Checkmk End User License Agreement

1.   Subject Matter and Definitions

1.1   This End-User License Agreement (**"EULA"**) governs the use of the 'Checkmk Enterprise Standard Edition' and the 'Checkmk Enterprise Managed Services Edition' of the Checkmk software (**"Checkmk"**) as well as the files contained in the virtual appliance (virt1) and the physical appliance of Checkmk.

1.2   **"Customer"** under this EULA is that natural or legal person, public body or authority that has acquired a subscription for Checkmk either from tribe29 GmbH (**"tribe29"**) or from a third party and is identified as such in the respective agreement. If, for example, a subsidiary has acquired the subscription, the parent and sister companies of that subsidiary will not be considered Customers within the meaning of this EULA. Similarly, subsidiaries will also not be considered Customers within the meaning of this EULA when a subscription is acquired by their parent company.

1.3   **"Affiliated Entities"** under this EULA are affiliates of the Customer within the meaning of §§ 15 *et seqq.* of the Stock Corporation Act (*Aktiengesetz* – AktG) or other legal persons under public law, public bodies or authorities that execute tasks jointly with the Customer based on law or statute. Use of the software by Affiliated Entities or use as a managed services provider is possible within the 'Group and Managed Services Use' license option.

2.   Checkmk Enterprise License

2.1   The provisions contained in this section 2 (referred to hereinafter as the **"Checkmk Enterprise License"**) apply to the files licensed under the *Checkmk Enterprise License* according to the file header or license list ("**Proprietary Software**").

2.2   **Creating Instances.** tribe29 grants the Customer a non-exclusive, perpetual, non-transferable right to install the files on an unlimited number of systems and to create an unlimited number of instances (sites). Instances may only be created on systems owned by the Customer or assigned to it for its exclusive use. This also includes external systems such as, for example, cloud services. The Customer is entitled to monitor systems of its Affiliated Entities; however, it will be necessary to acquire the 'Group and Managed Services Use' license option in order to create instances on these systems. The creation of instances in a country other than the country where the Customer has its principal place of business always requires the acquisition of the 'Group and Managed Services Use' license option. Exceptions to these limitations are possible under the Fair Use Policy (see section 2.10).

2.3   **Use of the Software.** tribe29 grants the Customer a non-exclusive, perpetual, non-transferable right to use the files in accordance with the purposes specified in section 4 below. Every interaction with Checkmk either directly or via an interface constitutes an act of use. This includes, for example, logging into the web interface, administration of the program, creation and deletion of hosts or the read-out of data via another application. Simply receiving messages (and confirming them) or PDF reports without logging into the software does not constitute use under this EULA. In addition to the Customer's own employees, where the Customer engages any independent contractors or service providers, they are also entitled to use the software within the limits of their engagement. Independent use by Affiliated Entities is only permitted if the Customer has acquired the 'Group and Managed Services Use' license option.

2.4   **Business Purposes.** The Customer may only use the files for its own business purposes and those of its Affiliated Entities. If the Customer also wishes to use the files for the business purposes of third parties, e.g., for monitoring IT infrastructure that the Customer operates for or makes available to a third party, it must acquire the 'Group and Managed Services Use' license option. In this context, it is not relevant whether the third party itself uses the software or whether the Customer simply uses it internally for

complying with its own Service Level Agreements. The use of the software for the business purposes of Affiliated Entities does not entitle such Affiliated Entities to use Checkmk independently (see section 2.3). The Customer is entitled to monitor systems of its Affiliated Entities; however, Affiliated Entities are only permitted to use the software independently if the Customer has acquired the 'Group and Managed Services Use' license option.

2.5 **Group Use.** If the Customer has acquired the 'Group and Managed Services Use' license option, the Customer, within the limits of the purposes specified in section 4, is granted the right for the benefit of a total of seven (7) Affiliated Entities

  a. to install the files on an unlimited number of systems owned by such Affiliated Entities and produce an unlimited number of instances (sites) on those systems (e.g., in order to implement a distributed monitoring with multiple instances across Affiliated Entities);

  b. to allow employees and service providers of such Affiliated Entities to use the files; and

  c. to distribute the files to these Affiliated Entities and allow them to use these independently for their own business purposes.

Affiliated Entities must be subjected to a duty to comply with this EULA. In the event that the files are distributed to any Affiliates, the Customer will also provide them with a copy of this EULA.

2.6 **Managed Services Use.** If the Customer has acquired the 'Group and Managed Services Use' license option, it may also use the files in accordance with the purposes specified in section 4 for business purposes of third parties that are no Affiliated Entities (**"Managed Services Clients"**) in the form of an add-on service incidental to significant other services that the Customer itself performs for such Managed Services Clients in return for remuneration. The 'Group and Managed Services Use' license option does not permit the offering of stand-alone monitoring services to third parties.

The 'Group and Managed Services Use' license option is necessary, for example, if

  a. Checkmk is used for monitoring physical or virtual infrastructure that the Customer makes available for the exclusive use of a particular Managed Services Client (e.g., the provision of virtual machines or physical servers as host) or

  b. Checkmk is used for monitoring physical or virtual infrastructure that the Customer operates for a particular Managed Services Client (e.g., as part of a broader managed services contract).

It is not relevant who owns the infrastructure.

The 'Group and Managed Services Use' license option is, however, not required if the Customer does not make infrastructure available to its client but only the use of services (e.g., SaaS, e-mail, databases or online shops).

The Customer may install the files on the systems of its Managed Services Clients. Managed Services Clients will be limited to passive use, i.e., they may receive read access to the web interface to call up information and/or reports, and schedule downtimes. Active use by such clients, including but not limited to independent modification of the configuration is not permitted.

2.7 The 'Group and Managed Services Use' license option is included in subscriptions for the 'Checkmk Enterprise Managed Services Edition' (CME).

2.8 **Sizing.** The right of use will be limited to the number of monitored services most recently agreed for the subscription. A service will be deemed to consist of a monitored data point, for example, the CPU load of a specific device. A device may, therefore, comprise many services. Services that are monitored only by Checkmk instances that are used exclusively to test Checkmk will not be counted for such purposes. If

the Customer monitors a specific service from several Checkmk instances simultaneously (e.g., for redundancy or testing purposes), that service will be counted only once. No more than the agreed number of services may be monitored by all instances of the software at any time. Monitored services of Affiliated Entities and Managed Services Clients shall be counted towards the number of services monitored by the Customer.

2.9 **Integrated Monitoring**. The combined display of monitored services in one view or the joint configuration of the monitoring (**"Integrated Monitoring"**) requires the purchase of one single subscription that covers the entire Integrated Monitoring. Integrated Monitoring based on multiple subscriptions is not permitted. This means, e.g.:

- Multiple smaller subscriptions may not be combined into one larger subscription;

- If the Checkmk Raw Edition is included in an Integrated Monitoring, services monitored from such instances shall be counted towards the number of services monitored by the Customer for the purpose of sizing of the Checkmk Enterprise Subscription; and

- If instances are created on systems of Affiliated Entities, the 'Group and Managed Services Use' license option must be purchased for the entire monitoring system. Exceptions are possible under the Fair Use Policy (see section 2.10).

A separate, non-integrated monitoring both within the Customer's organization and within a group remains possible with individual subscriptions.

In case of Managed Services Use, Integrated Monitoring of a Managed Services Client's systems is always permitted, even including instances operated by the Managed Services Client. For example, the Customer has the right to integrate the monitored services of all these instances, both the Customer's and the Managed Services Client's, in combined views, and to jointly configure his instances and those of his Managed Services Client. If the Managed Services Client holds its own Checkmk Enterprise subscription, for the purpose of sizing, a monitored service shall be assigned to the instance from which it is monitored. If the Managed Services Client uses the Checkmk Raw Edition, all services shall be counted towards the number of services monitored by the Customer.

2.10 **Fair Use Policy**. The purchase of the 'Group and Managed Services Use' license option is not required if less than 10% in the aggregate of the agreed number of monitored services pursuant to section 2.8 are monitored from instances of Affiliated Entities or from instances installed in a country other than the country where the Customer has its principal place of business. In this context, the Customer shall additionally have the rights under section 2.5a.

2.11 The Customer has the right to modify the files as long as no copyright or license notices are altered or removed. The provisions of this section 2 also apply to the modified versions of the files. The right to modify will not apply to files that exist only in the form of binary code.

2.12 No further rights of use (including, in particular, rights to copy and/or distribute the files and/or make them available to the public or any use that exceeds the restrictions of use) are granted unless expressly agreed in text form (e.g., by postal mail, e-mail or fax) or required by law.

2.13 The Customer may not reverse engineer or decompile files that exist only in binary code unless expressly allowed by the provisions of the German Copyright Act (*Urheberrechtsgesetz* – UrhG). In the event that the Customer decides to avail itself of its legal rights since this is indispensable to ensure interoperability with an independently created computer program, the Customer must request the required interface information or other information from tribe29 beforehand in writing, allowing tribe29 sufficient time and opportunity to provide such information in a form and manner that safeguards the legitimate interests of tribe29. The Customer may, however, also analyze and reengineer the Proprietary Software

that is linked with the program libraries licensed under the GNU Lesser General Public License (LGPL) in order to modify the program libraries licensed under the LGPL and eliminate errors in the Proprietary Software. Information that is obtained in that context may not be disclosed to third parties.

2.14 Files that are licensed exclusively under the Checkmk Enterprise License constitute trade secrets of tribe29 and as such must be treated confidentially. They may not be made available to third parties. The distribution right pursuant to section 2.5c shall remain unaffected.

3. Open Source Licenses

3.1 The software contains open source components. The rights of use for those files are governed exclusively by the license applicable to the respective file or the copyright act, respectively. The relevant license texts, disclaimers and any further notices will be delivered with the software.

3.2 On the basis of the applicable open source license or by law, the Customer will be comprehensively entitled to use the files, e.g. to copy, install and load them into the main memory. However, the modification or redistribution of unmodified or modified files may trigger license obligations. The Customer will be solely responsible for reviewing the relevant license terms and ensuring compliance with such terms.

4. Purposes of Use of Checkmk and Duties of the Customer

4.1 Checkmk is designed to monitor IT systems, devices and applications. Checkmk is not designed to monitor systems whose outage could result in bodily injury or loss of life.

4.2 When setting up the monitoring system, the Customer must take appropriate measures in accordance with the criticality of the systems to be monitored to ensure reliable monitoring (e.g., high availability / redundancy) and minimize the impact of possible outages.

4.3 Checkmk can be used to carry out automated actions. Automated actions can cause serious problems, including the outage of systems. When setting up and/or scripting such actions, the Customer must therefore exercise extreme care in order to limit the possible impact of false alerts.

4.4 Operation of the monitoring system must reflect the current state of the art. That includes backup of data, in particular prior to installation of updates or upgrades, and testing of updates or upgrades prior to productive use. Only stable versions of the software should be used for productive systems.

5. Protection of the Software

5.1 Checkmk is a registered trademark of tribe29. The present EULA does not authorize the Customer to use trademarks of tribe29 for the purposes of distribution of Checkmk or any part thereof. Trademarks of tribe29 may be used for the purposes of the distribution of Checkmk only on the basis of a separate written agreement. If the Customer distributes open source components of Checkmk under an applicable open source license, the Customer must first remove all registered trademarks of tribe29 except for such trademarks as are contained in copyright notices of tribe29.

5.2 Unless expressly granted under this Agreement, all rights in the Proprietary Software (and all copies thereof produced by the Customer), including but not limited to copyrights, trade secrets, rights to or in inventions and industrial property rights, are the exclusive property of tribe29. The Customer may not use the Proprietary Software for the purposes of obtaining trade secrets of tribe29.

5.3 The Customer will carefully store all copies of Checkmk and the login data for the download area in order to prevent abuse. The Customer will make the software (whether unchanged or modified by the Customer) available to third parties only with the previous written consent of tribe29. This will not apply

to open source components. The distribution right pursuant to section 2.5c shall remain unaffected. The login data may be entrusted only to employees who are administrators or users of the software.

5.4   The Customer may not alter or remove copyright notices, marks and/or control numbers or marks of tribe29. The proper use of the white label functionality of the Checkmk Enterprise Managed Services Edition shall remain unaffected. In the event that the Customer alters or modifies the software, these notices and marks must be included in the altered or modified versions. For alteration or modification of open source components, the duties of the Customer will be based exclusively on the applicable open source license.

5.5   The Customer may make and retain copies of the software only insofar as required for his business needs. Copies that are no longer used must be deleted. This will not apply in respect of open source components.

5.6   In the event that the Customer transfers ownership of storage media, storage devices or other hardware used to store software covered by this Agreement (in its entirety or in part, whether unchanged or modified) (i) to third parties or (ii) relinquishes actual possession of such media, devices or hardware, the Customer will ensure that the stored software is first completely and permanently deleted. In such cases, the Customer may decide at its own discretion whether or not to delete open source components as well.

6.   Mainlining of Changes in the Software and New Developments

The Checkmk Enterprise license authorizes the Customer to modify the software. In addition, new plug-ins may be developed for Checkmk. By forwarding any such modifications or improvements to tribe29 or making them available to tribe29 for use in the standard product in some other manner, e.g., by github pull request or upload to tribe29's git server, the Customer grants tribe29 a non-exclusive, but otherwise unlimited right for any now known or future use.

7.   Applicable Law and Jurisdiction

7.1   In the event that any provision of this Agreement should be or become invalid in part or in its entirety, this will not otherwise affect the validity of the remaining provisions. The parties agree to substitute for any such invalid provision a valid provision that most closely approximates the economic effect and intent of the invalid provision.

7.2   The Agreement will be governed by German law, with the exception of those provisions that would result in the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods (CISG) will not apply.

7.3   The courts of Munich, Germany, will have exclusive jurisdiction over any disputes arising out of or in connection with this Agreement, including the validity of the Agreement. tribe29 also reserves the right to bring action against the Customer before the courts of the Customer's principal place of business.