

Licensing terms for the SweepMe! standard software including free Add-On programs (“SweepMe! EULA”) (Last revised: 2022-10-10)

Part 1: General Section

§ 1 General provisions

(1) The SweepMe! GmbH, Bienertstraße 18, 01187 Dresden (hereinafter “Licensor”) agrees to use of the SweepMe! standard software by the *Licensee* exclusively under the following terms and conditions. The licensing terms set out herein apply exclusively to the *Standard Software* including free *Add-On Programs*. The Premium Modules EULA applies to fee-based Add-On programs. In addition, certain add-on programs may have special license terms and important information and notices that are contained in a document provided with the respective add-on program.

(2) These licensing terms are composed of Part 1 “General Section” and Part 2 “Country and Region-Specific Terms and Conditions”.

(3) The standard software is legally protected. As between the *licensee* and the Licensor, the copyright, patent rights, trademark rights and all other property rights in the *standard software* are exclusively owned by the Licensor.

§ 2 Definitions

For purposes of these licensing terms,

1. A *free license* is a royalty-free user license that permits the use, redistribution and modification of copyrighted works under certain conditions specified in the licensing terms (e.g. for open source software under the BSD license or LGPL license or for images under the Creative Commons License);
2. *Primary Program* refers to the free measurement and control software SweepMe! including some basic modules and device classes as well as the installation program provided that are already provided free of charge with the SweepMe! measurement and control software, as well as any documentation supplied;
3. *Country of Installation* refers to a country in one of the territories referred to in Part 2 “Country and Region-Specific Conditions” in which the *Computer* on which the *Licensee* first installs the *Standard Software* after downloading is located;

4. The *licensee* is any natural or legal person or partnership acquiring, downloading or installing the *standard software*;
5. *Premium Module* means an *Add-On* program that is generally subject to a fee but that may, as an exception, be acquired by *Private Users* free of charge;
6. *Private User* means any natural person who acquires the *Standard Software* and in particular a *Premium Module* as a free private license;
7. *Computer* means any physical device on which the primary program is installed, regardless of whether it is a workstation or a server;
8. *Standard Software* means the free *Primary Program* including free *Add-On Programs* and any exclusively fee-based *Add-On Programs*;
9. *Add-On Programs* refers to any supplemental modules, device classes, extensions and programs or program components other than the *Primary Program* acquired by the *Licensee* in addition to the *Primary Program*.

§ 3 Consent to the application of these licensing terms

As a rule, the Licensor obtains the *licensee's* consent to the application of these licensing terms upon download and prior to the completion of the installation process. Irrespective of this, the *licensee* declares its agreement to the application of these licensing terms no later than upon installing and/or otherwise using the *standard software*.

§ 4 Scope of the rights of use in the *standard software*

(1) The Licensor grants the Licensee a free, simple, unlimited right of use in the Standard Software for the territory of the Country of Installation; the right of use may be revoked at any time on objective grounds and is transferable to a limited extent. Any use outside the Country of Installation and the territories specified in Part 2 "Country and Region-Specific Conditions" is prohibited.

(2) If an Add-On Program is acquired as a free private license, the Private User may only use it for purely private purposes; any use for professional, commercial, independent or commercial purposes is prohibited.

(3) The right of use is limited to the purpose for which such right was granted. The *standard software* may not be used in a manner that may cause significant harm to *licensee*, third parties

or the environment. Accordingly, by way of example and without limitation, use of *standard software* is prohibited if

- a) There is a risk of harm to people, animals or the environment;
- b) There is a risk of considerable financial loss or damage to property;
- c) The respective use is related to the performance of animal or human experiments;
- d) Use is in the field of genetic engineering;
- e) The respective use is directly in conjunction with vehicle production/design, with machines that directly control the manufacturing process of products, with systems that regulate the safe operation and control of road and rail vehicles, or with the creation of games, ring tones and downloadable music;
- f) The respective use is directly in conjunction with medical and laboratory technology, with which there is a direct risk of personal injury;
- g) The respective use is in conjunction with the design, construction, manufacture, monitoring, control, or delivery of nuclear facilities;
- h) The respective use is directly in conjunction with the design, construction, manufacture, or delivery of aircraft or spacecraft, including the control and monitoring of air or space traffic; or
- i) Use is for weapon systems.

The limitation of the right of use does not extend to measurement related analyses, in particular of integrated circuits and electronic modules or sensor systems, even if these may be related to the applications mentioned under items e), f) and h).

(4) The *Standard Software* may only be installed by the *Licensee* and only as one unit. It may be installed on any number of *Computers* and network access is permitted from any number of the *Licensee's* workstations. However, sentence 2 does not apply to *Premium Modules* acquired by a *Private User* as a free private license; private users may install them on a maximum of three *Computers*; network access is prohibited.

(5) All other forms of use, in particular renting or using the standard software by and for third parties (e.g. by outsourcing, computer centre operations, application service providing, cloud services) are not permitted without prior written approval from the Licensor.

(6) The standard software, documents, proposals, test programs and other objects of the Licensor associated with the standard software to which the licensee is provided access before or after conclusion of the contract are deemed to be the intellectual property and trade and business secrets of the Licensor. To the extent not otherwise provided above, they may not be used in any form without written authorisation from the Licensor and must be kept confidential as provided in Section 14 (Confidentiality).

§ 5 Copies of *standard software*

The *licensee* may make copies of the *standard software* exclusively to exercise its rights of use and for backup purposes. Backup copies must be kept securely on the premises of the *licensee* and, as far as technically possible, must include a reference to authorship by the Licensor. Copies no longer required have to be deleted or destroyed. The manual and other documents provided by the Licensor may be copied only for internal purposes. Transfers to third parties are prohibited subject to the provisions of Section 7 (Transfers to third parties).

§ 6 Copyright notices

The Licensor applies references to the Licensor's authorship to the code for the *standard software*, the user interface and documentation to the extent such documentation is provided. The *licensee* may not modify or adulterate these notices without authorisation from the Licensor.

§ 7 Transfers to third parties

(1) To the extent that the Licensor placed the *standard software* on the market within the territory of the European Union or any other signatory to the Agreement on the European Economic Area, the *licensee* is only entitled to transfer the *standard software* to third parties, in whole or in part, on the basis of the following rules and after completing the following procedures:

- a) The *licensee* transfers the *standard software* to the third party. To the extent that the Licensor supplied on the *standard software* on data media, the *licensee* provides such data media to the third party. Similarly, the *licensee* provides the third party all user manuals and other documents related to the *standard software* provided by the Licensor.
- b) The *licensee* deletes all other copies of the *standard software* (regardless of version), including without limitation on workstation computers, servers, data media and other storage media, with the exception of copies made within the scope of data backup and

archiving such that segregation and separate deletion is not possible or would require unreasonable effort and expense, completely and finally ceases use and provides written confirmation to the Licensor that it has complied with these obligations.

- c) The transfer to the third party is permanent, i.e. without a right of return or re-purchase option.
- d) The *licensee* declares in writing to the Licensor that the *licensee* has notified the third party of the rules of these licensing terms, in particular Section 4 (Scope of rights of use in the *standard software*) and Section 14 (Confidentiality).

(2) To the extent that the Licensor placed the *standard software* on the market outside of the territory of the European Union or that of any other signatory to the Agreement on the European Economic Area, it may not be transferred to third parties absent written authorisation from the Licensor.

§ 8 Revocation of the right of use

(1) The right of use may be revoked at any time on objective grounds; arbitrary revocation, however, is excluded.

(2) All declarations in connection with the foregoing must be in writing in order to be effective (e.g. e-mail).

§ 9 Obligations upon a lack of or loss of the right of use

In the event the right of use does not arise or terminates, the Licensor may demand that the *licensee* return all objects and *standard software* provided to it as well as the destruction of all copies of such objects and *standard software* or a written assurance that all objects and *standard software*, including all copies, have been fully and permanently destroyed.

§ 10 Third party programs and free licenses

(1) If the *standard software* contains or uses a third-party program or a program under a *free license*, the license terms applicable to such programs shall apply rather than the terms of the instant licensing agreement.

(2) Without limitation, the *standard software* contains or uses program libraries provided by third parties or under a *free license*. The program libraries concerned, and their licenses, can

be found in the credits.html file in the installation directory; the applicable licensing terms and conditions must be followed.

§ 11 Software maintenance and support

The Licensor is neither obliged to correct errors nor to supply new versions. Nor is there any obligation to provide support services and other services such as installation, setup, consulting, instruction and training.

§ 12 Special risks of use

The Licensor provides notice of the following specific risks of use, whereby this does not represent a complete list:

1. The security provisions, risks and disclaimers of the relevant manufacturers apply to hardware and other devices used by *licensee* with *standard software*; This applies likewise to third party software used by *licensee* with the *standard software*.
2. Complex control and measurement procedures can be created by integrating device classes. Interactions between these device classes can lead to dangerous reciprocal effects. Before use, potential risks must be clarified with a safety officer and appropriate safety measures taken. Use of the *standard software* is prohibited if the risks cannot be estimated on the basis of experience.
3. Use of the *standard software* may endanger third parties. The *licensee* shall take appropriate safety measures.
4. Errors in or unexpected behaviour by the *standard software* can cause damage to people, animals and objects. The *licensee* shall take appropriate safety measures. Such unexpected behaviour may also result from interactions with defective hardware or other computer programs.
5. Errors in the operation of the *standard software* may result in the circumstance that activated devices, automatic machines or other machines are not switched off correctly and may still carry out their functions even after the measurement and control routines have concluded. All activated devices, automatic machines or other machines must therefore be regarded as in operation at all times.
6. When the standard software or the system becomes unresponsive, e.g. due to high load, it may no longer be possible to operate the standard software properly; the measurement has to be cancelled immediately.

7. The *standard software* may include device classes that have not been provided by the Licensor. The Licensor is not responsible for the correct functioning and operation of any such device classes. In particular, untested device classes could perform harmful operations and cause significant damage. Checking the source code of external device classes before including them, and reviewing their publishers with regard to confidentiality, is advisable.
8. In the program, the decimal separator is a full stop. Entering a character other than a decimal separator can lead to misinterpretation of the numerical value.

§ 13 Special obligations of the *Licensee*

The *licensee* undertakes

1. To inform other users of the *standard software*, in particular its employees and vicarious agents, about the terms of this licensing agreement and to ensure that such other users agree to the terms of the licensing agreement;
2. To inform other users of the programme of all possible risks and dangers in connection with the use of the *standard software* and the modules;
3. Before launching the *standard software*, to prevent all known and, with due diligence, discernible risks and dangers that could arise through the use of the *standard software* by taking appropriate security measures;
4. To test the *standard software* and any integrated modules and device classes for functionality and to satisfy itself of correct functionality and use, before *standard software* is placed into productive use (for example, measurement results obtained from the *standard software* can be compared to the measurement results obtained from computer program from the manufacturer of the instrument subject to monitoring, alternatively, measurement results from the *standard software* can be verified based on the results of a similar measurement setup);
5. To check the configuration in the graphical user interface before starting a measurement or an action which changes the operating status of an instrument, in particular to check the correct use of the decimal separator;
6. In the case of new measurement procedures, first check them on inexpensive, comparable test objects (e.g. electrical measurement of resistance); and

7. To inform itself of known bugs before using the *standard software*; bugs of which the Licensor is aware but that have not been corrected may be viewed online at sweep-me.net/bugs.

§ 14 Confidentiality

(1) The Licensee undertakes to treat all information obtained from the Licensor in connection with use of the software (e.g., information regarding the operation of the Standard Software or included in user documentation and other documents) in the strictest of confidence, including for the period of 5 years beyond the term of the contract, unless such information becomes generally known without a breach of this confidentiality obligation. The Licensee must keep and secure these items such as to prevent third-party access.

(2) The Licensee will provide items required to be kept confidential pursuant to paragraph (1) only to those employees and other third parties who need such access for performance of the duties assigned to them. The Licensee must instruct such persons about the confidential nature of these items.

§ 15 New versions

If and as long as the Licensor does not provide notice of any new license terms upon delivery of an update, upgrade, patch or other new version of the *standard software*, these license terms shall continue to apply to any and all new versions of the *standard software*.

§ 16 Assignment of rights and obligations

The Licensor may assign all rights and obligations arising under these license terms to third parties at any time. The *licensee* may object to such an assignment within one month if the assignment concerns affects any legitimate interests of the *licensee*.

Part 2: Country and Region-Specific Conditions

The following Country and Region-Specific Conditions shall apply in addition to Part 1: "General Part" depending on Country of Installation. In the event that the following Country and Region-Specific Conditions vary from the provisions of Part 1: "General Part", such terms have priority over the provisions Part 1: "General Part":

A. European Union and other signatory states to the European Economic Area

§ 1 Troubleshooting by the *Licensee*

The *licensee* may only correct errors in the *standard software* on its own with the consent of the Licensor. In such cases as well, correction of the respective error may not change or extend the contractually specified use; this does not result in any obligation on the part of the Licensor to surrender the source code.

§ 2 Analysis of the standard software and reverse engineering

The *licensee* may, without Licensor's consent, observe, investigate or test the functioning of the *standard software* in order to determine the concepts and principles underlying any program element, if this is done as part of actions related to loading, displaying, running, transmitting or storing the *standard software* to which it is entitled. Without limitation, this is permitted for scientific purposes. The performance of tests or the use of test results for the production of nearly identical software is prohibited, even if this is done without decompiling the *standard software*.

§ 3 Decompiling

The *licensee* may decompile interface information for the *standard software* only within the limits of section 69e Act on Copyright and Related Rights [Urheberrechtsgesetz] and only after it has informed the Licensor in writing of its plans and requests provision of the required information within a period of at least one month. All knowledge and information the *licensee* acquires in connection with decompiling is subject to part 1 Section 14 (Confidentiality). Prior to any involvement of a third party, the *licensee* shall provide the Licensor with a written statement from the third party that such third party has a direct obligation to the Licensor to comply with the contractual confidentiality provisions and the rights of use.

§ 4 Material defects and defects in title

(1) The *standard software* is provided free of charge. Therefore, the Licensor is only obliged to compensate the *licensee* for damage due to a material defect or defect in title if the Licensor has acted intentionally, in particular fraudulently concealed a defect or fraudulently misrepresented the absence of a defect. Any further warranty due to material defects and defects in title is excluded.

(2) Claims based on material defects and defects in title are precluded in particular in the case of

- a) Minor deviations from the agreed qualities and minor impairment of usability;
- b) Functional impairments of the *standard software* which result from faulty operation, use of the *standard software* outside the agreed environmental conditions, in violation of the agreed rights of use, violation of the special obligations of the *licensee* pursuant to part 1 Section 13, disregard of risk notices issued or a defect in hardware not supplied by the Licensor, insofar as this is not the responsibility of the Licensor;
- c) A change to the *standard software* including a program library contained or used by the *standard software* by the *licensee* and the Licensor has not agreed to this change at least in text form. This shall also apply if the *licensee* has made the change to a third-party program or a program under a *free license* and the relevant license conditions permit changes by the *licensee*;
- d) Defects known to the *licensee* at the time the agreement was entered into. If the *licensee* is unaware of a defect due to gross negligence, the *licensee* may only assert rights in respect of such defect if the Licensor has fraudulently concealed the defect or has assumed a guarantee for the quality of the *standard software*; or
- e) A supply of goods or services abroad and in the event that the *standard software* is intended to be resold or used in an area outside the Federal Republic of Germany, if the *standard software* violates technical standards, industrial property rights of third parties, violates legal or other sovereign provisions that apply in the country of the *licensee* or in any other area outside the Federal Republic of Germany in which the *standard software* is intended to be resold or used, and which the Licensor was not aware of. The Licensor is not obliged to examine the particularities of foreign law and foreign industrial property rights of third parties.

(3) The limitations of this Section 4 (Material defects and defects in title) shall not apply to the Licensor's liability in the event of the assumption of a guarantee or to claims based on the German Product Liability Act [*Produkthaftungsgesetz*].

(4) Section 5 (Liability of the licensor) applies to all other claims for damages or reimbursement of expenses.

§ 5 Liability of the Licensor

(1) The Licensor's liability for damages related to claims outside the law of liability for material defects and defects of title (e.g. from impossibility, delay, breach of contractual ancillary

obligations and in tort) shall be limited in accordance with this Section 5 (Liability of the Licensor) if such liability is dependent upon fault on the part of the Licensor.

(2) Liability for simple negligence on the part of the Licensor is excluded. Furthermore, liability on the part of the Licensor for gross negligence is excluded if the licensee is an entrepreneur, a legal entity under public law or a special fund under public law and there is no injury to life, limb or health.

(3) Liability on the part of the Licensor shall be excluded to the extent that the damage incurred is due to a functional impairment within the meaning of Section 4(2)(b) (Material defects and defects in title), an alteration to the standard software by licensee within the meaning of Section 4(2)(c) (Material defects and defects in title) or, in the case of a delivery abroad, to a circumstance described in Section 4(2)(e) (Material defects and defects in title).

(4) The exclusions and limitations on liability set out in this Section 5 (Liability of the Licensor) apply to claims for reimbursement of futile expenses *mutatis mutandis*.

(5) The exclusions and limitations on liability set out in this Section 5 (Liability of the Licensor) apply to the same extent in favour of the Licensor's executive bodies, legal representatives, employees and other agents.

(6) The limitations set out in this Section 5 (Liability of the Licensor) do not apply to liability on the part of the Licensor based on intentional conduct, in cases of bad faith, the assumption of a guarantee or to claims based on the German Product Liability Act [Produkthaftungsgesetz].

§ 6 Final provisions

(1) These licensing terms (both Part 1 and Part 2) are exclusively subject to the laws of the Federal Republic of Germany. This is without prejudice to mandatory consumer protection laws and regulations which apply in the country in which the consumer has their habitual residence.

(3) If the *licensee* is a merchant, legal person under public law or a special fund under public law, or if it does not have a place of jurisdiction in the Federal Republic of Germany, the exclusive place of jurisdiction for any and all disputes related to these licensing terms shall be the location of the Licensor's registered office. In addition, the Licensor may lodge suit against the *licensee* in any other lawful place of jurisdiction. This provision does not affect exclusive places of jurisdiction prescribed by law.

(3) The agreements related to the place of jurisdiction under paragraph (2) are based exclusively on the laws of the Federal Republic of Germany.

(4) If the *Licensee* is an entrepreneur within the meaning of section 14 German Civil Code (BGB), a complaint may only be lodged with the court once the parties have attempted to resolve the matter outside of the courts. For such purposes, the parties should agree to a neutral third party as arbitrator. The limitations period for the relevant claim subject to dispute is tolled upon initiation of an attempt at resolution by one of the parties until the end of the arbitration process. Section 203 German Civil Code (BGB) shall apply *mutatis mutandis*. Summary proceedings or lodging a complaint in order to toll a statutory limitations period that cannot be extended by agreement of the parties is permitted at any time.

B. All other states that are not in part 2 A.

§ 1 Troubleshooting by the *Licensee*

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§ 2 Analysis of the standard software and reverse engineering

The *licensee* may, without Licensor's consent, observe, investigate or test the functioning of the *standard software* in order to determine the concepts and principles underlying any program element, if this is done as part of actions related to loading, displaying, running, transmitting or storing the *standard software* to which it is entitled. Without limitation, this is permitted for scientific purposes. The performance of tests or the use of test results for the production of nearly identical software is prohibited, even if this is done without decompiling the *standard software*.

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The *licensee* may decompile interface information for the *standard software* only within the limits of section 69e Act on Copyright and Related Rights [Urheberrechtsgesetz] and only after it has informed the Licensor in writing of its plans and requests provision of the required information within a period of at least one month. All knowledge and information the *licensee* acquires in connection with decompiling is subject to part 1 Section 14 (Confidentiality). Prior to any involvement of a third party, the *licensee* shall provide the Licensor with a written statement from the third party that such third party has a direct obligation to the Licensor to comply with the contractual confidentiality provisions and the rights of use.

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(1) The *standard software* is provided free of charge. Therefore, the Licensor is only obliged to compensate the *licensee* for damage due to a material defect or defect in title if the Licensor has acted intentionally, in particular fraudulently concealed a defect or fraudulently misrepresented the absence of a defect. Any further warranty due to material defects and defects in title is excluded.

(2) Claims based on material defects and defects in title are precluded in particular in the case of

- a) Minor deviations from the agreed qualities and minor impairment of usability;
- b) Functional impairments of the *standard software* which result from faulty operation, use of the *standard software* outside the agreed environmental conditions, in violation of the agreed rights of use, violation of the special obligations of the *licensee* pursuant to part 1 Section 13, disregard of risk notices issued or a defect in hardware not supplied by the Licensor, insofar as this is not the responsibility of the Licensor;
- c) A change to the *standard software* including a program library contained or used by the *standard software* by the *licensee* and the Licensor has not agreed to this change at least in text form. This shall also apply if the *licensee* has made the change to a third-party program or a program under a *free license* and the relevant license conditions permit changes by the *licensee*;
- d) Defects known to the *licensee* at the time the agreement was entered into. If the *licensee* is unaware of a defect due to gross negligence, the *licensee* may only assert rights in respect of such defect if the Licensor has fraudulently concealed the defect or has assumed a guarantee for the quality of the *standard software*; or
- e) A supply of goods or services abroad and in the event that the *standard software* is intended to be resold or used in an area outside the Federal Republic of Germany, if the *standard software* violates technical standards, industrial property rights of third parties, violates legal or other sovereign provisions that apply in the country of the *licensee* or in any other area outside the Federal Republic of Germany in which the *standard software* is intended to be resold or used, and which the Licensor was not aware of. The Licensor is not obliged to examine the particularities of foreign law and foreign industrial property rights of third parties.

(3) The limitations of this Section 4 (Material defects and defects in title) shall not apply to the Licensor's liability in the event of the assumption of a guarantee or to claims based on the German Product Liability Act [*Produkthaftungsgesetz*].

(4) Section 5 (Liability of the licensor) applies to all other claims for damages or reimbursement of expenses.

§ 5 Liability of the Licensor

THE STANDARD SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE STANDARD SOFTWARE OR THE USE OR OTHER DEALINGS IN THE STANDARD SOFTWARE.

§ 6 Final provisions

(1) These licensing terms (both Part 1 and Part 2) are exclusively subject to the laws of the Federal Republic of Germany. This is without prejudice to mandatory consumer protection laws and regulations which apply in the country in which the consumer has their habitual residence.

(3) If the *licensee* is a merchant, legal person under public law or a special fund under public law, or if it does not have a place of jurisdiction in the Federal Republic of Germany, the exclusive place of jurisdiction for any and all disputes related to these licensing terms shall be the location of the Licensor's registered office. In addition, the Licensor may lodge suit against the *licensee* in any other lawful place of jurisdiction. This provision does not affect exclusive places of jurisdiction prescribed by law.

(3) The agreements related to the place of jurisdiction under paragraph (2) are based exclusively on the laws of the Federal Republic of Germany.

(4) If the *Licensee* is an entrepreneur within the meaning of section 14 German Civil Code (BGB), a complaint may only be lodged with the court once the parties have attempted to resolve the matter outside of the courts. For such purposes, the parties should agree to a neutral third party as arbitrator. The limitations period for the relevant claim subject to dispute is tolled upon initiation of an attempt at resolution by one of the parties until the end of the arbitration process. Section 203 German Civil Code (BGB) shall apply *mutatis mutandis*. Summary proceedings or lodging a complaint in order to toll a statutory limitations period that cannot be extended by agreement of the parties is permitted at any time.