ABN 59 056 947 372 (**Desart**).

1.2 How do I Enter Into This Agreement?

You can enter into this Agreement either as a Customer or a User, or both.

You are a **Customer** if you are an art centre or other organisation or employer seeking access to the SAM Platform for your staff and Desart has given you access to the SAM Platform at your request (whether or not you completed an Order Form).

You are a **User** if you click 'Login' from our website.

You are accepting the terms of this Agreement as they were at the time you become a Customer or a User (whichever is the later).

If you are not the Customer, then the **Customer** is the art centre or other organisation or person you work for who has authorised you to be an End User.

1.3 Commencement Date

This Agreement commences on the Commencement Date and will terminate at the end of the Subscription Term, unless earlier terminated under clause 19.

2 Definitions and Interpretation

2.1 Definitions

In this Agreement, unless the context requires otherwise:

Additional Services means the Additional Services (if any) specified in the Order.

Administrators means the Customer's personnel who administer the SAM Platform to End Users on the Customer's behalf.

Annual Support Fee means the Annual Support Fee set out in the Price List.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Beta Features means pre-release and beta products or features that Desart makes available in the SAM Platform from time to time.

Business Day means a day, not being a Saturday, Sunday or public holiday, on which banks are generally open for business in Alice Springs, Northern Territory, Australia.

Commencement Date means:

- (a) if you are the Customer, the Commencement Date set out in the Order (and if none, the date you sign the Order Form or receive as part of a Written Order Desart's agreement to provide access to the SAM Platform); or

- (b) if you are a User, the date you click “I Agree” to acknowledge these terms and log in to the SAM Platform.

Complimentary Basis means where Desart gives the Customer access to (or permits the Customer to enable its End Users to access) the SAM Platform or specific features of the SAM Platform at no charge to the Customer.

Confidential Information of a Discloser means any information which the Discloser tells the Recipient is confidential or which the Discloser communicated to the Recipient confidentially or which pursuant to this Agreement is deemed confidential, provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Recipient to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure, but in any event does not include Feedback. Where Desart is the Discloser, for the avoidance of doubt Desart’s Confidential Information includes any performance information relating to the SAM Platform whether or not it is specifically designated at the time of communication as being confidential.

Consumer has the meaning given to that term under the Australian Consumer Law.

Customer has the meaning set out in clause 1.2 above.

Customer Application means a software application created by or for the Customer which the Customer proposes to use in conjunction with the SAM Platform and which is proposed to access data via the Desart API.

Customer Data means all and any Materials that the Customer or its End Users enter into the SAM Platform, including by submitting, uploading, transmitting or otherwise making available to or through the SAM Platform.

Customer Materials means any Materials or systems owned by the Customer or the User.

Discloser means the party disclosing Confidential Information to the Recipient.

Desart API means the application programming interface to which Desart may give the Customer or third parties access so they can access data on the SAM Platform using that interface and tailor their applications (including Customer Applications) to use that method of access to their data.

Desart Deliverables means any Materials, deliverables, modifications, derivative works or developments that Desart provides in connection with any Additional Services.

Desart Policies means the Privacy Policy and any other policies of Desart of which Desart notifies you in writing from time to time.

Desart Technology means the SAM Platform, Desart Deliverables, the Desart API, all modifications, improvements or derivative works of any of them and all Intellectual Property Rights in or arising out of any of the foregoing.

Documentation means the details and specifications set out in the user guide located at <https://help.sam.org.au>.

End User means an individual who is the Customer or who is permitted by the Customer or anyone else on its behalf to access the SAM Platform and includes the User.

End User Account means an account established by the Customer or an End User to enable the End User to use or access the SAM Platform.

Feedback means comments, questions, ideas, suggestions or other feedback, provided by End Users via, or relating to, the SAM Platform, Support or Additional Services.

Fees means all fees payable under this Agreement and includes any Fees set out in Annexures and fees for Additional Services.

Hosting Annual Fee means the Hosting Annual Fee set out in the Price List.

Initial Licence Fee means the Initial Licence Fee set out in the Price List.

Integration Services Agreement means an agreement entitled Integration Services Agreement between the Customer and Desart pursuant to which Desart agrees to allow the Customer and the Customer's IT supplier access to the Desart API for the purposes of integration with a Customer Application.

Integration Support Services means the Integration Support Services as defined in the Integration Services Agreement.

Intellectual Property Rights means all industrial and intellectual property rights throughout the world protected by statute or common law including all current and future registered and unregistered rights (whether or not registrable) relating to:

- (a) trade marks, business names and domain names, copyright works, circuit layouts, designs, patents, know-how, inventions and discoveries, and all other intellectual property as defined in article 2 of the *Convention Establishing the World Intellectual Property Organisation 1967*; and
- (b) any application or right to apply for the registration of any of the rights referred to in paragraph (a) above.

Laws means common law, principles of equity, and laws made by parliament (laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them).

Materials means any data, content, code, video, text, writings, images or other materials of any type.

Notification Email Address means the email address(es) you used to register for use of the SAM Platform or which you otherwise notify Desart is your email address for notifications.

Order means the Order Form or the Written Order (as applicable).

Order Form means the order form the Customer filled out to request access to the SAM Platform.

Price List means the price list located at [SAM Price List](#)

Privacy Policy means Desart's privacy policy located at [\[insert link\]](#).

Recipient means the party receiving Confidential Information from the Discloser.

SAM Data means data accessed via the Desart API or the SAM Platform.

SAM Platform means the SAM – Stories Art Money platform accessible via the URL <https://sam.org.au> and includes all content, components and materials available via that platform save for those that are separately licensed to you.

Services means services set out in an Order which Desart agrees to provide to the Customer.

Subscription Term means the Customer's permitted period for subscription to the SAM Platform as set out in the Order (and if none, the period during which Desart allows the Customer (and its End Users) to access the Platform).

Support means support provided to you by Desart or its contractors in relation to the SAM Platform.

Support Hourly Rate means the Support Hourly Rate set out in the Price List.

User has the meaning set out in clause 1.2 above.

Written Order means (if any) exchanges in writing (including by email) between the Customer and Desart in which and to the extent (but only to the extent) to which the Customer has requested and Desart has agreed to provide Services, where the same has not been set out in an Order Form signed by the parties.

2.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to a Party includes a reference to that Party's executor, administrator, heirs, successors, permitted assigns, guardian, and trustee in bankruptcy, all of whom, respectively, are bound by the provisions of this Agreement;
- (b) headings shall not affect the meaning and interpretation;
- (c) words importing the singular or plural shall include the plural and singular respectively;
- (d) words importing persons include all persons, entities and associations, including companies, trusts, bodies corporate, statutory bodies, partnerships, and joint venturers;
- (e) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (f) the words *includes*, *including* or similar expressions are not to be read as words of limitation;
- (g) a reference to any statute is a reference to that statute as amended and in force from time to time;
- (h) a reference to an amount of money is a reference to that amount in Australian dollars; and
- (i) all amounts payable pursuant to this Agreement shall be paid in Australian dollars.

3 Access to the SAM Platform

3.1 Grant of Access

From the Commencement Date, Desart will give the Customer access to the SAM Platform in accordance with this Agreement. End Users are given access from the respective dates they are enabled as End Users.

3.2 Rights are non-exclusive

Your right to access and use the SAM Platform granted by this Agreement is revocable, non-exclusive, non-assignable and non-sublicensable.

4 Platform Administration

4.1 Logins

Once the Customer has paid the Initial Licence Fee, the Customer will be provided with unique login details to the SAM Platform enabling the Customer to:

- (a) access and use the SAM Platform; and
- (b) create multiple logins for use by End Users exclusively for the business of the Customer.

4.2 Administrators and End Users

You agree that:

- (a) via the SAM Platform, you may be able to specify certain End Users as Administrators, who will have important rights and controls over End Users' use of the SAM Platform, which may include entering into further transactions that may incur Fees, modifying End User accounts, setting End User usage permissions, and managing access to Customer Data by End Users or others;
- (b) the Customer is and will remain (and Desart will not be) responsible for all actions taken by Administrators and End Users in relation to or during their access to the SAM Platform, including as described above;
- (c) you are and will remain (and Desart will not be) responsible for all actions taken by you in relation to or during your access to the SAM Platform, including as described above; and
- (d) Desart's responsibilities do not extend to the internal management or administration of the Platform for the Customer.

4.3 End User Consent

The Customer must provide:

- (a) all required disclosures to and will obtain and maintain all required consents from End Users to allow:
 - (i) Administrators to have the access described in this Agreement and the Privacy Policy; and
 - (ii) Desart's provision of access to the SAM Platform to Administrators and End Users; and
- (b) evidence of such consents upon reasonable request from Desart.

4.4 Credentials

The Customer must ensure that all End Users:

- (a) keep their (and you must ensure that you keep your) user IDs and passwords or other access credentials for the SAM Platform strictly confidential; and
- (b) do not (and you must not) share such information with any unauthorized person.

4.5 Unauthorised Use or Access

You agree to notify Desart immediately on becoming aware of any unauthorised use of access credentials or unauthorised use of or access to the SAM Platform.

4.6 Age Requirement

The Platform is not intended for, and should not be used by, anyone under the age of 16. The Customer is responsible for ensuring that all End Users are at least 16 years old.

5 Billing, Payment and Fee Increases

5.1 Order Prevails

This clause 5 is subject to any terms relating to billing, payment for and renewal of access to the SAM Platform or specific features set out in the Order.

5.2 Initial Licence Fee

Desart will invoice the Customer for the Initial Licence Fee on or as soon as practicable after the Commencement Date.

5.3 Annual Support Fee

Desart will invoice the Customer for the Annual Support Fee in advance:

- (a) for the first year of the Subscription Term on or as soon as practicable after the Commencement Date; and
- (b) for each subsequent year of the Subscription Term on or as soon as practicable after each anniversary of the Commencement Date.

5.4 Invoicing and Payment

- (a) Desart will deliver invoices to the Customer for any Fees due under this Agreement from time to time:
 - (i) at the frequency set out in the Order, or as Desart otherwise notifies the Customer in writing from time to time; or
 - (ii) as otherwise set out in this Agreement.
- (b) Unless otherwise specified in the Order or on a given invoice, the Customer must pay all invoices within five (5) Business Days of the date of receipt of the relevant invoice.
- (c) If Desart offers the Customer different methods of payment and the method chosen by the Customer incurs a processing fee, Desart will include such Fees in its invoice.

5.5 Fee Increases

Unless the Order provides otherwise, all Fees and rates in the Order will remain fixed for the first calendar year commencing on the Commencement Date, and will (unless Desart elects within its sole discretion not to apply a given increase) increase on each anniversary of the Commencement Date during the term of this Agreement, such increases to be by the greater of 3% and any increase in the Consumer Price Index (Brisbane) over that period.

6 Rules of Access

6.1 Your Responsibilities

You must (and the Customer must procure that its End Users):

- (a) access and use the SAM Platform in accordance with reasonable directions and instructions given by Desart;
- (b) have sole responsibility for the accuracy, quality, integrity, reliability and appropriateness of all Customer Data that is entered into the SAM Platform;
- (c) use commercially reasonable efforts to prevent unauthorized access to or use of the SAM Platform and notify Desart promptly of any such unauthorized access or use;
- (d) comply with all applicable Laws in accessing and using the SAM Platform; and
- (e) provide and maintain your/their own equipment, software, networks and communications lines, including any public lines required to properly access the SAM Platform and any relevant content or data.

6.2 Access Purpose

Subject to this Agreement, during the Subscription Term, you may access and use the SAM Platform for and only for the Customer's business purposes in accordance with the terms of this Agreement.

6.3 Restrictions

Except as otherwise expressly permitted in this Agreement, you must not:

- (a) reproduce, modify, adapt or create derivative works of all or any part of the SAM Platform;

- (b) rent, lease, distribute, sell, sublicense, transfer or provide access to the SAM Platform to a third party;
- (c) provide to any third party (without first obtaining written permission from Desart to do so) copies of any Materials produced by Desart or by or via the SAM Platform;
- (d) use the SAM Platform for the benefit of any third party;
- (e) incorporate any part of the SAM Platform into a product or service you provide to a third party;
- (f) interfere with or otherwise circumvent mechanisms in the SAM Platform intended to limit your (or anyone's) use;
- (g) reverse engineer, disassemble, decompile, translate or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to any part of the SAM Platform, except to the extent expressly permitted by applicable Law (and then only upon advance notice to Desart in writing);
- (h) remove or obscure any proprietary or other notices contained in any part of the SAM Platform;
- (i) submit to the Desart API or any other part of the SAM Platform any viruses, worms, defects, Trojan horses, malware or any items of a destructive nature;
- (j) use any part of the SAM Platform to defame, abuse, harass, stalk or threaten others, promote unlawful activities or send disruptive or offensive messages or advertisements;
- (k) try to exceed or circumvent limitations within the Desart API or any other part of the SAM Platform;
- (l) download, scrape, post or transmit (in any form or means) any part of the SAM Platform or content within it except as expressly permitted under this Agreement;
- (m) use any SAM Data to assist with any unsolicited marketing communication (electronic or otherwise) to any person;
- (n) resell (for a fee, or any other commercial benefit) any SAM Data;
- (o) use the SAM Platform for competitive analysis or to build competitive products;
- (p) publicly disseminate information regarding the performance of the SAM Platform; or
- (q) encourage or assist any third party to do any of the foregoing.

7 Intellectual Property Rights

7.1 Desart Technology

The SAM Platform and its components (including all Desart Technology) are provided under a limited licence only on these terms and all ownership of and rights in the SAM Platform and Desart Technology and all Intellectual Property Rights in or arising out of any of those remains solely with Desart and its licensors.

7.2 Third Party Open Source Code

Desart acknowledges the incorporation of Jaspersoft Community Edition open source reporting solution in the SAM Platform. The Jaspersoft Community Edition code library and its use are covered by version 3 of the GNU Lesser General Public License, the guidelines of which can be found at <https://www.gnu.org/licenses/lgpl-3.0.en.html#license-text>.

7.3 Feedback

Desart may use, copy, disclose, license, distribute and exploit any Feedback in any manner without restriction and any obligation, royalty or restriction based on Intellectual Property Rights or otherwise.

7.4 Customer Data and Customer Materials

Without derogating from clause 11.1, nothing in this Agreement affects the Intellectual Property Rights in or arising out of any Customer Materials or Customer Data.

8 Platform Availability

8.1 Uptime

Desart warrants that the SAM Platform will be accessible to End Users 99.5% of the time in any given calendar month, excluding maintenance windows.

8.2 Maintenance Windows

- (a) A maintenance window may include standard maintenance and emergency maintenance. Desart will notify the Customer in writing of standard maintenance windows at least 72 hours in advance of the start of the standard maintenance window. Emergency maintenance will occur as needed.
- (b) Desart will make reasonable efforts to notify the Customer directly in advance of any emergency maintenance window, but it is possible that advanced notification of an emergency window may not occur, and Desart will not be liable to the Customer or anyone else arising out of failure to notify.

8.3 Error Correction

Desart is not required to correct any errors or provide any other support to the extent such errors or need for support was created in whole or in part by:

- (a) your acts, omissions, negligence or wilful misconduct or that of any End Users, or any unauthorised modifications of the SAM Platform or its operating environment;
- (b) any failure or defect of your or a third party's equipment, software, facilities, third party applications, or internet connectivity (or other causes outside of Desart's firewall);
- (c) Customer Applications;
- (d) your use of the SAM Platform other than in accordance with this Agreement; or
- (e) a Force Majeure event within the meaning of clause 24.3.

8.4 Updates

Desart will at Desart's sole discretion deliver updates to the SAM Platform at no additional charge to enhance or improve the functionality or operation of the SAM Platform, which may include any patch, bug fix, release, version, reports, modification or successor to the SAM Platform.

9 Support Services

9.1 Included Support

Desart will provide you at no additional cost with support and other types of services related to the SAM Platform subject to the terms of this Agreement, including:

- (a) Initial set up - Set up of your organisation within the SAM Platform. Providing you with staff access and basic set up of art centre details.

- (b) Up to a maximum of four hours per annum of technical support from SAM Tech Support (delivered by DWS NSW). If in any year, your licence period is less than 12 months, You will have access to a pro rata entitlement (33 minutes per month). Additional technical support will be charged at the Support Hourly Rate.
- (c) Online access (unlimited) to the SAM Platform [Knowledge Base](#)
- (d) Online access (unlimited) to the SAM Platform Course (LMS)
- (e) Unlimited phone and email support (non-technical).
- (f) Participation in face to face training opportunities provided by Desart from time to time
- (g) Subscription to the SAM e-news bulletin
- (h) Uploading of your annual financial report data to the SAM Platform (either directly from ORIC or as provided by you)

9.2 Additional Services for Fee

At Your request, Desart may provide You with additional support services at an additional cost to you including:

- (a) technical support from SAM Tech Support in excess of four hours per annum;
- (b) design and development of a new reporting format requested by You;
- (c) substantial work on Your data such as retrieval of deleted data, cleaning data, importing data or modifying data; and
- (d) exporting Your data upon termination of Your User Licence.

Additional support services are generally undertaken at the Support Hourly Rate. Additional support services will be the subject of a quote by Desart which You may accept or reject. If You do not accept Desart's quote, Desart has no obligation to provide such services to you.

9.3 Support Response Targets

Desart will make all reasonable efforts to respond to requests for technical support within the following parameters (service hours are 9am to 4pm Monday to Friday Australian Eastern Standard Time):

- (a) during business hours the same day for requests identified as high priority;
- (b) within one business day for requests identified as medium priority;
- (c) within three business days for requests identified as low priority.

The priority of a request for technical support will be determined by Desart in its sole discretion. Limited technical support is available outside of business hours but cannot be guaranteed.

9.4 Code of Conduct

Desart undertakes to respond to Your requests for technical support with courtesy and respect and You also undertake to deal with Desart's technical support team and representatives with courtesy and respect. Desart reserves the right to withdraw telephone and face to face technical support from You if, in Desart's sole discretion, Desart considers You, your staff or representatives to have failed to meet this standard.

9.5 Your Technical Information

You acknowledge and agree that Desart may use technical information You provide to Desart as part of the Support Services for its business purposes, including for product

support and development. Desart will not utilize such technical information in a form that personally identifies You.

10 Global Reports

The SAM Platform may include report formats which enable financial performance across the Australian Indigenous art sector to be viewed, including both nationally and by region (**Global Reports**). The Global Reports will be available to Desart, which may use and publish them, and may also be made available to all users of the SAM Platform.

11 Customer Data

11.1 Title to Customer Data

The ownership of any proprietary rights including Intellectual Property Rights in or arising out of any Customer Data, whether or not in the form submitted to the SAM Platform, is not affected by any upload of that Customer Data to the SAM Platform.

11.2 Access to and Use of Customer Data

- (a) Subject to this Agreement, and solely to the extent necessary to provide access to the SAM Platform to you, you grant Desart a worldwide, limited term licence to access, use, process, copy, distribute, perform, export, display and modify for display Customer Data you submit to the SAM Platform.
- (b) Desart may also access the Customer's and End Users' accounts in order to respond to support requests (but is not obliged to provide any support unless a specific agreement for that has been entered into).
- (c) You agree that Desart may at any time produce anonymized versions of the Customer Data so they contain no personal information nor information that includes the name or other identifying details of any legal entities (**Anonymized Data**) and may collate, use, copy, disclose and commercialise that Anonymized Data in any way Desart sees fit.

11.3 Customer Data Compliance

- (a) You must ensure that your and your End Users' use of the SAM Platform complies at all times with this Agreement and all Laws.
- (b) You warrant that:
 - (i) you have obtained all necessary rights, releases and permissions to submit all Customer Data to the SAM Platform and to grant the rights granted to Desart in this Agreement; and
 - (ii) Customer Data and its submission and use as you authorize in this Agreement will not violate:
 - (A) any Laws;
 - (B) any third-party rights (including Intellectual Property Rights); or
 - (C) any of your or third-party policies or terms governing any of the Customer Data.
- (c) Other than Desart's express obligations set out in this Agreement, Desart assumes and will have no responsibility or liability for Customer Data, and you agree that you are solely responsible for Customer Data and the consequences of submitting and using it with the SAM Platform.

11.4 Indemnity

You agree to defend, indemnify and hold harmless Desart, its officers, directors, agents and employees, from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable legal fees and costs) resulting from any claim arising from or related to:

- (a) your breach of this Agreement;
- (b) any claims or disputes brought by your End Users arising out of their use of the SAM Platform; or
- (c) Customer Materials you or your End Users submit to the SAM Platform.

11.5 Content Monitoring

Desart has no obligation to monitor any content uploaded to the SAM Platform. However, if Desart deems such action necessary based on your or an End User's violation of this Agreement, including any Desart Policies, or in response to lawful takedown requests that Desart receives, Desart may:

- (a) remove the relevant Customer Data from the SAM Platform; or
- (b) suspend your (and/or any End Users') access to the SAM Platform.

11.6 Notification

Desart will use reasonable efforts to provide the Customer with advance notice of any removals and suspensions when practicable, but if Desart determines that the Customer's (or any End User's) actions are in breach of any Laws or endanger the operation of the SAM Platform or other users, Desart may suspend the Customer's (or any End Users') access or remove any Customer Data immediately without notice.

11.7 Liability

You agree that Desart will have no liability to you for removing or deleting Customer Data from or suspending the Customer's or any End Users' access to any part of the SAM Platform as described in this clause 11.

12 Additional Services

12.1 Applicability

This clause 12 only applies if the Order specifies that Desart will provide Additional Services to the Customer.

12.2 Desart Deliverables

Desart will retain all right, title and interest in and to all Desart Deliverables and all Intellectual Property Rights in or arising out of any of them.

12.3 Customer Materials

The Customer:

- (a) agrees to provide Desart with reasonable access to Customer Materials as reasonably necessary for the provision of Additional Services, failing which performance of Additional Services will not be required until such access is provided;
- (b) retains all rights in all Customer Materials, subject to Desart's ownership of all parts of the SAM Platform, Desart Deliverables and of Desart Technology; and
- (c) licenses Desart to use the Customer Materials for the purpose of performing the Additional Services, and warrants that the Customer has all necessary rights in all Customer Materials to provide access to Desart for such purposes.

13 Integration Services

13.1 Integration Services Agreements

If the Customer proposes to create (or to engage a third party to create for it) a Customer Application, the Customer must enter into an Integration Services Agreement with Desart pursuant to which Desart will agree to provide Integration Support Services on the conditions set out in that agreement.

13.2 Access to SAM Data

The Customer must:

- (a) not reproduce, republish or otherwise distribute any SAM Data that is not Customer Data (**Restricted SAM Data**) unless expressly permitted by Desart; and
- (b) where the Customer has entered into an Integration Services Agreement and proposes to reproduce, publish, communicate or distribute SAM Data on or via the relevant Customer Application:
 - (i) ensure any reproduction of the Restricted SAM Data is fair, reasonable and not excessive as determined by Desart (acting reasonably);
 - (ii) not republish or reproduce any SAM Data in any way that may damage the reputation or goodwill of Desart, misrepresent or alter the meaning of the content of the SAM Data or otherwise mislead the reader; and
 - (iii) unless expressly preapproved in writing by Desart, not sell or license any Restricted SAM Data for profit or gain.

14 Data Storage

14.1 Reasonable Measures

Desart will implement reasonable measures designed to protect your data against accidental or unlawful loss, access or disclosure. You agree that such measures may include the storage of Your data on third party cloud-based platforms or storage solutions which are not owned or controlled by Desart, which may include data being hosted on Amazon Web Services and/or reports being produced in an Azure environment.

14.2 QR Codes Usage and Publicly Available Data

If you activate QR codes on the SAM Platform, information uploaded for use, presentation or access via QR codes will be accessible by the public.

14.3 Your Annual Financial Data

You agree that Desart may upload your publicly available annual financial report data to the SAM Platform. If your annual financial data is not publicly available (either from the ORIC website or elsewhere), You may provide equivalent annual financial data to Desart no later than 1 February each year and agree that Desart may upload such data to the SAM Platform. You understand that your annual financial report data may not contribute to or be reflected in the Tracking Reports and Global Reports which can be generated by the SAM Platform if your annual financial data for any financial year has not been uploaded to the SAM Platform.

14.4 De-identified Data

You agree that any of your data which is uploaded to the SAM Platform, including but not limited to your annual financial report data, sales and payments data, may be de-identified and used to generate Global Reports which may be accessed and used in

specific reports by all users of the SAM Platform and by Desart. You agree that Desart may also access and use, and permit others to access and use, any of your de-identified data to generate bespoke industry analyses and reports which will be available to, and may be published by, Desart.

14.5 After Termination

You acknowledge that after your use of the SAM Platform is terminated, your data may remain on the SAM Platform and agree that it may be de-identified and used to generate Global Reports and other reports and analyses.

15 Evaluation and Trial Products & Beta Features

15.1 Complimentary Basis

- (a) Where access to the SAM Platform or Beta Features is offered on a Complimentary Basis, use of the SAM Platform or Beta Features is subject to any additional terms that Desart specifies and is only permitted during the term Desart designates (or, if not designated, until terminated in accordance with this Agreement).
- (b) Desart may modify or terminate access to the SAM Platform or any Beta Features provided on a Complimentary Basis at any time in its sole discretion, without liability to you.

15.2 Beta Features

- (a) You understand that any Beta Features are still under development, may be inoperable or incomplete and are likely to contain more errors and bugs than the SAM Platform as generally available.
- (b) In some circumstances, a Fee may be charged in order to allow access to Beta Features, but the Beta Features will remain subject to this clause.
- (c) All information regarding the characteristics, features or performance of any part of the SAM Platform or Beta Features provided on a Complimentary Basis constitutes Desart's Confidential Information.

15.3 Liability Limitation

To the maximum extent permitted by applicable law, Desart disclaims all obligations or liabilities with respect to any part of the SAM Platform or Beta Features offered or provided on a Complimentary Basis, including any support, warranty and indemnity obligations. NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS, DESART'S MAXIMUM AGGREGATE LIABILITY TO YOU IN RESPECT OF ANY PART OF THE SAM PLATFORM OR BETA FEATURES OFFERED OR PROVIDED ON A COMPLIMENTARY BASIS WILL BE AUD \$100.

16 Confidentiality

16.1 Confidential Information

Except as otherwise set out in this Agreement, each party agrees that all Confidential Information disclosed to that party as a Recipient by the other party as Discloser constitutes the Confidential Information of the Discloser.

16.2 Must be Kept Confidential

Except as expressly authorized in this Agreement, the Recipient:

- (a) must hold in confidence and not disclose any Confidential Information to third parties;
- (b) must not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement; and

- (c) may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know, provided that they are bound to confidentiality obligations no less protective of the Discloser than (and that the Recipient remains responsible for compliance by them with the terms of) this clause 16.

16.3 Exceptions

Clause 16.2 will not apply to information which the Recipient can document:

- (a) was lawfully in its possession or known to it prior to receipt of the Confidential Information;
- (b) is or has become public knowledge through no fault of the Recipient;
- (c) is lawfully obtained by the Recipient from a third party without breach of any confidentiality obligation; or
- (d) is independently developed by employees of the Recipient who had no access to such information.

16.4 Disclosure by Legal Obligation

The Recipient may disclose Confidential Information if so required pursuant to a Law but only to the minimum extent required to comply with such Law and with advance written notice to the Discloser.

16.5 Equitable Relief

The Recipient acknowledges that disclosure of the Discloser's Confidential Information could cause substantial harm to the Discloser for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure or threat of disclosure by the Recipient, the Discloser will be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

17 Warranties and Disclaimers

17.1 Power

Each party warrants that it has the legal power and authority to enter into this Agreement.

17.2 Desart Warranties

Desart will use commercially reasonable efforts to:

- (a) prevent introduction of viruses, Trojan horses or similar harmful materials into the SAM Platform (but Desart will not have any liability for harmful materials submitted by the Customer or End Users); and
- (b) ensure the SAM Platform functions in accordance with the Documentation.

17.3 Warranty Remedy

If Desart determines (within its sole discretion) that corrections or costs required to comply with clause 17.2 have become or are likely to become uncommercial or impracticable, Desart may terminate this Agreement (where this Agreement is between the Customer and Desart) with immediate effect by giving written notice to the Customer, in which case any Fees that have been pre-paid for use of the SAM Platform will be reimbursed for the terminated portion of the applicable Subscription Term.

17.4 Claim Under Warranty

Clause 17.2 will not apply:

- (a) unless the Customer notifies Desart in writing of a claim under that clause within thirty (30) days of the date on which the non-conformity was first noticed;
- (b) if the non-conformity was caused by misuse, unauthorized modifications or third-party products, software, services or equipment; or
- (c) to any access, products or services provided on a Complimentary Basis.

17.5 Australian Consumer Law

- (a) Nothing in this Agreement is intended to limit any liability that Desart may have that may not by Law be limited.
- (b) For the purposes of section 64A of the Australian Consumer Law, if Desart is liable to the Customer for breach of any consumer warranties under the Australian Consumer Law in respect of its supply or proposed supply of products or services under this Agreement, Desart's liability is limited, at its option, to:
 - (i) in respect of the supply of any goods, and one or more of:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired; and
 - (ii) in respect of the supply of any services:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.

17.6 Disclaimers

You acknowledge that:

- (a) except as otherwise provided in this clause 17, all products and services provided or to be provided by Desart to you are provided "as is," and to the maximum extent permitted by Law, Desart expressly disclaims any and all warranties and representations of any kind, including any warranty of non-infringement, title, fitness for a particular purpose, functionality or merchantability, whether express, implied or statutory;
- (b) Desart does not warrant that your use of the SAM Platform will be uninterrupted or error-free, that Desart will review Customer Data for accuracy or that Desart will preserve or maintain Customer Data without loss;
- (c) use of the SAM Platform necessarily involves transmission of Customer Data over networks that Desart does not own, operate or control;
- (d) Desart is not responsible for any of the Customer Data lost, altered, intercepted or stored across such networks;
- (e) Desart cannot guarantee that its security procedures will be error-free, that transmissions of Customer Data will always be secure or that unauthorized third parties will never be able to defeat Desart's security measures or those of its third party service providers;
- (f) Desart will not be liable for delays, interruptions, service failures or other problems inherent in use of the internet and electronic communications or other systems outside Desart's reasonable control;

- (g) you may have other statutory rights, but the duration of statutorily required warranties, if any, will be limited to the shortest period permitted by Law;
- (h) the SAM Platform and the Support Services cannot be and are not guaranteed to be error free and further acknowledge that the existence of any such errors shall not constitute a breach of this Agreement;
- (i) prior to entering into this Agreement, you have been given a reasonable opportunity to examine and satisfy yourself regarding the features and operation of the SAM Platform (including the opportunity to trial the SAM Platform at test.sam.org.au) and that prior to entering this Agreement, you have availed yourself of that opportunity;
- (j) you have made the evaluation or judgement that you wish to use the SAM Platform and that Desart does not warrant that the SAM Platform will be suitable for Your particular purposes;
- (k) at no time prior to entering into this Agreement have you relied on the skill or judgment of Desart and that it would be unreasonable for you to rely on any such skill or judgment;
- (l) the accuracy of all report formats generated by the SAM Platform (other than the Global Reports) depends exclusively on the integrity and validity of the data entered by you and Desart does not warrant, and is not responsible for, the accuracy or utility of any such reports;
- (m) the Global Reports are based on data provided by third parties and Desart does not warrant, and is not responsible for the accuracy or utility of, any Global Reports;
- (n) you are responsible for the design and operation of any external website or third party online sales platform that provides data to the SAM Platform and Desart does not warrant, and is not responsible for, the omission of data from, or accuracy of any data recorded in, the SAM Platform which is generated by your website or third party online sales platform; and
- (o) you are responsible for all payments made to, or from, any external website or third party online sales platform and Desart does not warrant, and is not responsible for, the security of any financial transactions made through, any external website or other third party online sales platform.

17.7 Desart's Warranties

Desart provides the following warranties, in relation to the SAM Platform and the Support Services if You are a Consumer:

- (a) that the SAM Platform is of acceptable quality, as that term is defined in the Australian Consumer Law;
- (b) that the SAM Platform is reasonably fit for the purpose of artist and artwork management;
- (c) that the Support Services will be rendered with due care and skill;
- (d) that the Support Services will be provided either:
 - (i) at a time determined in a manner agreed between Desart and You; or
 - (ii) if there is no such agreement, within a reasonable time.

18 Limitation of Liability

18.1 Consequential Damages

Subject to clauses 17.5 and 18.3, neither party will have any liability arising out of or related to this Agreement for any loss of use, lost or inaccurate data, lost profits, failure of security mechanisms, interruption of business, costs of delay, or any indirect, special, incidental, reliance or consequential damages of any kind, even if informed of the possibility of such damages in advance.

18.2 Liability Cap

Subject to clauses 17.5 and 18.3, Desart's aggregate liability to you arising out of or related to this Agreement will not exceed the amount actually paid or payable by the Customer to Desart under this Agreement in the twelve (12) months immediately preceding the claim.

18.3 Excluded Claims

Clauses 18.1 and 18.2 do not apply to:

- (a) the Customer's liability to pay Fees owed to Desart under this Agreement;
- (b) either party's express indemnification obligations in this Agreement; and
- (c) your liabilities under clauses 4 (Platform Administration) or 6 (Rules of Access).

18.4 Application

The parties agree that the waivers and limitations specified in this clause 18 apply regardless of the form of action, whether in contract, tort including negligence), strict liability or otherwise.

19 Termination and Suspension

19.1 Termination for Cause

The Customer or Desart may terminate this Agreement (where this Agreement is between the Customer and Desart) by written notice with immediate effect if the other party:

- (a) fails to cure any material breach of this Agreement (or the other party is the Customer and has failed to make a due payment under this Agreement) within ten (10) Business Days after receiving from the party not in breach written notice of such breach;
- (b) ceases operation without a successor; or
- (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days).

19.2 Termination for Convenience

- (a) The Customer may choose to stop using the SAM Platform and terminate this Agreement at any time for any or no reason upon giving written notice of no less than three (3) calendar months to Desart, but, unless such early termination is pursuant to clause 19.1, upon any such termination:
 - (i) the Customer will not be entitled to a refund of any pre-paid Fees; and
 - (ii) all outstanding applicable Fees for the then-current Subscription Term or related services period (as applicable) will become immediately due and payable.

- (b) Desart may terminate this Agreement (where this Agreement is between the Customer and Desart) for convenience by giving written notice of twenty (20) Business Days to the Customer.
- (c) If Desart terminates this Agreement under clause 19.2(b) then Desart will refund to the Customer any pre-paid Fees (on a pro rata basis as applicable) covering periods after the end of the relevant notice period.

19.3 Effect of Termination

Upon any expiration or termination of this Agreement (where this Agreement is between the Customer and Desart):

- (a) all use of the SAM Platform must cease and all copies of Desart's Confidential Information or other materials must be deleted upon Desart's request, including from any third-party systems;
- (b) Desart is not required to provide access to Customer Data (which Desart may delete irretrievably unless legally prohibited from doing so) after such expiration or termination, but if the Customer has paid all amounts owed to Desart under this Agreement, Desart may upon written request provide the Customer with access to the SAM Platform for a limited period for the limited purpose of exporting Customer Data;
- (c) subject to the above paragraph, the Customer is solely responsible for ensuring that all Customer Data is exported using the functionality of the SAM Platform during the applicable Subscription Term;
- (d) if termination was by the Customer pursuant to clause 19.1, any prepaid Fees covering the remainder of the then-current Subscription Term will be reimbursed after the effective date of termination;
- (e) if termination was by Desart pursuant to clause 19.1, any unpaid Fees covering the remainder of the then-current Subscription Term after the effective date of termination will become immediately due and payable; and
- (f) in no event will termination relieve the Customer of its obligation to pay any Fees payable for periods up to the date of termination.

19.4 Suspension

Where Desart reasonably forms the view that the Customer is and remains in breach of any term of this Agreement (including an obligation to pay Fees), without prejudice to any other rights that Desart may have, Desart may suspend the Customer's (and any End Users') access to the SAM Platform or any Services until such breach has been remedied. Desart will have no liability to the Customer or any End User arising out of any such suspension.

19.5 Other Remedies

Except where an exclusive remedy may be specified in this Agreement, the exercise by either party of any remedy, including termination, will be without prejudice to any other remedies it may have under this Agreement, whether by law or otherwise.

19.6 Data Hosting after Termination

Desart may, but is not obliged to, continue to host your data on the SAM Platform after termination although neither You nor any third party may access it. In that event, if you purchase a new licence to use the SAM Platform in the future, Desart may provide you with access to any such preserved historical data on the SAM Platform, upon payment of the Hosting Annual Fee for each year or part of the year that you did not have a current paid-up licence to use the SAM Platform.

19.7 Surviving Terms

The following provisions will survive any termination or expiration of this Agreement, namely clauses 6.3 (Restrictions), 7 (Intellectual Property Rights), 11.4 (Indemnity), 15 (Evaluation and Trial Products & Beta Features), 16 (Confidentiality), 17.5 (Australian Consumer Law), 18 (Limitation of Liability), 19 (Termination and Suspension), 20 (Indemnity for Third Party IP Claims) (but solely with respect to claims arising from Customer's use of the SAM Platform during the Subscription Term), 21 (Dispute Resolution) and 21 (Dispute resolution).

20 Indemnity for Third Party IP Claims

20.1 Defence of Claims

Desart will defend you against any claim brought by a third party alleging that the SAM Platform, when used as authorized under this Agreement, infringes that party's copyright, or a patent right granted in the United States, Australia or a member nation of the European Union (**Claim**), and Desart will indemnify and hold you harmless against any damages and costs finally awarded on the Claim by a court of competent jurisdiction or agreed to via settlement executed by Desart (including reasonable legal fees), provided that Desart has received from you:

- (a) prompt written notice of the Claim (but in any event notice in sufficient time for Desart to respond without prejudice);
- (b) reasonable assistance in the defence and investigation of the Claim, including providing Desart a copy of the Claim, all relevant evidence in your possession, custody, or control, and cooperation with evidentiary discovery, litigation, and trial, including making witnesses within your employ or control available for testimony; and
- (c) the exclusive right to control and direct the investigation, defence, and settlement (if applicable) of the Claim.

20.2 Injunctions

If your use of the SAM Platform is (or is likely to be) enjoined, whether by court order or by settlement, or if Desart determines such actions are reasonably necessary to avoid material liability, Desart may, at its option and discretion:

- (a) procure the right for your continued use of the SAM Platform in accordance with this Agreement;
- (b) substitute a substantially functionally similar product or service; or
- (c) terminate your right to continue using the SAM Platform and (where you are the Customer) refund any prepaid amounts for the terminated portion of the Subscription Term.

20.3 Exceptions

Desart's obligations under clause 20.1 do not apply:

- (a) if the SAM Platform is modified by any party other than Desart (or contractors at its request), but solely to the extent the alleged infringement is caused by such modification;
- (b) if the SAM Platform is used in combination with any non-Desart product, software, service or equipment, but solely to the extent the alleged infringement is caused by such combination;
- (c) to unauthorized use of the SAM Platform;
- (d) to any Claim arising as a result of:

- (i) Customer Data or circumstances covered by your indemnification obligations under this Agreement; or
- (ii) any third-party deliverables or components contained with the SAM Platform; or
- (e) if you settle or make any admissions with respect to a Claim without Desart's prior written consent.

20.4 Sole Remedy

This clause 20 states Desart's sole liability and your exclusive remedy for any infringement of Intellectual Property Rights in connection with the SAM Platform or any product or service provided under this Agreement.

21 Dispute resolution

21.1 Proceedings

If any dispute arises in relation to this Agreement (**Dispute**), including in relation to its interpretation or any aspect of its performance, no party may commence any form of legal proceedings, unless and until the parties have complied with the procedures set out in this clause 21, except where a party seeks urgent interlocutory relief or the dispute relates to compliance with this clause 21.

21.2 Notice of Dispute

If any Dispute arises, either party may give written notice (**Notice of Dispute**) to the other party claiming that a Dispute has arisen, specifying the nature of the Dispute, and request that a meeting be held between one duly authorised representative of each party within ten (10) Business Days.

21.3 Meetings between authorised representatives

If a party receives a Notice of Dispute from the other party in accordance with clause 21.2, that party, and the party that gave the Notice of Dispute, must cause an authorised representative to attend at the meeting referred to in that notice, which may be held by contemporaneous linking by telephone or live audio visual transmission (or similar).

21.4 Dispute resolution and mediation

If the parties have not resolved the Dispute within twenty (20) Business Days of the meeting referred to in clause 21.3 (or such further period as agreed in writing by them), the parties must attempt to resolve the Dispute by participating in a mediation (**Mediation**), which must be conducted in Brisbane (or as agreed in writing between the parties), in accordance with the ACICA Mediation Rules (in operation from time to time) by the ACICA, except where they conflict with this clause 21 in which case this clause 21 will prevail.

21.5 Appointment of mediator

If the parties are required by clause 21.4 to mediate the dispute, the parties agree that:

- (a) ACICA will appoint the mediator unless the parties agree on a mediator (**Mediator**);
- (b) the role of the Mediator is to assist in negotiating a resolution of the dispute via the Mediation;
- (c) the Mediator may not make a decision that is binding on the parties unless the disputing parties otherwise agree in writing;

- (d) the costs of the Mediator (and of the venue for the Mediation, if there are any such costs) must be paid equally by the disputing parties but otherwise each disputing party must pay their own costs of the Mediation; and
- (e) if the Dispute is not resolved within twenty (20) Business Days after referral to the Mediator, any disputing party may take legal proceedings to resolve the Dispute.

22 Taxes

22.1 Consideration GST exclusive

Unless otherwise stated in this Agreement, all Fees are exclusive of and contain no allowance for any GST that the Customer may be obliged to withhold and pay and if payable by Desart or the Customer will be treated as a debt due by the Customer to Desart and the Customer must indemnify Desart and keep Desart indemnified against any GST claim.

22.2 Payment of GST

If GST is payable by Desart on any supply made under this Agreement, the Customer must pay to Desart an amount equal to the GST payable on the supply (in addition to the relevant Fees).

22.3 Tax invoice

Unless otherwise set out in the Order:

- (a) Desart must deliver a tax invoice or an adjustment note to the Customer before Desart is entitled to payment of an amount under this Agreement; and
- (b) the Customer can withhold payment of the amount until Desart provides a tax invoice or an adjustment note, as appropriate.

22.4 Adjustment event

If an adjustment event arises in respect of a taxable supply made by Desart under this Agreement, the amount payable by the Customer will be recalculated to reflect the adjustment event and a payment will be made by the Customer to Desart or by Desart to the Customer as the case requires.

22.5 Reimbursements

Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

22.6 Withholding Tax

All Fees under this Agreement are exclusive of and contain no allowance for any withholding tax that the Customer may be obliged to withhold and if payable by Desart or the Customer will be treated as a debt due by the Customer to Desart and the Customer must indemnify Desart and keep Desart indemnified against any withholding tax or similar tax claim.

23 Changes

23.1 Changes to Terms

- (a) Desart may modify this Agreement and any Desart Policies from time to time, with effect from the next time you or any End User logs in and accepts these terms (as amended) by clicking "I Agree".
- (b) Where you are the Customer, you will also be bound by any changes to this Agreement and any Desart Policies upon your receipt of notice in writing by Desart of those changes, unless Desart receives from you within ten (10) Business Days after your receipt of Desart's notice a written notice confirming you reject the changes and wish to terminate this Agreement.
- (c) Such written notice from you will be treated as a notice under clause 19.2(a) (Termination for Convenience) and this Agreement will until the end of the notice period provided in that clause continue on foot upon the terms as they were before you received Desart's written notice.

23.2 Changes to the SAM Platform

You acknowledge that the SAM Platform is an online subscription-based product, and that in order to provide improved customer experience or to comply with changes to Laws (or for other reasons relevant to Desart's business), changes may be made to the SAM Platform, and Desart may update the applicable Documentation accordingly.

23.3 Discontinuation

Notwithstanding Desart's obligation to provide access to the Platform and Additional Services under relevant Orders, any or all of the SAM Platform, Additional Services and any other product or service of Desart or any portion or feature of any of the same may be discontinued at any time without liability to you. You agree that Desart's only liability arising out of having discontinued any features, products or service will be a pro rata refund to the Customer of any sums prepaid for periods after the date of such discontinuation.

24 General Matters

24.1 Notices

The parties agree that:

- (a) any notices under this Agreement must be given in writing;
- (b) Desart may notify you through the Notification Email Address, your account or in-product notifications;
- (c) any electronic communication will satisfy any applicable legal communication requirements, including that such communications be in writing;
- (d) any notice from:
 - (i) Desart to you will be deemed given upon the first Business Day after it has been sent;
 - (ii) you to Desart will be deemed given upon receipt;
- (e) You must provide notices to Desart by post to PO Box 9219 Alice Springs NT 0871.

24.2 Exclusion of Conventions

The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this Agreement. The *Uniform Computer Information Transactions Act* will also not apply to this Agreement regardless of when or where adopted.

24.3 Force Majeure

Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay Fees) if the delay or failure is due to events which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a licence by a government agency (but not including economic hardship, changes in market conditions or insufficiency of funds).

24.4 Assignment

Neither party may, or shall have the power to, assign this Agreement without the prior written consent of the other, except that Desart may assign its rights and obligations under this Agreement without your approval to an entity which acquires all or substantially all of Desart's assets.

24.5 Entire Agreement

This Agreement represents the entire agreement between the parties relating to the SAM Platform and any other subject matter covered by this Agreement, and supersedes all prior or contemporaneous oral or written communications, proposals and representations between the parties with respect to the SAM Platform or any other subject matter covered by this Agreement. No provision of any purchase order or other business form employed by the Customer will supersede or supplement this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect.

24.6 Waivers

No failure or delay by an injured party in exercising any right, power or privilege under this Agreement will operate as a waiver of any of those things, nor will any single or partial exercise of those things preclude any other or further exercise of them or the exercise of any right, power or privilege under this Agreement at law or equity.

24.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

24.8 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

24.9 Relationship of parties

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.