



# Datalystica® Terms & Conditions

Last updated: December 18, 2020

These terms and conditions constitute a binding legal agreement between (A) **Datalystica LTD.**, hereafter referred to as “Licensor”, a corporation organized and existing under the laws of Switzerland, with its head office located at Park innovAARE, 5234 Villigen, Switzerland and (B) **Licensee** hereafter referred to as “Licensee”. Licensor has developed the computer program source finder (SoFi) referred to as “SoFi” and grants one or more licenses to Licensee.

These terms and conditions are valid between Licensor and Licensee. Now, therefore Licensor and Licensee agree as follows:

## 1. DEFINITIONS

1.1. Unless specifically defined otherwise in this document, the following words and expressions shall have the following meanings to be applicable to both the singular and plural forms of the terms defined:

**Confidential Information** includes SoFi and related documentation as well as non-public ideas and information, such as know-how, data, technical data, contracts, documentation, presentations, business plans, formulas, products, specifications, rules and procedures, product plans, business methods, services, formats, methodologies, applications, developments, processes, designs, drawings, algorithms, procedure files, , marketing or finance. Confidential Information may take the form of documents, technical specifications, unpublished patent specifications, data, drawings, plans, processes, photographs, databases, computer software in disk, cassette, tape or electronic form and any item of computer hardware.

**Designated environment** means the computer equipment and operating system described under Specifications.

**Documentation** consists of manual, training materials, guides, Specifications, and other material for use in conjunction with SoFi.

**Intellectual Property Right(s)** means any registered and unregistered intellectual property rights such as but not limited to patents, designs, trademarks, algorithms, procedure files, code diagrams, physical models and corresponding applications, copyrights (including commercial and moral rights) or any other similar rights, in any jurisdiction whatsoever and whatever applicable law protecting the results of any development efforts or work or the value of any intangible goods arising out of such an effort.

**License** is granted by Licensor to Licensee to use SoFi and its related Documentation in accordance with these terms and conditions.

**Receiving Party** means either Party receiving Confidential Information from the other Party.

**SoFi** means the computer program Source Finder (SoFi) further described under the section “SOFTWARE” and Specifications.

**Specifications** means Licensor's current published product release definitions and capabilities identified on “APPENDIX A”.

1.2. For clarity, words or expressions may be defined in other Sections. The meaning of such words or expressions shall apply throughout this entire document.



## **2. SOFTWARE**

- 2.1. SoFi shall perform the functions described in the manual (accessible from the Licensor's internet homepage) and comply with the Specifications (APPENDIX A).
- 2.2. Licensor may issue updates to the SoFi and require Licensee to install and use the updated or upgraded version of SoFi to meet the Specifications. However, at no time Licensor is obliged to provide such updates or upgrades.

## **3. LICENSE**

- 3.1. Licensor grants Licensee a non-exclusive, non-transferable license to use SoFi and Documentation, without the right to sublicense SoFi, solely for its internal operations and on the Designated Environment.
- 3.2. This license entitles Licensee to install and use the amount of copies stipulated when acquiring the license from the official distributor of SoFi.
- 3.3. This license entitles Licensee to copy SoFi and Documentation for archival or backup purposes only, provided that all titles, trademarks, and copyright, proprietary and restricted rights notices shall be reproduced in all such copies, and that all copies shall be subject to the terms of these terms and conditions.
- 3.4. These terms and conditions do not permit the installation or use of SoFi, on computational resources belonging to third parties, nor to store a copy of SoFi on peer-to-peer file-sharing systems.
- 3.5. Title, ownership rights, and Intellectual Property Rights in and to SoFi and all component works within it shall remain in Licensor. Licensor remains the sole owner of SoFi and all enhancements, modifications, updates or upgrades thereof. No transfer of title to SoFi is made by using SoFi. Ownership of all copies of SoFi and all rights including all Intellectual Property Rights in and to SoFi remain vested in Licensor.

## **4. Licensee's Right and Obligations**

- 4.1. Licensee shall install and use SoFi, as specified in these terms and conditions.
- 4.2. Licensee may make one copy of SoFi for backup or archival purposes. That copy must be on a storage medium other than a hard disk and may only be used for the reinstallation of SoFi in emergency cases. SoFi has to be stored password protected.
- 4.3. Without first obtaining the express written consent of Licensor, Licensee may neither assign its rights and obligations under these terms and conditions nor redistribute, encumber, sell, rent, lease, sublicense or otherwise transfer or make available its rights in SoFi.
- 4.4. Licensee shall ensure that all copies of SoFi made pursuant to these terms and conditions shall bear all copyright, trademark or other proprietary rights notices included therein by Licensor.
- 4.5. Licensee shall not, nor permit any third party to
  - a) copy the documentation or SoFi except to make archival or backup copies as provided in these terms and conditions;
  - b) extract portions of SoFi;
  - c) modify or adapt SoFi or merge it into another program;
  - d) reverse engineer, disassemble, decompile, modify or otherwise attempt to create the source code for SoFi or its structure;
  - e) place SoFi onto a publicly accessible server/network or distribute SoFi or its derivative work

## 5. COPYRIGHT

SoFi is protected by Swiss copyright laws and international treaty provisions. Unauthorized use or copying of SoFi is expressly prohibited, except as explicitly set forth in these terms and conditions.

## 6. TECHNICAL SUPPORT

Licensor offers a troubleshooting service and is committed to providing fast technical solutions to problems and questions of Licensee. However, at no time Licensor will be obliged to provide immediate and intensive technical support. In particular if solving the issues raised by Licensee would require several days of work of Licensor.

## 7. CONFIDENTIALITY

### 7.1. Confidential information

Confidential Information does not mean any information that the Receiving Party can demonstrate that:

- a) is known to the Receiving Party or in the public domain at the time of disclosure or enters thereafter the public domain without the Receiving Party or its representatives having breached any obligations under these terms and conditions; or
- b) has been lawfully disclosed to the Receiving Party by a third party who had the right to disclose it and was not bound to the Disclosing Party, whether directly or indirectly, by similar confidentiality undertakings; or
- c) has been created, conceived, developed or reduced to practice by the Receiving Party alone and in good faith, independently of and without access to or use of any Confidential Information disclosed by the Disclosing Party.

### 7.2. Confidentiality Obligations

7.2.1. The Receiving Party undertakes to:

- a) use the Confidential Information only according to these terms and conditions or other future agreement that could be executed by the Parties;
- b) take all precautionary measures to preserve the confidentiality of the Confidential Information, in particular to protect the Confidential Information from any unauthorised access by third parties, prevent any unauthorised disclosure of the Confidential Information and protect the Confidential Information from any destruction, deterioration, damage or loss (in whole or in part); and,
- c) only disclose the Confidential Information to its directors, officers, employees, agents or representatives insofar as such disclosure is strictly necessary in accordance with these terms and conditions or any future agreement that could be executed by the Parties. Any director, officer, employee, agent or representative shall be clearly instructed of the confidential nature of the Confidential Information and shall be required to keep the Confidential Information confidential; the Receiving Party shall be solely liable for those persons complying with the confidentiality obligations set forth in these terms and conditions.
- d) adopt all measures as reasonably required to keep confidential all Confidential Information but not less than the degree of care used by it in safeguarding its own confidential information.

7.2.2. Should the Receiving Party be required, pursuant to law or a court order, to disclose all or part of the Confidential Information, the Receiving Party undertakes to (i) immediately inform the Disclosing Party (and in any case before disclosing any Confidential Information) and, (ii) provide the Disclosing Party with all documents evidencing such request of disclosure together with a detailed list of the concerned Confidential Information and, (iii) inform the Disclosing Party of the contemplated response to such obligation to disclose and, (iv) at the request of the Disclosing Party and at its costs, endeavour to resist said injunction on the grounds of trade or business secrets or of confidentiality of the Confidential Information or on any other similar reasons.

- 7.2.3. Subject to Sections 7.21 c) and 7.2.2, or without the prior written consent of the other Party, each Party undertakes not to directly or indirectly disclose to anyone whomsoever the fact that Confidential Information has been provided. The Parties also undertake not to disclose the existence, content, terms and conditions of these terms and conditions, or any other fact related to these terms and conditions.

### **7.3. Ownership, Copies and Other Reproductions**

- 7.3.1. All Confidential Information shall remain the exclusive material ownership of the Disclosing Party. The disclosure of Confidential Information shall not in any way be interpreted or construed as granting the Receiving Party any right to use such Confidential Information, except from the use strictly necessary in accordance with these terms and conditions.
- 7.3.2. The reproduction by the Receiving Party of Confidential Information, in whole or in part, in any form or by any means whatsoever, is not authorised unless needed in accordance with these terms and conditions.

### **7.4. Restitution and Destruction**

The Receiving Party undertakes to return to the Disclosing Party, upon first request of the Disclosing Party, all originals and all copies of the Confidential Information, whatever their medium or format, and shall not retain any copy; the Disclosing Party may also accept at its sole discretion a written confirmation that all Confidential Information has been destroyed. All digital copies of the Confidential Information shall also be destroyed.

### **7.5. Duration**

Any confidentiality obligation according to these terms and conditions shall remain in effect for a period of five (5) years following the expiry date of the license acquired by Licensee.

## **8. WARRANTIES**

- 8.1. SoFi is provided "as is". No oral or written information or advice given by Licensor shall create a warranty. Licensor does not guarantee that SoFi will meet Licensee's requirements, operate without interruption, or be Error-free. Licensor will not take any responsibility for defects or malfunctions in SoFi. To the extent permitted by law, all warranties of any kind, express or implied are excluded. Licensor disclaims any warranties or conditions, including any warranty of title, non-infringement, performance, merchantability or fitness for a particular purpose.
- 8.2. The entire risk in connection with SoFi as to satisfactory quality, performance, precision, accuracy and effort is with the Licensee.

## **9. LIABILITY**

- 9.1. Regardless of the legal reason, Licensor is not liable to Licensee for any loss of profit, data or goodwill, or any other consequential, incidental, indirect, punitive or special damages in connection with claims arising out of the provision of SoFi, except to the extent such damages were caused by the gross negligence or wilful misconduct of Licensor or to the extent prohibited by applicable law.
- 9.2. Licensor will not be held responsible for any consequences arising out of any inaccuracies or omissions of SoFi or any information given to Licensee unless such inaccuracies or omissions are the result of gross negligence or willful misconduct of Licensor.
- 9.3. The foregoing limitations will apply regardless of the form of any claim hereunder, whether for breach or repudiation of any other term or condition of these terms and conditions or any related writing, for negligence, on the basis of strict liability, or otherwise.

- 9.4.** Licensee will defend, indemnify and hold Licensor harmless for any alleged or actual losses or damages arising from or related to Licensee's use of SoFi, including third party claims.

## **10. DURATION AND TERMINATION**

- 10.1.** The license(s) granted shall remain in effect for the duration of the acquired license(s) by Licensee.

- 10.2.** Licensor may terminate the validity of the license immediately by registered letter in case of material breach of these terms and conditions by Licensee, which is either incapable of remedy or has not been remedied within thirty (30) days from written notice of such breach, or if Licensee becomes bankrupt or insolvent.

- 10.3.** Should these terms and conditions end or be terminated, whatever the reason and without prejudice of other rights accrued:

- a) Licensee shall discontinue to use SoFi;
- b) Licensee shall return to Licensor or destroy the original and all copies of SoFi, including partial copies and modifications, as well as any Confidential Information then in Licensee's possession.
- c) Sections 7, 9 and 11 as well as any other obligation which by its nature is intended to survive, shall survive the expiration or termination of these terms and conditions.

## **11. APPLICABLE LAW AND JURISDICTION**

- 11.1.** These terms and conditions are governed by and construed in accordance with the laws of Switzerland under exclusion of its conflict of laws rules and the United Nations Convention on International Sale of Goods.

- 11.2.** The Parties will attempt in good faith to resolve promptly through negotiation any disputes arising out of or relating to these terms and conditions.

- 11.3.** In case of controversies, which cannot be settled amicably within one (1) month, the matter shall exclusively be brought before the competent courts of Zurich.

## **12. MISCELLANEOUS**

### **12.1. Entire document**

These terms and conditions constitute the entire and sole legal binding document between the Parties and supersedes all previous oral or written contracts between the Parties on the subject matter hereof.

### **12.2. Severability**

If any provision of these terms and conditions is declared void or unenforceable, the remaining provisions of these terms and conditions shall nevertheless remain valid and enforceable. Such void or unenforceable provision shall be automatically replaced by a provision with a similar economic effect to that of the provision which is wholly or partially void or unenforceable.

### **12.3. Validity**

These terms and conditions are automatically executed and are valid once SoFi is electronically transferred to Licensee.

### **12.4. No Partnership**



Licensor is and shall remain at all times an independent party, and shall not be considered an agent, partner or joint-venture of Licensee.

**12.5. Assignment and Subcontracting**

Licensee is not authorized to assign these terms and conditions, or separately the rights or obligations provided in these terms and conditions, to a third party without prior written consent of Licensor.

**12.6. No Waiver**

Any failure or delay on the part of either Party in exercising its rights under these terms and conditions shall not be construed as a waiver of such right. No waiver by a Party of any provision under these terms and conditions shall constitute a waiver of another provision nor shall it constitute a continuing waiver.

**12.7. Force Majeure**

- 12.7.1. Neither Party shall be liable for delay in performing or failure to perform obligations under these terms and conditions for the period that such failure or delay is due to causes beyond its reasonable control.
- 12.7.2. In such circumstances, the Party affected shall promptly notify the other Party and shall take all reasonable steps to mitigate its effects.
- 12.7.3. If a force majeure event continues for more than thirty (30) consecutive days, both Parties shall settle the further performance of these terms and conditions through negotiations as soon as possible.

## APPENDIX A: Specifications

SoFi is a software package written on IGOR (WaveMetrics, Inc. P.O. Box 2088 Lake Oswego, OR 97035 USA). SoFi can only be accessed through IGOR. Therefore, the machine of the Licensee must possess the IGOR software together with an officially purchased and valid license of IGOR. Please consult the official distributor for IGOR (<https://wavemetrics.com>) for more details on IGOR.

SoFi consists in an encrypted IGOR procedure file that must be loaded and compiled within the Designated environment. The officially released SoFi version together with the specification of the Designated environment are further described within the SoFi manual or on the official homepage of the Licensor (<https://datalystica.com>).

SoFi requires the multilinear engine (ME-2, Pentti Paatero) to be operational, as ME-2 evaluates the statistical model that is controlled via SoFi. Contact Pentti Paatero to purchase an official license of ME-2 ([pentti.paatero86@gmail.com](mailto:pentti.paatero86@gmail.com)). Note that ME2 consists in an executable file (ME2.exe). Therefore, the machine of the Licensee is supposed to be either a PC or a MAC with an Emulator for the Windows operating system for successfully calling and running the ME2.exe file.

Once SoFi is compiled in an IGOR experiment file, the main functionalities of SoFi (SoFi standard) can be used. The SoFi standard license acquired by the Licensee is Royalty-free and can be used for an unlimited duration of time under the terms and conditions of these terms and conditions. To activate all advanced utilities of SoFi, also referred to as SoFi Pro, the SoFi Pro key, consisting in an encrypted IGOR procedure file must be loaded and compiled in the IGOR experiment together with the main SoFi file. Note that every twenty-four (24) hours SoFi Pro connects to the server of the Licensor to verify the validity of the license of the Licensee. Therefore, an internet connection is supposed to be available on the machine where SoFi Pro is used or at least the Licensee is responsible to provide a temporary Internet connection for the license validation process every twenty-four (24) hours.