

End User Licence Agreement

1. Preamble

- 1.1. The Licensee is a company or a natural person (hereinafter referred to as "**Licensee**") which/who acquires the usage rights to the "Sophia" computer program described in point 5 (hereinafter referred to as "**licenced item**") from Sophia Testing GmbH (hereinafter referred to as "**Licensor**") or a distributor of the Licensor.
- 1.2. The Licensor is a limited liability company established in accordance with Austrian law and registered under FN 404093f of the commercial register of the Commercial Court of Vienna (Handelsgerichts Wien) with its registered office in 1010 Vienna and the business address Wollzeile 1.
- 1.3. The Licensee can contact the Licensor on +43 678 128 80 80 and at the email address support@sophiateesting.com

2. General provisions

- 2.1. By installing, downloading, copying, or otherwise using the licenced item, you are agreeing to this End User licence agreement (hereinafter referred to as the "**licence agreement**"). If you do not agree to the terms of this licence agreement, you are prohibited from installing and otherwise using the licenced item.
- 2.2. The following provisions govern the permissible use of the licenced item.
- 2.3. Conflicting terms and conditions of the Licensee that deviate from or differ from this licence agreement do not form part of the licence agreement between the Licensor and the Licensee, unless the Licensor expressly agreed to their validity in writing. The provisions of this licence agreement shall apply even if the Licensor unconditionally carries out deliveries and services to the Licensee in the knowledge of conflicting or deviating conditions of the Licensee.

3. Subject of the contract and terms of delivery

- 3.1. The subject matter of the licence agreement is the granting of the rights of use to the licenced item mentioned in point 5 by providing the licenced item for download on the Internet as well as the granting of the rights of use defined under point 5.
- 3.2. The delivery takes place by means of the download on the homepage of the Licensor or on the homepage of the sales/distribution partners.
- 3.3. The provisions contained in this contract also apply to all updates that replace or supplement the licenced item, unless they are covered by other licences. These updates are automatically downloaded and installed.

4. Contract conclusion

4.1 By clicking on the "Accept" option, the Licensee agrees to all terms of this Agreement and declares that it/he/she has read and understood all terms.

5. Scope of Use

5.1 The Licensee receives the non-exclusive and unlimited temporal right to use the licenced item under the following conditions.

5.2 The Licensee is entitled to use the licenced item on each of the EDP systems available to him.

5.3 The Licensee is entitled to reproduce the licenced item in order to install, load and run it on more than one computer system in accordance with the conditions set out in points 5.2 and 5.4.

5.4 The right to use the licenced item by test organisers includes the right to reproduce the licenced item to the extent necessary to achieve the purpose of the contract. Necessary reproductions include the installation of the licenced item from a data storage medium or from a download medium - for example via a link on the Internet - to the hard drive, to a mass storage device or to load the licenced item into the RAM of those computers that are used for test persons.

6. Limits of use and protection of the licenced item

6.1 The Licensee is only authorised to use the licenced item intra-corporately (internally) or privately; data processing service operation for third parties or other provision to third parties, such as by way of hiring, is not permitted.

6.2 The transfer to third parties and the commercial use of the licenced item is prohibited to the Licensee. With the exception of the rights referred to in point 5, the Licensee may not transfer the licence in whole or in part, either for consideration or free of charge.

6.3 The translation of the machine code into source code, reverse engineering or de-compilation are strictly prohibited.

6.4 The Licensee undertakes never to remove or to manipulate any Licensor copyright notices or certification marks on the copies of the licenced item and/or the user guide.

6.5 The Licensee is obliged to keep the licenced item, the source text, the logic and structure as well as the content (examination questions) of the licenced item secret.

6.6 The Licensee is prohibited from altering, removing or adding marks of any kind, or from using the "Sophia" marks for its own purposes, unless this is expressly permitted by other agreements with the Licensor.

7. Preliminary/pre-release version of the licenced item

7.1 The Licensor and the Licensee may agree to the provision of preliminary versions of the licenced item. Pre-release versions are characterised in particular by the term "demo test", "debug version" or similar names. The provision of pre-release versions to the Licensee shall be finalised as follows, unless individual agreements have been made.

- 7.2 The pre-release version is provided free of charge loan-wise to the Licensee for the sole purpose of testing. It is not intended for use in day-to-day business operations and may not be used on IT systems or networks that are in use in the course of day-to-day business operations.
- 7.3 The Licensee acquires the right to use the preliminary version for the period of the loan.
- 7.4 The Licensor may terminate the loan agreement at any time and demand the immediate cessation of the use of the preliminary version as well as its release and deletion from the computers and IT systems as well as networks of the Licensee.
- 7.5 The Licensee undertakes to inform the Licensor in writing of any error messages, errors in connection with usability, etc., and to describe the occurrence of the error, time and place of its occurrence.

8. Useful life and termination

- 8.1 This Agreement shall come into effect upon clicking the "Accept" option by the Licensee. The Licensee is entitled to use the licenced item as defined in point 3.1 during the term of this agreement.
- 8.2 This agreement is concluded for an indefinite period.
- 8.3 Termination
 - 8.3.1 The Licensee may uninstall the licenced item at any time. Termination by the Licensee therefore takes place at the time the Licensee completely and permanently deletes the licenced item from its/his/her computer hard disks.
 - 8.3.2 The right to extraordinary termination for good cause remains unaffected. Good cause includes any persistent and substantial breach by a contract party to the terms of this licence agreement, inasmuch as, despite a written request by the terminating party, the contractual condition is not restored within a reasonable time, but not longer than 14 days after receipt of the letter.
- 8.4 Upon termination of this contract, all rights established by the contract expire. The Licensee shall cease all use of the licenced item with immediate effect and shall promptly delete all versions of the licenced item in its original form, copies, partial copies, upgrades, updates, program generated files (with exception for .log files) and other services provided in connection with this licence agreement.

9. Warranty

- 9.1 The Licensor warrants that the licenced item is free from third-party property rights that restrict or exclude the contractual use of the licenced item. The parties will notify one another immediately in writing if they are asserted claims for infringement of property rights.

10. Limitation of Liability

- 10.1 The Licensor is not liable for direct or indirect damages and cannot be called upon to claim any damages. This shall apply to all matters related to the licenced item such as loss

of profit claims, damages resulting from the use of the licenced item, loss of data or other intangible loss, damage resulting from the use or non-usability of the licenced item, for damages resulting from the termination of this contract by the Licensor for any reason whatsoever, for the costs of procuring or exchanging goods or services.

11. Final Provisions

- 11.1 **Applicable Law:** This Agreement shall be governed exclusively by Austrian law, excluding the conflict of law rules and the UN Sales Convention.
- 11.2 **Place of jurisdiction:** All disputes arising from the present agreement, including the question of the conclusion, the validity, the dissolution or invalidity, are subject to the exclusive jurisdiction of the court objectively appointed for the 1st district of Vienna.
- 11.3 **Severability clause:** Should one or more provisions of this agreement prove to be wholly or partially ineffective or if there is a loophole, the validity of the remaining provisions of this contract shall remain unaffected. The contracting parties are obliged to agree on an effective arrangement which is as close as possible to the intended content of this agreement in lieu of the ineffective provision or to fill the loophole.
- 11.4 **Entire Agreement:** These Licence Terms and Conditions correspond to the entire agreement between the Licensee and the Licensor with respect to the licenced item. They supersede agreements made previously or temporarily with respect to the licenced item between the Licensee and the Licensor.