

End User License Agreement for Checkmk Enterprise Standard Edition and Checkmk Enterprise Managed Services Edition

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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 (referred to hereinafter as “**Checkmk Enterprise Edition**” or “**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 purchased a subscription for Checkmk either from Checkmk GmbH or from a third party and is identified as such in the respective agreement.
- 1.3 “**Affiliate**” under this EULA means any entity controlling, controlled by, or under common control with a party. For purposes of this definition, control means ownership of more than 50% of the voting shares of an entity or the power to direct the management and policies of an entity. If the Customer is a legal entity under public law, a public body or a public authority, other legal entities under public law, public bodies or authorities that execute tasks jointly with the Customer based on law or statute shall be deemed to be Affiliates.

2 Checkmk Enterprise License

- 2.1 **Scope of the License.** The provisions of this section 2 (referred to hereinafter as the “**Checkmk Enterprise License**”) apply to the Checkmk files that as per their file header are licensed under the ‘*Checkmk Enterprise License*’, as well as the Checkmk Micro Core (with such files and the Checkmk Micro Core hereinafter referred to as “**Proprietary Software**”).
- 2.2 **Creating Instances.** The Customer is granted a non-exclusive, non-transferable and non-sublicensable (with the exception of Section 2.5c) right to install the Proprietary Software in accordance with this EULA 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 (including external systems, such as cloud services). While the Customer is entitled to monitor systems of its Affiliates, creating instances on an Affiliate’s systems requires the purchase of the ‘Group and Managed Services Use’ license option. Creating instances in a country other than the country where the Customer has its principal place of business always requires the purchase 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.** The Customer is granted a non-exclusive, perpetual, non-transferable and non-sublicensable (with the exception of Section 2.5c) right to use the Proprietary Software in accordance with this EULA and within the purposes of use set out in section 4. Every interaction with Checkmk either directly or via an interface constitutes an act of use. This includes, for example, logging into the Checkmk web interface, changing the configuration or the read-out of data via another application. Simply receiving messages (and confirming them) or PDF reports without logging into the Checkmk web interface does not constitute use under this EULA. Independent use by Affiliates is only permitted if the

Customer has purchased the 'Group and Managed Services Use' license option (see section 2.5).

- 2.4 **Business Purposes.** Use of the Proprietary Software is limited to business purposes of the Customer and those of its Affiliates. Use for the business purposes of Affiliates does not include the right for such Affiliates to use Checkmk independently (see section 2.3). While the Customer is entitled to monitor systems of its Affiliates, independent use by Affiliates is only permitted if the Customer has purchased the 'Group and Managed Services Use' license option (see section 2.5). If the Customer wishes to use the Proprietary Software also 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 also purchase the 'Group and Managed Services Use' license option (see section 2.6).
- 2.5 **Group Use.** If the Customer has purchased the 'Group and Managed Services Use' license option, it is further granted the following rights for the benefit of up to seven (7) Affiliates within the purposes of use set out in section 4:
- a. The right to install the Proprietary Software on an unlimited number of systems owned by such seven (7) Affiliates and create an unlimited number of instances (sites) on those systems.
 - b. The right to distribute the Proprietary Software to such seven (7) Affiliates or to make it available to them for download by providing them with login data for the download area.
 - c. The right to allow such seven (7) Affiliates to create instances and to use the Proprietary Software independently for their own business purposes, both in accordance with this EULA.
- 2.6 **Managed Services Use.** If the Customer has purchased the 'Group and Managed Services Use' license option, it may also use the Proprietary Software within the purposes of use set out in section 4 for business purposes of third parties that are not Affiliates (such third parties hereinafter referred to as "**Managed Services Clients**" and such use hereinafter referred to as "**Managed Services Use**"). However, Managed Services Use is only permitted in the form of an add-on service to significant other services that the Customer itself performs for such Managed Services Clients in return for remuneration, and which must at least include the configuration of the monitoring.

In connection with a permitted Managed Services Use, the Proprietary Software may also be installed on systems of Managed Services Clients and Managed Services Clients may be authorized for passive use. Passive use means read-only access to the Checkmk web interface to access information and reports, the ability to schedule downtimes and to acknowledge problems. Active use by Managed Services Clients, including but not limited to independent modification of the configuration, is not permitted. The provision of Checkmk to third parties "as a service" in the form of a stand-alone monitoring service is prohibited. Such prohibited use for the provision of Checkmk "as a service" shall be given in particular if the end user is enabled to configure Checkmk and to actively use Checkmk.

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 only provides services (e.g., SaaS, e-mail, databases or online shops) to its Managed Services Clients, but no infrastructure.

- 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 specified in the subscription. A service consists 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 a specific service is monitored 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. Monitored services of Affiliates and Managed Services Clients shall be counted towards the number of services monitored by the Customer.
- 2.9 **Integrated Monitoring.** The Customer may run different editions of the Checkmk software (including the Checkmk Raw Edition) simultaneously based on different subscriptions. However, 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 for a Checkmk Enterprise Edition that covers all instances and services included in the Integrated Monitoring. Integrated Monitoring based on multiple subscriptions is not permitted. This means, e.g.:
 - Multiple subscriptions for a Checkmk Enterprise Edition may not be combined for an Integrated Monitoring.
 - The inclusion of instances of the Checkmk Cloud Edition in an Integrated Monitoring based on a Checkmk Enterprise Edition is not permitted.
 - 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 Affiliates, 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).

- 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 number of monitored services specified in the subscription pursuant to section 2.8 are monitored from instances of Affiliates 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 **Right to Modify.** The Checkmk Enterprise License includes the right to modify the Proprietary Software as long as no copyright or license notices are altered or removed. Such right to modify does not apply to files that are provided in the form of binary code only, including in particular the Checkmk Micro Core. The provisions of this section 2 also apply to the modified versions.
- 2.12 **Cloud Edition Plug-ins.** The Checkmk Enterprise Edition may not be used together with Checkmk plug-ins that are exclusively delivered with the Checkmk Cloud Edition.
- 2.13 In addition to the Customer's own employees, the Customer's employees without employee status, such as freelancers, temporary workers or service providers working on behalf of the Customer, shall also have a right of use within the scope of their assignment. If the 'Group and Managed Services Use' license option is purchased, the same shall apply to employees, other staff and service providers of those Affiliates and Managed Services Clients who have received a sublicense from the Customer pursuant to Section 2.5c or Section 2.6. All users and, if applicable, Affiliates and Managed Services Clients and their respective users must be subjected to a duty to comply with this EULA. The Customer shall be liable for violations of this EULA by its users, Affiliates and Managed Services Clients and their respective users as if the Customer would have committed the violation.
- 2.14 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. To ensure compliance with the terms of the license, activation of the software by entering license credentials may be required. Use of the software beyond the licensed sizing may be technically prevented.
- 2.15 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. 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 Checkmk GmbH beforehand in writing, allowing Checkmk GmbH sufficient time and opportunity to provide such information in a form and manner that safeguards the legitimate interests of Checkmk GmbH. 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.

- 2.16 The Proprietary Software contains trade secrets of Checkmk GmbH and must therefore be treated confidentially. Any disclosure to third parties is prohibited, unless the disclosure is expressly permitted. The distribution right pursuant to section 2.5b 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 automated actions.
- 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 must be used for productive systems.

5 Protection of the Software

- 5.1 Checkmk is a registered trademark of Checkmk GmbH. The present EULA does not authorize the Customer to use trademarks of Checkmk GmbH for the purposes of distribution of Checkmk or any part thereof. Trademarks of Checkmk GmbH 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 Checkmk GmbH except for such trademarks contained in copyright notices of Checkmk GmbH.

- 5.2 Unless expressly granted under this EULA, 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 Checkmk GmbH. The Customer may not use the Proprietary Software for the purposes of obtaining trade secrets of Checkmk GmbH.
- 5.3 The Customer will carefully protect 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 Checkmk GmbH. This will not apply to open source components. The distribution right pursuant to section 2.5b shall remain unaffected. The login data may be entrusted only to employees who are administrators or users of the software.
- 5.4 Markings of the software, in particular copyright notices, trademarks, serial numbers or the like may not be removed, altered or obliterated, except to the extent permitted as part of the white label functionality of the Checkmk Enterprise Managed Services Edition. If the software is modified or edited, these markings must be included in the modified version. Modifications or adaptations that are capable of removing or circumventing technical measures to protect the software, of accessing functions of the software for which no license has been granted, or of impairing or preventing the verification of compliance with license terms and usage restrictions, in particular the measurement of the number of monitored services, are expressly prohibited. For modifications and adaptations of open source components, the Customer's obligations shall be governed solely by 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 (i) 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) 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; provided, however, that 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 includes a right to modify the software. In addition, new plug-ins for Checkmk may be developed. By submitting any such modifications or developments to Checkmk GmbH or otherwise making them available to Checkmk GmbH (e.g., by github pull request or upload to Checkmk GmbH's git server) for use in the standard product, the Customer or the Affiliates authorized under the 'Group and Managed Services Use' license option grant Checkmk GmbH a non-exclusive, but otherwise unlimited right of use. The above license grant does not apply to modifications or improvements submitted to Checkmk GmbH for the purpose of the Customer or an authorized Affiliate receiving support, development and consulting services.

7 Severability Clause

Should any provision be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions.