

# SAJARI PTY LTD - TERM & CONDITIONS

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## 1 DEFINED TERMS

- (a) This clause 1 defines terms used in this agreement. Other terms are defined elsewhere in this agreement. Terms capitalised or otherwise used in the Agreement Details and not in this clause 1 have the meaning as specified in the Agreement Details.
- (b) **Agreement Details** means one of the following, depending on the manner in which this agreement is formed:
- if this is an Online Sign-Up Agreement – the details of this agreement, such as they are, encountered or referred to during the online 'sign up' process; or
  - in any other case – the document created by Sajari containing Agreement Details of this agreement and signed by the parties, regardless of whether the document is labelled 'Agreement Details' or some other title.
- (c) **CCPA** means the California Consumer Privacy Act of 2018 (Cal. Civ. Code §§ 1798.100 to 1798.199).
- (d) **Collection** means a data set and its associated rules and processes that forms a discrete index that can be interrogated with search requests.
- (e) **Customer Data** means raw information:
- supplied to Sajari by Customer, including by way of Customer providing access; or
  - input into the Software by Customer.
- (f) **Customer Materials** means all subject-matter authored, created or produced by Customer in or to which Intellectual Property or other rights subsist or relate, including Customer Data, Output Data and other compilations of data.
- (g) **Customer** means the customer of Sajari entering into this agreement, as identified in the Agreement Details (not being a Sajari Partner).
- (h) **Confidential Information** means any discovery, fact, data, idea, plan, strategy, method, principle, technique, routine, practice, knowledge, formula, specification, design, recipe, trade secret, know-how, business proposal, software, source code, dashboard, Customer Data, information, business information, financial information, product information or marketing plan that is not presently widely known or available to the public and that is held by Sajari or Customer or generated by them in the course of the performance of this agreement.
- (i) **Consumer** means any person who interacts with Customer or an End Customer, as relevant to this agreement.
- (j) **Data Analysis** means the aggregation and analysis of data, including in relation to anonymous generic benchmarking, trending and reporting.
- (k) **End Customer** means a customer of Customer.

- (l) **End User** means an individual who is an officer, director, employee, contractor or agent of Customer or End Customer and who uses the Software Access.
- (m) **Fees** means the fees and charges specified in any Agreement Details.
- (n) **Functionality** means the quality and breadth of function of the Software and Output Data.
- (o) **GDPR** means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016.
- (p) **Intellectual Property** means existing and future copyright, trademarks, designs or patents, whether registered or not.
- (q) **Loss** includes any loss, damage, cost, expense or liability, including legal costs, but excludes special (indirect, consequential, incidental) loss.
- (r) **Module** means a module or 'bolt-on' to the Software, as specified in the Agreement Details, which Sajari makes available to Customer for separate subscription via a process provided by or authorised by Sajari.
- (s) **Online Sign-Up Agreement** means this agreement if formed via an online 'sign up' process on the Sajari website.
- (t) **Output Data** means new data or a compilation of existing data, created by using the Software.
- (u) **Personal Information** means personal information within the meaning of the *Privacy Act 1988* (Cth), personal data within the meaning of the GDPR or personal information within the meaning of the CCPA (as applicable).
- (v) **Professional Services** means any services that are not Software Access or Software Support, including implementation, configuration or customisation of third-party Software and services in the nature of the Software Support but where at least Software Support variable has already been consumed.
- (w) **Related Body Corporate** has the same meaning as in the *Corporations Act 2001* (Cth).
- (x) **Sajari Materials** means all subject-matter authored, created, produced or licensed by Sajari in or to which Intellectual Property or other rights subsist or relate, including all source code underlying the Software.
- (y) **Sajari Partner** means a reseller, distributor, 'partner' or sales agent with whom Sajari has an agreement and via whom some End Customers become customers of Sajari.
- (z) **Service Credits** mean the service credits (if any) specified in the service level schedule (if any).
- (aa) **Service Levels** mean the service levels (if any) specified in the service level schedule (if any).
- (bb) **Services** means the supply of the Software Access, Software Support, Modules and Professional Services, as specified in the Agreement Details.
- (cc) **Software Access** means Sajari providing access to the Software.

- (dd) **Software Support** means the software support (if any) as specified in any Agreement Details, and otherwise means training, support and consulting in the use and enjoyment of the Software, as limited in scope by factors such as time.
- (ee) **Start Date** means:
- if this is an Online Sign-Up Agreement – the date that the Customer ‘signs up’; or
  - in any other case:
    - if a date specified in any Agreement Details – that date;
    - if no date is specified in any Agreement Details and this agreement is formed on the first day of a calendar month – that date; or
    - if neither of the above apply – the first day of the calendar month following the month in which this agreement is formed.
- (ff) **Trial Period** means a period of time (if any) specified in the Agreement Details as being a period of trial use of the Services.
- (gg) **Usage Tier** means a level, range or bracket of consumption of Services (for example, volume of input queries within a period of time) by Customer, to which a certain level, range or bracket of Fees are charged, as varied by Sajari from time to time.
- (hh) **Usage Tier Details** means the details of Usage Tiers that may apply to Services, as specified in the Usage Tier Details schedule or, if there is no such schedule or the schedule is not populated with details of Usage Tiers, then the details of Usage Tiers located at an online location for the time being, presently <https://www.sajari.com/pricing>.
- (ii) **Collection** means a distinct collection of data accessible within the Software, to be queried by the End User, with its own set of inputs and applicable data processing rules
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## 2 SERVICES

### 2.1 Sajari

- (a) Sajari must supply the Services to Customer and must do so with due care and skill and in a professional and timely manner. This paragraph does not apply during a Trial Period (if any),
- (b) Consistently with common practices in software industries, Sajari may modify, upgrade, update or vary the Software and Modules from time to time,

### 2.2 Service Levels

- (a) Without limiting clause 2.1, Sajari must meet or exceed the Service Levels (if applicable, and not during any Trial Period).
- (b) Subject to clause 10.2 (exclusion of liability), if Sajari fails to meet any applicable Service Level, then:

- that failure is not a breach of this agreement; and
- Sajari must issue Service Credits to Customer in accordance with the service levels schedule.

### 2.3 Modules

- (a) If Customer is entitled to subscribe to Modules, it may do so at any time.
- (b) Customer may give notice of cancellation of its subscription to a Module at any time by using the online process provided or authorised by Sajari. The cancellation will take effect from the end of the subscription month in which the notice is given.

*Note: A 'subscription month' can commence on any day of a calendar month and finishes on the day immediately before the corresponding day of the following calendar month.*

### 2.4 Usage Tiers

- (a) Usage Tiers will apply to Services in accordance with the Usage Tier Details.
- (b) If Customer's consumption of Services exceeds a Usage Tier applying to the Services, Sajari may immediately elevate those Services to a higher Usage Tier and, for Customers other than Customers with an Enterprise Agreement, may do so automatically. If Customer is not elevated to a higher Usage Tier, then Sajari charge Overage as specified in the Agreement Details.

### 2.5 Customer

- (a) Customer must provide such reasonable co-operation as required to enable Sajari to supply the Services in accordance with this agreement, including by:
- using the Software as intended and instructed by Sajari;
  - providing timely, accurate and complete instructions and approvals;
  - ensuring that, insofar as may affect Sajari's supply of the Services, the Customer Materials are accurate, complete and function properly.
- (b) Customer must not create, nor permit any other person to create, a Collection within Customer's Sajari account unless:
- both the following apply: (i) creation of the Collection is solely for the benefit of Customer or its Related Body Corporate; and (ii) no access to the Collection is available to any person (other than Customer or its Related Body Corporate, or their agents) except via search functionality embedded in Customer's product or the product of its Related Body Corporate; or
  - all of the following apply: (i) access to the Collection by an End Customer or Consumer is solely via search functionality embedded in Customer's product; and (ii) the Collection is indistinct from the product supplied by Customer to an End Customer as the object of a contract with that End Customer; and (iii) the Collection is not accessible to the End Customer or a Consumer either via the Sajari console or otherwise, except through the search functionality in Customer's product; and (iv)

access to the Collection by an End Customer is only where that End Customer has contracted with Customer for services other than search account or search collection services.

- (c) Customer must ensure that, insofar as Customer's obligations in this agreement relate to using the Software Access, all End Users and Consumers comply with those obligations.
- (d) Customer must take reasonable steps to prevent persons who are not authorised to acquire and use the Services from doing so. Customer must promptly notify Sajari if it becomes aware of persons acquiring or using Software Access unauthorised.
- (e) Except to the extent that any Software is open source software, Customer must not reverse engineer, decompile or otherwise interfere with any Sajari Materials.
- (f) Promptly upon the termination of this agreement or, if occurring sooner, terminate of a licence, Customer must, at Sajari's reasonable election, destroy, permanently disable access to or return to Sajari, all copies of Sajari Materials no longer licensed or supplied under this agreement.

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### 3 FEES

#### 3.1 Generally

- (a) Sajari may calculate and charge Customer the Fees in accordance with the Agreement Details, plus GST or other local sales tax law as applicable. Sajari will not charge Fees during a Trial Period (if any).
- (b) Sajari may increase the Fees chargeable:
  - if this is an Online Sign-Up Agreement – at any time prior to the next billing cycle;
  - in any other case – for the next Renewing Term by giving notice in writing to Customer no less than 32 days prior to the commencement of that next Renewing Term.

#### 3.2 Usage Tiers

If Services are elevated to a higher Usage Tier (see clause 2.3), the Fees will increase in accordance with the Usage Tiers Details.

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### 4 PAYMENT

- (a) Subject to the Agreement Details, Sajari may invoice Customer the Fees:
  - in respect of Software Access, Software Support and subscription to Modules – monthly in advance; and
  - in respect of Overage and Professional Services – monthly in arrears.

- (b) Subject to the Agreement Details, Customer must pay to Sajari all invoiced Fees, without any set-off or withholding, no later than within 30 days of the date of the invoice. This paragraph (b) does not apply to Online Sign-Up Agreements.
  - (c) Customer must pay all amounts in accordance with the payment method set out in the invoice.
  - (d) Despite anything else in this agreement, Sajari may suspend its supply of the Services until all amounts due and owing have been paid.
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## 5 INTELLECTUAL PROPERTY

### 5.1 Ownership

- (a) Sajari acknowledges that, as between it and Customer, Sajari does not own any Intellectual Property, or other rights, in Customer Materials.
- (b) Customer acknowledges that, as between it and Sajari, Customer does not own any Intellectual Property or other rights in Sajari Materials.

### 5.2 Licences

- (a) Sajari hereby grants Customer a licence to use Sajari Materials as required to acquire and use the Services as contemplated by this agreement. The licence is for the term of this agreement, non-exclusive, world-wide, royalty free, non-transferable and non-sublicensable.
- (b) Paragraph (a) does not apply to the extent that Sajari Materials are comprised of software subject to an open source licence and it is a term of such a licence that the owners of the intellectual property in the software automatically grant to users, which includes Customer, a licence to use the software. Any licence granted by an owner of open source software is on its terms.

*Note: Sajari can provide copies of relevant open source licences on request.*

- (c) Customer hereby grants Sajari a licence to use Customer Materials as required to supply the Services. The licence is for the term of this agreement, non-exclusive, world-wide, royalty free, non-transferable and non-sublicensable other than to Related Bodies Corporate and sub-contractors of Sajari.

### 5.3 Non-infringement

- (a) Customer must not do any act that infringes on any Intellectual Property or other rights subsisting in or relating to any Sajari Material.
- (b) Sajari must not do any act that infringes on any Intellectual Property or other rights subsisting in or relating to any Original Customer Materials or Customer Data.
- (c) Sajari warrants that Customer acquiring and using the Services as contemplated by this agreement and any other reasonable directions of Sajari, and otherwise lawfully, will not cause Customer to infringe the Intellectual Property of any third party.

#### 5.4 Moral rights

Sajari warrants that any person who has any moral rights in respect of any Sajari Materials waives all right, title and interest they may have in any right, action or remedy against Customer for infringement of any such moral rights and consents to Customer's use of the Sajari Materials without regard for the person's moral rights.

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## 6 CONFIDENTIAL INFORMATION

### 6.1 Disclosure & use

(a) The parties acknowledge that, in the course of performing this agreement, one party (Discloser) may disclose Confidential Information to the other (Recipient).

(b) Subject to the express provisions of this agreement, a Recipient must not:

- disclose any of Discloser's Confidential Information to any person; or
- use any of Discloser's Confidential Information for any purpose other than exercising its rights or performing its obligations under this agreement,

without Discloser's express written authorisation.

(c) Each Recipient may disclose Discloser's Confidential Information to its officers, directors, employees, contractors and agents as, and only as reasonably necessary for the purposes of Recipient's exercising its rights or performing its obligations under this agreement.

### 6.2 Customer Data & Output Data

Sajari may use Customer Data and Output Data for the purposes of improving Functionality and Data Analysis.

### 6.3 Return & destruction

Within 14 business days of the termination of this agreement, each Recipient must return to Discloser, permanently disable access to or destroy all copies of material embodying Discloser's Confidential Information including, to be clear, copies of the Software held by Customer.

### 6.4 Rights in Confidential Information

Recipient acknowledges to Discloser that Recipient has or acquires no right, title or interest in any of Discloser's Confidential Information.

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## 7 PRIVACY & SPAM

### 7.1 Customer

(a) Customer warrants that it does and will not acquire or use the Services:

- in a manner that would be in contravention of the *Privacy Act 1988* (Cth), the GDPR or CCPA; and
  - in contravention of the *Spam Act 2003* (Cth), *Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003* (USA) or other applicable anti-spam law.
- (b) Without limiting this clause 7.1, Customer must not disclose or transfer to Sajari any Personal Information other than the Personal Information that Sajari expressly requests or permits Customer to disclose or transfer to Sajari.
- (c) Customer acknowledges that Sajari may protect and improve the Services through analysis of Customer's and End Users' use of the Services or End Users' personal information in anonymised, pseudonymised, de-personalised or aggregated form. If applicable law requires, Customer must explain those matters to End Users, including in a privacy policy.
- (d) Customer warrants that, when using the Services, it is solely responsible for complying with all applicable data protection, security and privacy laws (including, where applicable, the GDPR or the CCPA), including any notice and consent requirements. Customer must comply with all its obligations under data protection, security and privacy laws, including its collection and processing of any Personal Information, Customer's use the Services to send electronic communications to individuals and Customer's use of cookies and similar technologies in relation to its use of the Services. If applicable privacy laws require, Customer must provide and make available to End Users a legally compliant privacy policy and cookie policy.

## 7.2 Sajari

- (a) To the extent that the GDPR applies to this agreement and the Services, the terms of the GDPR Schedule, as amended by Sajari from time to time, are referred to herein and thereby incorporated into this agreement. The GDPR Schedule is at an online location for the time being, presently <https://www.sajari.com/gdpr> or any other URL to which Sajari directs you for the GDPR Schedule.
- (b) To the extent that the CCPA applies to this agreement and the Services, the terms of the CCPA Schedule are referred to herein and thereby incorporated into this agreement. The CCPA Schedule is at an online location for the time being, presently <https://www.sajari.com/ccpa> or any other URL to which Sajari directs you for the CCPA Schedule.

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## 8 SUB-CONTRACTORS

Sajari may engage appropriately qualified sub-contractors to supply the Services. As head contractor, Sajari remains liable to Customer for the performance of all sub-contractors.



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## 9 ADDITIONAL WARRANTIES & REPRESENTATIONS

### 9.1 Additional warranties & representations Customer gives

In addition to and without limiting any warranty or representation Customer gives elsewhere in this agreement, Customer warrants that:

- the instructions it intends to issue to Sajari will not cause Sajari to engage in any unlawful conduct by reason merely of Sajari's performance of those instructions; and
- Customer does not rely on any representation from Sajari that is not expressly contained in this agreement.

### 9.2 Additional warranties Sajari does not give

In addition to warranties expressly disclaimed elsewhere in this agreement, Sajari gives no warranty that:

- Output Data will yield any particular result or utility or perform any particular function, except to the extent that the Software does not perform as described or is otherwise defective; or
- the supply of the Services will confer on Customer any particular commercial objective, outcome or benefit.

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## 10 INDEMNITY & LIABILITY

### 10.1 Indemnity

- (a) Subject to this clause 10, Sajari indemnifies Customer against any Loss suffered by Customer as a result of any breach of this agreement (including its warranties) by Sajari or any other unlawful conduct engaged in by Sajari in relation to the performance of its obligations under this agreement, including where such loss arises from legal action brought against Customer by a third party or brought by Customer against a third party.
- (b) Subject to this clause 10, Customer indemnifies Sajari against any Loss suffered by Sajari as a result of any breach of this agreement (including its warranties) by Customer or any other unlawful conduct engaged in by Customer in relation to the acquisition or use of the Services, including where such loss arises from legal action brought against Sajari by a third party or brought by Sajari against a third party.

### 10.2 Exclusion of liability

- (a) Customer acknowledges that the Software operates in an online environment and, accordingly, its availability and performance rely on infrastructure and services, e.g. hosting services, supplied by third parties.
- (b) Subject to paragraph (c), to the extent that there is a breach of this agreement by Sajari, and that breach is caused by a default by a third-party infrastructure and services provider, then that

breach is not a breach of this agreement and Sajari is not liable for any loss suffered by Customer caused by the third-party default.

- (c) Sajari must use only reputable third-party infrastructure and service providers and Sajari must take reasonable steps to ensure that such measures as would be reasonable to expect are taken in relation to back-up systems and infrastructure.
- (d) Despite anything else in this agreement, to the extent that Sajari receives compensation from a third-party infrastructure or service provider in respect of any third-party default as a result of which Customer has suffered loss, Sajari must compensate Customer. The compensation:
- may be apportioned by Sajari, acting reasonably, between Sajari's customers, such that Customer receives only a portion of the total compensation received by Sajari;
  - need not be provided to Customer unless and until actually received by Sajari from the third-party provider; and
  - need not take a form different to the form that it is received by Sajari, eg a credit to Sajari's account with the third-party provider.

### 10.3 Limitation of liability

- (a) The liability of each party to the other is limited to Loss in an amount equal in aggregate to the amount of the Fees:
- if this is an Online Sign-Up Agreement – paid or payable in the month that the liability was incurred, multiplied by 12; or
  - in any other case – paid or payable in respect of the current term of the agreement.
- (b) In respect of Sajari's liability to Customer, Sajari's liability is further limited to supplying the Services again or paying the cost of supplying them again.
- (c) To be clear, in respect of Sajari's liability to Customer, the operation of this clause 10.3 is not affected by the operation of clause 10.2, except that Customer acknowledges that it acquires no right to be overcompensated for its loss.

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## 11 TERM, RENEWAL & TERMINATION OF AGREEMENT

### 11.1 Term

Subject to this clause 11, the term of this agreement commences on the Start Date and:

- if this is an Online Sign-Up Agreement – continues until terminated, including that it continues automatically upon the expiry of a Trial Period (if any) unless terminated during the Trial Period; or
- in any other case – continues for the Initial Term plus any Renewing Terms.

## 11.2 Renewal &amp; termination

- (a) Subject to paragraph (b) and clause 11.3, if this agreement has an Initial Term, this agreement renews automatically for the Renewing Term upon the first anniversary of the Start Date, and subsequently, the day after each Renewing Term terminates by expiry.
- (b) Customer may terminate this agreement:
- if this is an Online Sign-Up Agreement – at any time by using an online ‘cancellation’ process; or
  - in any other case:
    - by giving Sajari no less than 30 days’ notice in writing during the Initial Term, such termination to take effect from the end of the Initial Term; or
    - by giving Sajari notice in writing during a Renewing Term, such termination to take effect from the end of the Renewing Term coming after the Renewing Term during which notice was given.
- (c) The terms of any renewed agreement are the same as this agreement (as amended pursuant to clause 12.4).
- (d) Sajari may terminate this agreement by giving no less than 90 days’ notice in writing, except during a Trial Period, during which Sajari may terminate this agreement at any time.

## 11.3 Termination for breach

Without prejudice to any other right, action or remedy, if a party (the first party) breaches this agreement and:

- the breach is reasonably capable of being remedied by the first party and the first party does not remedy the breach within 14 days of the other party notifying the first party in writing about the breach; or
- the breach is not reasonably capable of being remedied by the first party,

then the other party may terminate this agreement with immediate effect by giving the first party notice in writing.

## 11.4 Consequences of termination

- (a) Sajari will cease supplying the Services.
- (b) If Sajari terminates this agreement pursuant to clause 11.2(d) during an Initial Term of 12 months where the Fee for the Software Access and Software Support was paid as a single lump sum, then Sajari must, within 7 days, refund to Customer, on a pro rata basis, the amount of fees and charges paid to Sajari (if any) in respect of Services not supplied by reason of that termination of this agreement by Sajari.

- (c) If Sajari terminates this agreement pursuant to clause 11.3, then Sajari is not obliged to provide any refund to Customer for fees and charges paid to Sajari in respect of Services not supplied by reason of Customer's breach of this agreement.
- (d) Paragraph (b) is without prejudice to Customer's other obligations under this agreement, including accrued obligations to pay fees and charges, or any other right, action or remedy that Sajari may have against Customer for breach of this agreement.

*Note: Clause 6.3 is also relevant to the consequences of termination of this agreement.*

#### 11.5 Notice in advance

To be clear, any notice in writing given under this clause 11 is notice given in advance.

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## 12 THIS AGREEMENT

### 12.1 Formation

This agreement is formed:

- if this is an Online Sign Up Agreement – when Customer creates an account using the online sign-up process;
- if the form of this agreement is electronic and communicated between the parties – when Customer signs an electronic copy of the Agreement Details or otherwise indicates that it accepts the agreement; or
- if the form of this agreement is a hard copy document – when Customer signs a copy of the Agreement Details.

### 12.2 Terms and conditions

- (a) This agreement includes the Agreement Details, all other schedules and appendices to this agreement. To the extent there is any irreconcilable inconsistency between the body of this agreement and its other parts, the terms and conditions of the body of this agreement prevail, except in relation to the GDPR Schedules and CCPA Schedules, in which case those schedules prevail.
- (b) Subject to paragraph (a) and clause 12.4 (variation), this agreement:
- as a document, embodies all the express terms of the agreement; and
  - supersedes or excludes all other agreements, arrangements, understandings and representations, written or oral, in relation to Customer's engagement of Sajari to provide the Services.
- (c) If there is an agreement between Customer and a Sajari Partner in connection with the Services, then, to the extent that that agreement makes substantive provision for:
- the same rights of Customer and corresponding obligations of Sajari (e.g. Customer's right to receive Services, which corresponds to Sajari's obligation to supply Services)

as in this agreement, then the agreement between Customer and the Sajari Partner is taken to exhaustively deal with those rights and corresponding obligations and this agreement does not operate in respect of them; or

- the Sajari Partner to pay fees to Sajari as full consideration for the supply of the Services to Customer, then clause 4(b)-(c) of this agreement does not operate in respect of the payment of Fees.

### 12.3 Principles of interpretation of agreement

In this agreement, unless expressly to the contrary and as appropriate in the context:

- (a) an expression in the plural may be read in the singular, and vice versa;
- (b) all references to currency or amounts of money are in US Dollars;
- (c) in relation to an expression reflecting a present state of affairs, if the existence of an obligation is conditional on the existence of that state of affairs, the obligation survives only to the extent that that state of affairs exists during the term of this agreement;
- (d) a reference to a thing or things includes a reference to any, some or all, or part or whole, of the thing or things;
- (e) a reference to an act includes an omission and to the causing to be done of that act or omission, including the execution of legal documentation;
- (f) a reference to a person doing an act includes a reference to the doing of the act on behalf of the person;
- (g) a reference to one alternative does not, of itself, exclude any other alternative;
- (h) an expression of the exercise of a right means the exercise of that right at the sole and absolute discretion of the relevant party;
- (i) an expression prohibiting the doing of an act includes the prohibiting of:
  - offering, attempting or purporting to do the act; or
  - aiding, abetting, authorising, approving, contributing to, directing or materially being involved with the doing of the act;
- (j) a list of rights is not to be read as an exhaustive list of rights;
- (k) an expression of ownership includes the legal or beneficial ownership;
- (l) a reference to an assignment or transfer of proprietary rights is a reference to the absolute and irrevocable assignment or transfer
- (m) a reference to an indemnity is a reference to compensation for loss, not prevention of loss;
- (n) a reference to a 'copy' of a thing includes the original embodiment in material form of the thing;

- (o) a reference to 'this agreement' includes a reference to the terms and conditions of this agreement, or this document, regardless of whether the terms and conditions of this agreement, or this document, are sometimes expressly referred to in this agreement; and
- (p) a reference to a provision, clause, paragraph or schedule is a reference to a provision, clause, paragraph or schedule of this agreement.

#### 12.4 Variation

The parties may vary this agreement only by agreement in writing.

#### 12.5 Waiver

Subject to this agreement, no waiver of rights, actions or remedies is effective unless in writing. To be clear, the failure of any party to exercise or enforce a right, action or remedy under this agreement, or otherwise, does not constitute a waiver of the relevant right, action or remedy.

#### 12.6 Compulsory provisions and severability

- (a) Sajari acknowledges that, by operation of law:
  - certain agreements contain certain terms, conditions or warranties, whether by implication or otherwise, or there are statutory guarantees (Compulsory Terms);
  - Compulsory Terms cannot or must not be excluded, modified or limited by agreement; and
  - to the extent that any provision of this agreement excludes, modifies or limits those Compulsory Terms, that provision may be unlawful, unenforceable or void.
- (b) Subject to clause 10.3(b) (limitation of liability) but otherwise despite anything else in this agreement, this agreement does not, nor purports to, exclude, modify or limit any Compulsory Terms.
- (c) To the extent that any provision of this agreement would be unlawful, void or unenforceable for any reason (including by reason of the matters acknowledged in this clause 12.6) or is found to be so, the other provisions of this agreement are valid and enforceable.

#### 12.7 Assignment and novation

- (a) Each party may assign its rights under this agreement by giving written notice to the other party.
- (b) Each party cannot not novate its obligations under this agreement without the other party's written consent, which consent will not be unreasonably refused or delayed.

#### 12.8 Survival

The following matters survive the termination of this agreement:

- clauses 1, 4, 5, 6, 10, 11.4, 12.2, 12.3, 12.8 and 12.9;

- all accrued obligations, including an obligation to pay fees and charges; and
- all terms necessary to construe and give effect to the foregoing matters.

12.9 Governing law and jurisdiction

- (a) The laws of the state of New South Wales, Australia, govern this agreement.
- (b) The parties acknowledge that the courts of NSW are an appropriate forum for the settlement of disputes arising under or in relation to this agreement.
- (c) To the extent they come before any court, all disputes arising under or in relation to this agreement will be determined in the courts of NSW.