

SAFYR® LICENCE AND SUPPORT AGREEMENT

INTRODUCTION AND STRUCTURE

This Agreement consists of this electronic document (“Safyr Licence and Support Agreement”) and the “Safyr Licence and Support Agreement ‘Configuration Schedule’ executed by you (referred to in this Agreement as the “Configuration Schedule”). This document is made reference to in the Configuration Schedule.

In the event of any conflict or inconsistency between these two documents; the terms of this Safyr Licence and Support Agreement will prevail.

You agree that you have read the following details of this Agreement and have understood them. Moreover, you agree that you have not relied on any representation made by us either verbally or in writing. This Agreement cannot be modified except in circumstances when signed by you and us (or where we or the Silwood Partner issue a new Configuration Schedule to you (on your request) to re-state and vary your software licence configuration and the component parts of the Configuration Schedule) and represents the entire agreement between you and us on the matters contained in it. We and you further declare that neither you nor we intend to grant or create any right enforceable by any person who is not a party to this Agreement (including, but without limitation, the Silwood Partner as defined hereinbelow). Under this Agreement you are purchasing a software licence with associated support services (*via* the Silwood Partner) and it is effective when you sign your Configuration Schedule.

NOW THEREFORE, in consideration of the mutual covenants and undertakings herein contained and intending to be legally bound by the provisions of this Agreement, you and we agree as follows:

1. THE LICENCE

1.1 Your Licence Model for Safyr Safyr is available in two Licence Models. One where Safyr is licensed annually, year-on-year as a subscription; the other where Safyr is being licensed on a one-time basis. The Licence Model relevant to your purchase of Safyr Licences is set out in the Configuration Schedule.

1.2 Subscription Licence Model Upon the Key Delivery Date, we grant to you an Annual, Non-Exclusive, Non-Transferable, Personal, Revocable and Temporary Licence to use Safyr in the Use Configuration on the Designated Equipment only.

1.3 One-Time Licence Model Upon the Key Delivery Date, we grant to you a Non-Exclusive, Non-Transferable, One-Time Personal, Revocable and Temporary Licence to use Safyr in the Use Configuration only and on the Designated Equipment only. For the avoidance of doubt, the One-Time Licence Model does not automatically include Support Services.

1.4 The Reason for and Nature of Temporary Licensing

1.4.1 No matter what Licence Key Route you take (please see the SLASA Appendix below) once you have entered into this Agreement (by signing your Configuration Schedule) there will be a period of time between your receipt of the Licence Key (so that you can use it in Safyr to unlock your Use Configuration) and the Silwood Partner receiving the payment of your Licence Fees. That period of time will be referred to as the “Payment Interval”.

1.4.2 During the Payment Interval your Licence is Temporary; and such ‘Temporary Status’ ends on the Silwood Partner’s receipt of the applicable Licence Fee and your Licence becomes a Subscription Licence and/or One-Time Licence Model (as the case may be) as described in your Configuration Schedule.

1.4.3 The ‘Temporary Status’ of your Licence (as described in Clause 1.4.3 above) can be rescinded or extended by us in our sole, absolute and exclusive discretion (by giving you prior, written notice thereof).

1.5 Conditions Applying To All Licence Models

1.5.1 Only you have the right to use Safyr as set out in the Configuration Schedule and only the number of Users set out in the Configuration Schedule may have access to it at any one time on the Designated Equipment only. You must not make Safyr available for other parties to use nor use (at any one time) Safyr beyond the Limit that you are authorised for under this Agreement.

1.5.2 You may not copy Safyr in any circumstances except to make a reasonable number of back-up copies and you may only use a back-up copy by substituting it for the copy you are using. If copies you have made of Safyr fall into the hands of a third party for any reason or through any route, you agree that you will be responsible for paying us the full licence and other fees connected with the use of these unauthorised copies. You will provide all of the remote connectivity to Safyr and Designated Equipment that we advise you of at your sole and exclusive cost.

1.6 Administration and Procedures in Obtaining the Safyr Licence Key

1.6.1 We or our Silwood Partner provide you with your Safyr Licence Key and your use of it can take place *via* one of or both of our Licence Key Routes as described in the SLASA Appendix below. You agree to cooperate with us and our Silwood Partner fully as you proceed through the Licence Key Route or Routes as set out in your Configuration Schedule.

1.6.2 On our request (whether directly or through our Silwood Partner) and with our advice you will provide us with such information as we require to administer and validate your use of Safyr and generate the Safyr Licence Key. You agree that we have the right to use that information to ensure that Safyr is used strictly in accordance with this Licence. You warrant your unconditional understanding and acceptance that we, as world-wide licensor of Safyr, shall have the sole and exclusive right to determine the methodologies, administrative mechanisms and procedures whereby you receive the Safyr Licence Key.

1.7 Administrative Processes and Licence Key Routes

1.7.1 Notwithstanding anything to the contrary contained in this Agreement, you acknowledge your understanding that certain interim solutions and new processes are being developed by us in relation to the administrative processes we use in order to safeguard and control the use of Safyr generally including, but not limited to, our development of Licence Key Routes.

1.7.2 In the event that, at the time of your installation of Safyr: Safyr exhibits or displays any text relating to the acceptance of any licence or agreement not being this Agreement – the provisions of this Agreement shall prevail and control all matters of whatsoever kind between you and us. All such text exhibited or displayed in or by Safyr requiring the 'acceptance' by you of anything other than this Agreement shall be null and void. Your signature of the Configuration Schedule shall be your final acceptance of this Agreement and no other (as further set out, but without derogation of the foregoing, in Clause 9.13 hereinbelow).

1.7.3 As a consequence of your acknowledgement and agreement to all of the foregoing in this Clause 1.7; you agree to cooperate with us and use any interim ordering processes and Licence Key Route changes required by us and work with us in good faith in your adherence to any revised Internet-based procedures necessary to implement our administrative systems (including, but not limited to, Licence Key Routes).

2. SUPPORT SERVICES AND SUPPORT

2.1 The detail of the technical aspects of the support elements of this Agreement are set out in the Technical Support Statement at: <http://www.silwoodtechnology.com/safyrtss> and the division of support activities between Silwood and the Silwood Partner (if any) is as set out in your Configuration Schedule.

2.2 Our Support Services (including a telephone advice service on the standard operation of Safyr) will be provided between 09.00 hrs. to 18.00 hrs. (local UK time). Monday to Friday inclusive, but excluding UK public holidays and all days between Christmas Eve and New Year's Day inclusive. You and we may agree to extend this coverage by recording the additional cover in the Configuration Schedule against the heading: 'Extended Support Services'. And as part of the Support Service, we make available access to the Silwood Support Portal – which is described in the Technical Support Statement.

2.3 We undertake to do our best to rectify any errors in Safyr that you notify to us in writing and that we can recreate with the latest unaltered release of Safyr. However, if our efforts exonerate Safyr as a cause of the problems you are reporting, you will be liable to pay us for our time spent at our then prevailing hourly rate.

2.4 If we think it necessary, you must allow us or our representatives reasonable remote access to Safyr and the Designated Equipment during normal working hours (and any extra agreed cover) so that we can carry out our obligations under this Agreement and ensure that you are complying with your obligations under this Agreement. Your non-compliance with your obligations arising under this Agreement enables us to terminate it.

2.5 As they become available, we will advise you (directly or indirectly through our Silwood Partner) of any new releases, updates or revisions that we are incorporating into Safyr. We deliver this type of change either by a Silwood Partner on-site visit or through remote electronic means and we grant you a personal, non-exclusive, non-transferable licence to use it subject to the same restrictions that are set out elsewhere in this Agreement. At our discretion, significant extensions to the functionality of Safyr may be options for which additional fees apply. If you elect to take a chargeable option, we will issue an additional Configuration Schedule to this Agreement and our Silwood Reseller will raise an invoice for any fee due; but if you do not elect to take this option, your rights under this Agreement will remain unaffected.

2.6 The provision of your Annual Subscription Licence and Support Services is ongoing on a yearly basis and continues unless cancelled by either you or us not less than thirty days prior to the anniversary of the Service Start Date. The Annual Subscription Fee, Support Service Fee and their timing and method of payment are set out in Your Partner Agreement. All other Support Services Fees and other charges payable by you to us should be paid in full in accordance with our relevant invoice. In the event that any Annual Subscription Fee, Support Services Fee or any other Fee or charge remains unpaid after it has become due for payment, we become entitled to withdraw the Support Service provided in this Clause or, at our discretion, terminate this Agreement.

2.7 In the course of supplying Support Services and other technical and support services to you, it is likely that you will address matters with us which are not covered by this Agreement and, although not bound or required to do so, in the interest of good general commercial relations with you we may provide advice, suggestions, proposals, information, data, and the like where such provision is similarly made outside of this Agreement and *ex gratia* (such advice, suggestions, proposals, information, data, and the like being called collectively "Extra-Contractual Support").

3. PAYMENT

3.1 Subscription Licence Model Where the Licence Model relevant to your purchase of Safyr Licences set out in the Configuration Schedule is the Subscription Licence Model; then you agree to pay our Silwood Reseller in accordance with the terms for payment set out in Your Partner Agreement. The Annual Subscription Fee is initially payable by you as set out in Your Partner Agreement and is thereafter payable you on or before each anniversary of the Service Start Date.

3.2 One-Time Licence Model Where the Licence Model relevant to your purchase of Safyr Licences set out in the Configuration Schedule is the One-Time Licence Model; then you agree to the Silwood Partner the One-Time Licence Fee in accordance with the terms for payment set out in Your Partner Agreement. The Support Services Fee is initially payable by you as set out Your Partner Agreement and is thereafter payable you on or before each anniversary of the Service Start Date or as otherwise provided for in Your Partner Agreement.

3.3 Failure to Pay On Time Should you fail to pay within the foregoing terms, we become entitled to withdraw Support Services and/or revoke your Licence and you will lose your right to use Safyr. You agree that us reinstating Support Services after its withdrawal is not a cost free exercise for us. Accordingly, you agree that we may (in our discretion) charge you a fee to reinstate Support Services of 10% (ten per centum) of the then standard Annual Subscription Fee or standard Support Service Fee (as the case may be) which you will pay straightaway. All charges quoted in this Agreement exclude VAT which will be chargeable at the then prevailing rate. Where applicable, we will give you notice of any change in the Annual Subscription Fee and/or Support Services Fee via the Silwood Partner.

4. COPYRIGHT

4.1 You acknowledge that Safyr is confidential material and agree that you must not show it or allow it to be shown to any third party in any form whatsoever without our prior permission given to you in writing.

4.2 We make available at reasonable charges a wide range of information which could assist you in the creation of independent computer programs to operate with Safyr. In view of this ready availability, you also agree not to Reverse Engineer Safyr.

5. CONFIDENTIALITY Each party undertakes to keep and treat as confidential and not to disclose to any third party, any Confidential Information nor make use of such information for any purpose whatsoever, except for the purposes of this Agreement, provided that the foregoing obligation shall not extend to information which is: (i) in or comes into the public domain other than by breach of this Agreement; (ii) in the possession of one party prior to receipt from the other party; (iii) received bona fide by one party from a third party not receiving the information directly or indirectly from the other party.

6. DEFINITIONS AND INTERPRETATION

6.1 **Definitions** To make this Agreement more understandable, and so that you are certain as to what rights you are gaining under it; we need to define certain terms:

“Annual Subscription Fee” means the annual fee payable by you which renews your Licence to use Safyr (subsequent to the Initial Term) in accordance with Clause 1.2; and entitles you to receive Support Services during the relevant year.

“Confidential Information” means any information relating to the business or trade secrets of either you or us including (but without limitation): (i) any information relating to, connected with and/or describing any of your customers to which we are exposed; (ii) the technical information, data, processes and know-how employed by us in providing Safyr and Support Services; and (iii) the content and provisions of this Agreement together with all matters, facts, events and occurrences connected with your and our discharge of our respective obligations under it. For the avoidance of doubt, and without derogation from (iii) of this definition immediately hereinabove, the fact of the existence of this Agreement shall not be confidential information nor a secret (of either party).

“Configuration Schedule” means the schedule referred to in the section headed ‘Introduction and Structure’ above in which we and you state the variables in this Agreement. On your request we or our Silwood Partner will issue a new Configuration Schedule which will comprehensively re-state such variables (including for example (but without limitation), the components of Safyr licensed to you and your Use Configuration). It is your obligation to ensure that the Configuration Schedule correctly states the information set out in it.

“Designated Equipment” means the computer hardware specifically identified by the Safyr Hardware Key.

“Domain Name” means a unique, case-insensitive, name, consisting of a string made up of alphanumeric characters and dashes separated by periods, that the Domain Name System maps to IP Addresses and other information.

“Domain Name System” means the distributed database that the Internet uses to translate hostnames into IP Addresses and provide other domain related information.

“Evaluation Version” means, with respect to a computer software product, a type or version which is identified as a demonstration, evaluation or appraisal version which is: (i) used only for the purpose of commercial evaluation and assessment; and (ii) includes limitations on its features and functionality.

“Fee” or “Fees” (as the context requires) is the collective noun for ‘One-Time Licence Fee’, ‘Initial Fee’, ‘Annual Subscription Fee’ and ‘Support Services Fee’.

“Hyperlink” means an electronic link providing direct access from one distinctively marked place in a Hypertext or Hypermedia document to another in the same or a different document.

“Hypertext” means a database format in which information related to that on a display can be accessed directly from the display.

“Hypermedia” means a database format similar to Hypertext in which text, sound, or video images related to that on a display can be accessed directly from the display.

“IP Address” means a 32-bit number that identifies each sender or receiver of information that is sent in packets across the Internet.

“Initial Fee” means the amount set out in Your Partner Agreement in relation thereto.

“Instance” means a virtual server in a cloud computing environment whereby a cloud computing virtual machine runs your computing workloads.

“Intellectual Property” means copyright rights (including, but without limitation, the exclusive right to use, reproduce, modify, distribute, publicly display and publicly perform the copyright work), trademark rights (including, but without limitation trade names, trademarks, service marks, and trade dress), patent rights (including, but without limitation, the exclusive right to make, use and sell), trade secrets, moral rights, right of publicity, authors’ rights, contract and licensing rights, goodwill, and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, regardless of whether such rights arise under the laws of England (and any state thereof) or any other state, country or jurisdiction. Notwithstanding the generality of the foregoing, such definition shall include Non-Literal Elements (as defined hereinbelow), Preparatory Design Materials (as defined hereinbelow), and Know-How (as defined hereinbelow)

“Intellectual Property Rights” means any and all rights and privileges associated with Intellectual Property and which, *inter alia*, protect against use without consent.

“Key Delivery Date” means the date that we e-mail the Licence Key Download Link to you so that you can download the Safyr Licence Key and use it in Safyr to unlock your Configuration. The Key Delivery Date is elaborated in the SLASA Appendix below.

"Know-How" means: (i) factual knowledge not capable of precise, separate description that when used in an accumulated form, after being acquired as the result of trial and error, gives to the one acquiring it an ability to produce something which otherwise would not have known how to produce with the same accuracy or precision found necessary for commercial success; and (ii) confidentially held or closely held information in the form of unpatented inventions, formulae, designs, drawings, procedures and methods, together with accumulated skills and experience in the hands of a parties' professional personnel.

"Licence" means the restricted legal authorisation to use Safyr that we grant to you in Clause 1. above. It is an aggregate of rights granted to you by us (being Intellectual Property Rights with respect to Safyr) And "licensed" and "licensing" shall be interpreted accordingly as the context requires.

"Licence Key Download Link" means a Hyperlink generated by Silwood that enables the access to and downloading of a specific Safyr Licence Key.

"Licence Key Route" means our administrative process for the delivery of Licence Keys as set out in the SLASA Appendix at the end of this Agreement.

"Licence Model" means the type, classification or category of the licence to use Safyr that is granted to you by Silwood. Each category of 'Licence Model' has different licence attributes.

Limit" means the factors or features set out in the Configuration Schedule (which may include (without limitation) maximum number of users, number of employees configured on a database) which describe the extent of your licence to use Safyr

"Metadata" means "data that provides information about other data, but not the content of the data, such as the text of a message or the image itself. There are many distinct types of metadata, including (but without limitation 'descriptive metadata', 'structural metadata', 'administrative metadata' reference metadata', statistical metadata, (also called process data) and 'legal metadata') but, for the avoidance of doubt, this definition of 'Metadata' is not strictly bounded to one of the foregoing categories, as it can describe a piece of data in many other ways.

"Non-Literal Elements" means the distinctive and particular elements of a copyright work (of whatsoever kind or classification), graphics, design, organisation, presentation, layout, graphic user interface, navigation, trade dress and stylistic convention (including (but not limited to) the digital implementations of said distinctive and particular elements) and the total appearance, functional effect and impression substantially formed by the combination, coordination and interaction of said distinctive and particular elements.

"Object Code" means the computer executable binary code derived from compiled Source Code for execution on a computer hardware system.

"One-Time Licence" means the Licence Model where we grant to you a Non-Exclusive, Non-Transferable, One-Time, Personal, Revocable Licence to use Safyr in the Use Configuration only, and on the Designated Equipment only. All of the foregoing being subject to the restrictions set forth in Clause 1. above.

"One-Time Licence Fee" means the fee payable by you pursuant to Your Partner Agreement which enables your One-Time Licence (where applicable and as set out in the Configuration Schedule) to use Safyr.

"One-Time Licence Model" means the Licence Model with the attributes of a One-Time Licence.

"Preparatory Design Materials" means, in relation to a literary work (of whatsoever kind or classification), computer program, computer program script and/or a computer software product, all of the materials produced in preparing and designing such computer program, computer program script and/or a computer software product and/or literary work including, but without derogation from the generality of the foregoing, drafts, structural representations, architecture descriptions, flow-diagrams, flow-charts, algorithms, formulae and prototypes.

"Reverse Engineer" means the process by which a person seeks to decompile, reverse compile, reverse engineer, interrogate, observe or decode a computer program to bypass or delete protection methods by any technique (including, but not limited to, any accompanying authorisation key or passcode provided for preventing unauthorised use of the computer program) so to derive from the foregoing any of Silwood's Intellectual Property, Confidential Information, Source Code, Preparatory Design Material, or the Know-How expressed therein in any form whatsoever or for any purpose whatsoever.

"Safyr" means the means the computer programs and associated documentation listed in the Configuration Schedule against the heading 'Safyr'. It does not include Source Code but does include configuration undertaken by us, new releases, updates or revisions to the computer programs which are available to you as part of Support Services in Clause 2.. The Safyr Database is an intrinsic component of Safyr and therefore references to Safyr include Safyr Database (making the necessary alterations while not affecting the main point at issue).

"Safyr Key Function" means the functions in Safyr (as it executes and runs) that regulate the generation of Safyr Hardware Keys and the entering into Safyr of Licence Keys.

"Safyr Database" means the database (within the meaning of section 3(1)(d) Copyright, Designs and Patents Act 1988) including, but without limitation, such other electronic collection of records, documents, scripts, drawings, scans and/or data (of whatsoever kind including but not limited to Metadata) functionally associated with, generated by and used by Safyr (whether the foregoing has been generated by Safyr or entered into Safyr by us, you or any other person whatsoever).

"Safyr Evaluation Licence" means the licence agreement on our website, the acceptance of which, enables an Evaluation Version of Safyr to be downloaded and which controls the use thereof by the Licensee.

"Safyr Hardware Key" means a form of Safyr Licence Key generated as part of the Licence Key Route that is part of the process that confines the licensed use of Safyr to the Designated Equipment.

"Safyr Licence Key" means any number, sequence of numbers, computer program, code, hardware, firmware, device or dongle provided by us to you to be entered into Safyr during its execution or installation or used in association with Safyr during its execution; so as to enable your full and continuing use of Safyr.

"Safyr Repository" means a relational database management system which stores the Safyr Database populated by Safyr from one (1) Instance of the Source Application.

"Safyr Subject Area" means a grouping of computer file (storage) tables created by Safyr from the Source Application metadata in a Safyr Repository.

"Silwood Partner" means a third party who is appointed by us to be an official reseller, distributor or 'VAR' (value added reseller) for our computer software product Safyr.

"Silwood Sales" means our direct sales department and its personnel.

"Silwood Support" means our direct technical support department and its personnel.

"SLASA Appendix" means the appendix at the end of this Agreement, which is an integrated part of this Agreement and is to be construed as part of it, that explains the procedures and administrative methods through which Safyr Licensing takes place.

"Source Application" means the third-party computer software products with which Safyr is compatible as officially listed by us in our 'Source Application Certification List' as published by us from time to time and, with respect to you, as nominated in the Configuration Schedule.

"Service Start Date" means the date upon which you will be entitled to receive Support Services as set out in Your Partner Agreement or in the Configuration Schedule.

"Source Code" means any computer program, whether stored on or in any magnetic or optical medium, in any computer memory of whatsoever kind or in eye readable form: (i) from which it is possible to discern the logic, algorithms, internal structure, operating features and any other design characteristic of such computer program; or (ii) that form of human readable computer program which is typically read and written by programmers (including (but not limited to) the necessary build scripts and/or make files) and which is converted by assembly or compilation into Object Code prior to execution by a computer.

"Subscription Licence" means the Licence Model where we grant to you an Annual, Non-Exclusive, Non-Transferable, Personal, Revocable Licence to use Safyr in the Use Configuration only, and on the Designated Equipment only. All of the foregoing being subject to the restrictions set forth in Clause 1. above.

"Subscription Licence Model" means the Licence Model with the attributes of a Subscription Licence.

"Support Services" or "Support" means the support and maintenance services for Safyr described in Clause 4. above.

"Support Service Fee" means the Fee payable for Support services in the One-Time Licence Model as agreed between you and your Silwood Partner.

"Technical Support Statement" means the document, being an integral part of this Agreement, that definitively states the technical components of Support Services.

"Term" means the initial fixed period of time for which you have contracted for as set out in the Configuration Schedule.

"Use Configuration" means the selection and permutation of the different types of use of Safyr (and its different component parts) permitted under this Agreement and the different services connected with that use which is comprehensively stated in the Configuration Schedule.

"Users" means the number of persons (being your employees or persons under contract to you) who have access to and use Safyr on the Designated Equipment at any one time.

"Your Partner Agreement" means the binding contract made between you and our Silwood Partner concerning Safyr and the Configuration Schedule and pursuant to which, *inter alia*, you pay the Silwood Partner your fees for the use of Safyr and, where relevant, Silwood Support.

6.2 Interpretation

6.2.1 The use of the word “Annual” (in the foregoing capitalised fashion) in the context of Licensing means the status of the Licence being of the Subscription Model Licence where your Licence continues year on year unless it is terminated and/or expires under the terms of this Agreement.

6.2.2 The use of the word “Non-Exclusive” (in the foregoing capitalised fashion) in the context of Licensing means: (i) the type of licence described in Section 101A Copyright, Designs and Patents Act 1988 where you are granted a limited licence (as described in this Agreement) to use the Intellectual Property in Safyr and we remain free to exploit the same Intellectual Property; and (ii) we are authorising you to exercise a copyright right which remains exercisable by us.

6.2.3 The use of the word “Non-Transferable” (in the foregoing capitalised fashion) in the context of Licensing means that only you have the right to exercise the Licence and, therefore, you may not use any method (whether directly or indirectly) to relocate, move, assign, convey, handover, or in any other fashion give the Licence to any third party whatsoever.

6.2.4 The use of the word “One-Time” (in the foregoing capitalised fashion) in the context of Licensing means the Licence granted to you is not automatically recurring, period or repeating Licence (as in the Subscription Licence Model) but is a Licence granted by us once to you after which such Licence continues until the termination and/or expiry of this Agreement.

6.2.5 The use of the word “Personal” (in the foregoing capitalised fashion) in the context of Licensing means: (i) that it makes a significant difference as to who the licensee is in this Agreement; and (ii) this is an Agreement where (through precontractual negotiations and sales interaction between you and us) we have personal confidence in you (with respect to your skill and expertise) that you will be an appropriate, suitable and fitting user of Safyr.

6.2.6 The use of the word “Revocable” (in the foregoing capitalised fashion) in the context of Licensing means that a Licence may be cancelled, annulled, rescinded or withdrawn by us only in the circumstance where you have either (i) have breached any of your obligations under this Agreement; or (ii) have committed any unlawful or illegal act against or involving us (whether directly or indirectly).

6.2.7 The use of the word “Temporary” in the context of Licensing means the status of the Licence between the Key Delivery Date and our receipt of the applicable Licence Fee (as specified in the Configuration Schedule). The ‘Temporary Status’ of your Licence ends on our receipt of the applicable Licence Fee and your Licence becomes a Subscription Licence and/or One-Time Licence Model (as the case may be).

6.2.8 All references to Clauses, Sub-clauses, Schedules and Appendices are to Clauses, Sub-clauses, Schedules and Appendices of this Agreement.

6.2.9 Words importing the singular number only shall include the plural number and vice versa; words importing the masculine gender only shall include the feminine gender; and words importing persons shall include corporations.

6.2.10 References to and obligations that include the phrase ‘best endeavours’ or the phrase ‘do our best’ will be construed and interpreted as meaning that an obligation is placed upon the party in question to take one reasonable course (out of a selection of contemporaneously available reasonable courses) to achieve the aim or satisfy the obligation expressed and such course of action must not be conducted in such a manner so as to involve any sacrifice of the obliged party’s commercial interests (whether with respect to this Agreement or generally).

6.2.11 The Clause Headings in this Agreement are inserted for ease of reference only and shall not affect the construction or interpretation of this Agreement.

6.2.12 The expressly defined words, terms, acronyms and phrases set out in this Clause 6. will prevail over any conflicting interpretation hereof, howsoever made.

6.2.13 References to you ‘purchasing’ (or similar words or references) in respect of Safyr always means Licensing or paying the Licence Fee for the grant of a Safyr Licence. For the avoidance of doubt, references to ‘purchasing’ or ‘selling’ in respect of Safyr shall not, in any circumstances whatsoever, connote or imply and transfer of title or ownership.

6.2.14 You and we specifically represent, each to the other, that this Agreement is: (i) the exclusive and comprehensive exposition of their consensus on the subject-matter expressed herein; (ii) the definitive and exclusive authority on the respective rights and obligations of you and us; and that any interpretation and/or construction of this Agreement must be made solely and exclusively with reference to the content of it. Without derogation from the generality of the foregoing, no interpretation and/or construction of this Agreement will be made by any reference to any previous draft or previous issues of this Agreement nor by reference to the negotiations of you and us preceding the execution of the Configuration Schedule.

6.2.15 Despite the possibility that we may have prepared the initial draft of this Agreement or played the greater role in the physical preparation of subsequent drafts, you agree that we will not be deemed the drafter of this Agreement and that, in construing this Agreement in case of any claim that any provision may be ambiguous, no such provision shall be construed in favour of you on the ground that such provision was drafted by us.

6.2.16 The terms of this Agreement have been established by mutual negotiation and shall be deemed to have been mutually drafted.

6.2.17 This Agreement may not be changed or modified in any way subsequent to the date of the Configuration Schedule except in writing by you and us. Without prejudice to the generality of the foregoing, no implied term or variation, addition or deletion may arise by usage, custom or trade, course of dealing, representation or course of performance or by your and/or our conduct in relation to this Agreement or to each other.

6.2.18 The terms and conditions stated in this Agreement are controlling over you. Any conflicting statements or terms listed on any of your purchase orders, invoice confirmation or other documents generated by you (collectively, "Your Documents") are negated and rendered void and of nil effect by this Agreement, and all differences or additional terms and conditions contained in any of Your Documents are hereby objected to by us

7. TERMINATION You may only terminate this Agreement after the Term by giving us thirty days written notice prior to the anniversary of the Service Start Date, but you will not be entitled to any refund of the Licence Fees nor the Support Service Fees. If we or you terminate this Agreement you lose your right to use Safyr and Safyr Database. You must therefore return **ALL COPIES** of Safyr and Safyr Database to us or you may, with our written permission, destroy **ALL COPIES** of Safyr and certify to us in writing that you have done so.

8. WARRANTIES AND APPORTIONMENT OF RISK

8.1 **Warranties** You assume full and exclusive responsibility for the information and results obtained from the use of Safyr and for the application of such information and results. We will not be responsible for the loss or corruption of any of your data, howsoever caused. Except for the express warranty given in Clause 2.2 above, we give no warranties or representations, and there shall be excluded from this Agreement any further warranties or conditions, either express or implied, statutory or otherwise, with regard to Safyr, Support Services and/or Extra-Contractual Support.

Without prejudice to the generality of the foregoing, no implied warranties of quality, quality of service or fitness for a particular purpose are given by us, and no implied warranty arising by usage or trade, course of dealing, or course of performance is made by us nor can any such implied warranty arise by this Agreement and/or our and/or your conduct in relation hereto or to each other.

8.2 **No Other Licences** Except for the express licence in Clause 1. above, we grant no other licences and there shall be excluded from this Agreement any further licences, either express or implied, statutory or otherwise, with regard to the Deliverable. Without prejudice to the generality of the foregoing, no implied licence arising by usage or trade, course of dealing, or course of performance is made by us nor shall any such implied licence arise by this Agreement and/or our and/or your conduct in relation to this Agreement or to each other.

8.3 **Limitation of Liability** We and you agree that it is your and our joint firm and mutual intention and agreement to modify, exclude and abandon certain legal remedies available to us and you so as to apportion the risk arising under this Agreement in a fashion appropriate to the commercial arrangement expressed in it. Accordingly, Clause 8.3.1 must be construed and interpreted in strict accordance with the express intention of you and us as set out in this Clause 8.3 and this Agreement in general.

8.3.1 The provisions of this Clause 8.3 do not apply to the case of personal injury or death caused by the negligence of either party and; the exceptions set out in this Clause 8.3.1 will be referred to as the "Exceptions".

8.3.2 Other than the Exceptions; in no event will we be liable for any direct damages or loss (whether arising in contract, tort, by statute or otherwise) being loss which is reasonably foreseeable by you and us at the time of entering into this Agreement (hereinafter "Direct Loss") in excess of the Annual Subscription Fee paid by you in relation to the time at which your cause of action arose.

8.3.3 Other than the Exceptions; in no event whatsoever shall we be liable for any other form of loss or damage of whatsoever kind (whether arising in contract, tort, by statute or otherwise) – hereinafter "Consequential Loss".

8.3.4 Without limiting or derogating from the generality of the definition of Consequential Loss in Clause 8.3.3 above, for the avoidance of doubt Consequential Loss includes **damages at common law**.

8.3.5 Without limiting or derogating from the generality of the definition of Consequential Loss in Clause 8.3.3 above, for the avoidance of doubt Consequential Loss includes **repudiatory damages or loss**.

8.3.6 Without limiting or derogating from the generality of the definition of Consequential Loss in Clause 8.3.3 above, for the avoidance of doubt Consequential Loss includes **indirect damages or loss**.

8.3.7 Without limiting or derogating from the generality of the definition of Consequential Loss in Clause 8.3.3 above, for the avoidance of doubt Consequential Loss includes **special damages or loss**.

8.3.8 Without limiting or derogating from the generality of the definition of Consequential Loss in Clause 8.3.3 above, for the avoidance of doubt Consequential Loss includes **idiosyncratic damages or loss**.

8.3.8 Without limiting or derogating from the generality of the definition of Consequential Loss in Clause 8.3.3 above, for the avoidance of doubt Consequential Loss includes what is generally called **'consequential damages' or 'consequential loss'**.

8.3.10 Without limiting or derogating from the generality of the definition of Consequential Loss in Clause 8.3.3 above, for the avoidance of doubt Consequential Loss includes your **loss of anticipated profits**.

8.3.11 Without limiting or derogating from the generality of the definition of Consequential Loss in Clause 8.3.3 above, for the avoidance of doubt Consequential Loss includes your **loss of business opportunity**.

8.3.12 Without limiting or derogating from the generality of the definition of Consequential Loss in Clause 8.3.3 above, for the avoidance of doubt Consequential Loss includes your **loss of contracts**.

8.3.13 Without limiting or derogating from the generality of the definition of Consequential Loss in Clause 8.3.3 hereinabove, for the avoidance of doubt Consequential Loss includes your **wasted expenditure**.

8.3.14 Without limiting or derogating from the generality of the definition of Consequential Loss in Clause 8.3.3 hereinabove, for the avoidance of doubt Consequential Loss includes your **loss of bargain**.

8.3.15 Without limiting or derogating from the generality of the definition of Consequential Loss in Clause 8.3.3 above, for the avoidance of doubt Consequential Loss includes **loss of your goodwill**.

8.3.16 Without limiting or derogating from the generality of the definition of Consequential Loss in Clause 8.3.3 above, for the avoidance of doubt Consequential Loss includes **loss of your reputation**.

8.3.17 Without limiting or derogating from the generality of the definition of Consequential Loss in Clause 8.3.3 above, for the avoidance of doubt Consequential Loss includes your **loss of non-pecuniary benefit**.

8.3.18 Without limiting or derogating from the generality of the definition of Consequential Loss in Clause 8.3.3 above, for the avoidance of doubt Consequential Loss includes **demands against you by any third party or other like economic loss** in connection with or arising out of this Agreement.

8.3.19 Other than the Exceptions, in no event will we be liable for anything that is in connection with or arising out of the provision of Extra-Contractual Support in any manner whatsoever, any form of loss or damage of whatsoever kind (whether arising in contract, tort, by statute or otherwise), including, but without limitation, those classes and types of loss and damage identified in Clauses 8.3.3 to 8.3.18 inclusive that are incurred by you or any third party or claims or demands against you by any third party or other like economic loss.

8.3.20 You and we expressly agree that all of the limitations, restrictions and exclusions of Direct Loss and Consequential Loss (collectively "Loss") apply no matter how the Loss arises including, but without limitation, whether such Loss arises directly or indirectly.

8.3.21 If any term, provision, sub-clause or part of this Clause 8.3 is held illegal or unenforceable, it is to that extent deemed omitted; the validity and enforceability of the remainder of this Clause 8.3. will not be affected.

9. MISCELLANEOUS

9.1 Data Security and Disaster Recovery A copy of Safyr and Safyr Database resides on the Designated Equipment which is under your control and not ours. You are solely responsible for the security and provision of back-up copies of Safyr and Safyr Database together with recovery of them in the event of any circumstance.

9.2 Poaching During the term of this Agreement and for 1 (one) year thereafter, neither you nor any of your officers, employees or agents shall, whether directly or indirectly, make any offer of employment to any person who has been employed by us during the life of this Agreement.

9.3 **Assignment** Neither this Agreement nor the licences hereunder (if granted) may be assigned or transferred, in whole or in part, by you, or by operation of law, or otherwise, without our express, specific, prior and written consent. We may assign this Agreement (whether in whole or in part and whether novating this Agreement (including its benefits and burdens)) upon giving you written notice thereof and you hereby irrevocably and unconditionally assents to such assignment and novation.

9.4 **Force Majeure** Neither party shall be under any liability to the other in respect of anything which, apart from this provision, may constitute a breach of this Agreement arising by reason of force majeure, namely, circumstances beyond the control of either of the parties hereto which shall include (but not be limited to): acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to supply Safyr or Support Services, breakdown of equipment and labour disputes of whatever nature and whatever cause arising; including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto and any other employer). For the avoidance of doubt, the provisions of this Clause shall not apply respect of anything which, apart from this provision, may constitute a breach of this Agreement arising by reason of any infectious disease, epidemic or pandemic.

9.5 **Waiver and Affirmation**

9.5.1 A waiver by a party hereto of any provision of this Agreement shall only be effective upon the giving by the waiving party of specific, express and unequivocal notice of such waiver to the other party in writing (hereinafter a "Waiver Notice"). The giving of such Waiver Notice by a party in respect of any breach of any such provision of this Agreement shall not be taken or held to be a waiver of any subsequent breach thereof or as nullifying the effectiveness of any such provision or in any way prejudicing such party's right hereunder.

9.5.2 Always excepting the giving of a Waiver Notice: (i) failure by any party at any time to require the performance of any provision of this Agreement shall not affect the right of such party to require full performance thereof at any time thereafter; (ii) in no event shall any delay, neglect or forbearance on the part of any party in enforcing (in whole or in part) any provision of this Agreement be or be deemed to be a waiver thereof or a waiver of any other provision or shall in any way prejudice any right of that party under this Agreement; and (iii) no waiver shall arise (including, but not limited to, by usage or trade, course of dealing, course of performance and/or our and/or your conduct in relation hereto or to each other) in any circumstance whatsoever.

9.6 **Representations** It is hereby declared and acknowledged by you and we have not made any representations to you and you have not has acted on or relied upon any representation made by us to you except as is expressly provided and set forth herein. You hereby declare and acknowledge that you have had the opportunity to read, print-out and save an electronic copy of this Agreement and thereby had the opportunity of negotiating changes, additions and/or amendments to this Agreement. You hereby represent your unconditional understanding and irrevocable acceptance that we may, from time to time, produce marketing, sales and other collateral associated with Safyr and Services but in the event of any conflict or inconsistency between such material and this Agreement: the content of this Agreement prevails.

9.7 **Counterparts** The Configuration Schedule may be executed in any number of counterparts, including facsimile and/or electronic counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same Agreement.

9.8 **Survival Limitation**

9.8.1 The provisions of this Agreement which by their nature and in order to give business efficacy hereto are intended to survive the termination, cancellation, completion or expiration of the Agreement shall continue as valid and enforceable obligations of you and us notwithstanding any such termination, cancellation, completion or expiration. Without limiting the foregoing, Clauses 3., 4.1, 5., 6., 7., 8. and 9. shall survive the expiration or termination of this Agreement. For the avoidance of doubt but without derogation from the foregoing, Clauses 1., 2., and 4.2 shall not survive the expiration or termination of this Agreement.

9.8.2 All claims of whatsoever nature against us arising out of or relating to this Agreement and/or any Safyr, whether arising in contract, tort, or otherwise will be barred after a period of six (6) months from the date on which you: (i) obtain knowledge (constructive or actual) of the breach and/or cause of action; or (ii) ought reasonably have known of the breach and/or cause of action (collectively the "Knowledge") save in respect of claims which are by then already the subject matter of formal legal proceedings issued by you within such six (6) month period. Irrespective of such Knowledge, all claims of whatsoever nature against us arising out of or relating to this Agreement and/or any Safyr, whether arising in contract, tort, or otherwise are barred at the latest one (1) year from the date upon which the breach occurred or the cause of action arose (whichever is the earlier). Nothing in this Agreement shall limit or exclude our liability for death or personal injury resulting from our negligence.

9.9 **Relationships with Third Parties** This Agreement is for the sole benefit of you and us and nothing herein, express or implied, shall give or be construed to give any rights under this Agreement to any third party. Neither this Agreement nor you and we intend to confer a third party beneficiary right of action upon any person or entity whatsoever, and nothing in this Agreement will be construed so as to confer upon any person or entity, other than the parties hereto, a right of action either under this Agreement, or otherwise, in any manner whatsoever. Without derogation from the foregoing and solely for the avoidance of doubt – the Silwood Partner is not a party to this Agreement.

9.10 **Assignment and Novation** Neither this Agreement nor the Licences hereunder may be assigned or transferred, in whole or in part, by you, or by operation of law, or otherwise, without our express, specific, prior and written consent. No implied assignment or novation, whether by action of law or otherwise, is permitted by the parties hereto. We may assign this Agreement (whether in whole or in part and whether novating this Agreement (including its benefits and burdens)) upon giving you written notice thereof and you hereby irrevocably and unconditionally assents to such assignment and novation.

9.11 **Commercial Relationship** You and we agree that, in a commercial and business sense, this Agreement is of importance to both parties. As a consequence of the foregoing, both you and we agree that either party can advertise the existence of this Agreement – such advertising including (but not limited to), the issuing of press releases with respect thereto, using each other's logo, services and other trademarks with respect thereto; and such other reasonable activities (always providing that each party shall ensure that such advertising activity does not infringe upon the parties obligations described in Clauses 4. and 5. hereinabove.

9.12 **Controlling Language** The parties hereto hereby agree that the official and controlling language of this Agreement shall be English and undertake that all communications (including, but without limitation, notices, processes, certificates and any other document of whatsoever kind) between the parties with respect to this Agreement shall be in the English Language.

9.13 Describing the Silwood Partner as a 'Partner' is the use of terminology common within the computer software product industry describing and indirect channel of distribution for a product. The foregoing terminology is synonymous with nouns such as 'reseller' and 'distributor' and is not intended, nor shall be construed as being intended to connote any thing or theory of Law connoting being legal partners or any other association other than an 'arm's length' contracting between two parties where one is reselling the other's products, under licence, to third parties.

9.14 **Entire Agreement** This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, understandings and negotiations. You and we specifically represent, each to the other, that there are no additional, contemporaneous or supplemental agreements between them related in any way to Safyr or Support Service or the use thereof other than: (i) this Agreement incorporating the SLASA Appendix; (ii) the Technical Support Statement; and (iii) the Configuration Schedule - unless copies of the same are presently attached hereto and made a part hereof (all in hard copy and signed by you and us). This Agreement may not be changed or modified in any way subsequent to the date of execution hereof except in writing by you and us.

9.15 **Proper Law** This Agreement shall be governed and construed in accordance with the Laws of England and the parties hereto irrevocably submit to the exclusive jurisdiction of the English Courts of Law in respect of all matters arising hereunder, whether such matter arises in contract, tort, by statute or otherwise. You hereby agree during the term of this Agreement and thereafter that you will never challenge the validity of this Clause 9.15 in any manner whatsoever nor in any forum wheresoever.

SLASA APPENDIX

This Appendix (referred to in Clause 6.1) and sets out the two procedures used to Licence Safyr®

| Procedure Stage | Safyr Licence Purchase begins with Silwood Partner Sales Contact | Safyr Licence Purchase begins with Safyr Evaluation Copy Download |
|-----------------|---|--|
| | <u>Licence Key Route #1</u> | <u>Licence Key Route #2</u> |
| Stage #1 | There is a possibility that a Silwood Partner will have undertaken a demonstration of Safyr for the Prospective Safyr User. | Prospective Safyr User downloads an Evaluation copy of Safyr from the Silwood website. |
| Stage #2 | Prospective Safyr User decides to purchase a Licence to use Safyr and a dialogue between the Prospective Safyr User and the Silwood Partner occurs. | The Evaluation Licensee decides to purchase a Licence to use Safyr commercially and a dialogue between the Prospective Safyr User and the Silwood Partner occurs. |
| Stage #3 | Prospective Safyr User signs the Safyr Configuration Schedule. | Prospective Safyr User signs the Safyr Configuration Schedule for Silwood Partners. |
| Stage #4 | The Silwood Partner issues its Invoice to the Prospective Safyr User + wet e-mail a Safyr Token with a download link for Safyr. | The Temporary Licensee uses the Safyr Key Function to generate a Safyr Hardware Key. |
| Stage #5 | The Temporary Licensee uses the Safyr Key Function to generate a Safyr Hardware Key. | The Temporary Licensee e-mails the Safyr Hardware Key to Silwood Support. |
| Stage #6 | The Temporary Licensee e-mails the Safyr Hardware Key to Silwood Support. | The appropriate Licence Key for the Temporary Licensee's Configuration is sent to the Temporary Licensee + the Silwood Partner issues its Invoice. This is the 'Key Delivery Date' for Licence Key Route #2. |
| Stage #7 | The appropriate Licence Key for the Temporary Licensee's Configuration is sent to the Temporary Licensee. This is the 'Key Delivery Date' for Licence Key Route #1. | The Temporary Licensee copies the Licence Key into the Safyr Key Function. |
| Stage #8 | The Temporary Licensee copies the Licence Key into the Safyr Key Function. | The Temporary Licensee's Configuration of Safyr is unlocked. |
| Stage #9 | The Temporary Licensee's Configuration of Safyr is unlocked. | The Safyr User pays the Silwood Partner Invoice in Stage #6. |
| Stage #10 | The Safyr User pays the Silwood Partner Invoice in Stage #6. | The Temporary Licence granted automatically converts into One-Time and/or Subscription status upon the payment of the Silwood Partner's Invoice issued in Stage #6 above. |
| Stage #11 | The Temporary Licence granted automatically converts into One-Time and/or Subscription status upon the payment of the Silwood Partner's Invoice issued in Stage #6 above. | Route #2 Completed |

