

Checkmk Enterprise Free Edition End User License Agreement

1. Subject Matter of the Agreement

- 1.1 This End-User License Agreement (“EULA”) governs the contractual relationship between tribe29 GmbH (“tribe29”) and users of the Checkmk Enterprise Free Edition (“Checkmk”) and of the virtual appliance delivered with Checkmk, as the case may be.
- 1.2 tribe29 offers the Checkmk Enterprise Free Edition, free of charge, for testing purposes or for operating a minimal installation. Tribe29 may, at its own discretion, discontinue this offer at any time.
- 1.3 A contract is concluded between the parties at the time when the user downloads the software. The user has no right of withdrawal. The user may at any time delete the software copies that it has created and thus terminate this Agreement.

2. Rights of Use

- 2.1 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 user will be solely responsible for reviewing the relevant license terms and ensuring compliance with such terms. The relevant license texts, disclaimers and any further notices will be delivered with the software.
- 2.2 Regarding the files licensed under the *Checkmk Enterprise License* according to the file header or license list (“**Proprietary Software**”), users of the Checkmk Enterprise Free Edition shall have the following rights:
 - a. tribe29 grants the user a non-exclusive, perpetual, non-transferable right to use the files in accordance with the purposes specified in section 3 below. The use is limited to the creation of a **maximum of two (2) instances (sites)** and the monitoring of a **maximum of ten (10) hosts (devices) per instance**. The number of services monitored on these hosts is not limited.
 - b. For both instances, the combined display of monitored services in one view or the joint configuration of the monitoring (“**Integrated Monitoring**”) are permitted. No other Integrated Monitoring is permitted. In particular, Integrated Monitoring using the Checkmk Enterprise Free Edition in combination with the Checkmk Raw Edition or the Checkmk Enterprise Standard Edition is not permitted. A separate, non-integrated monitoring using different editions or multiple installations of the Free Edition remains possible.
 - c. The user may transfer the files to third parties (e.g. the operators of the systems on which the instances are created) and allow them to use the files subject to compliance with this section 2.2 where this is necessary in order for the operation of the installation. The recipients of the files must be subjected to a duty to comply with this EULA.
 - d. The user 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 user decides to avail itself of its legal rights since this is indispensable to ensure interoperability with an independently created computer program, the user 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 user 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.

- e. The rights pursuant to the Checkmk End User License Agreement are only available to customers who have concluded a Subscription Agreement.

3. Purposes of Use of Checkmk and Duties of the User

- 3.1 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.
- 3.2 When setting up the monitoring system, the user 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.
- 3.3 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 user must therefore exercise extreme care in order to limit the possible impact of false alerts.
- 3.4 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.

4. Protection of the Software

- 4.1 Checkmk is a registered trademark of tribe29. The present EULA does not authorize the user 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 user distributes open source components of Checkmk under an applicable open source license, the user must first remove all registered trademarks of tribe29 except for such trademarks as are contained in copyright notices of tribe29.
- 4.2 Unless expressly granted under this Agreement, all rights in the Proprietary Software (and all copies thereof produced by the user), including but not limited to copyrights, trade secrets, rights to or in inventions and industrial property rights, are the exclusive property of tribe29. The user may not use the Proprietary Software for the purposes of obtaining trade secrets of tribe29.
- 4.3 The user will carefully store all copies of Checkmk. The user will make the software 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 2.2c shall remain unaffected.
- 4.4 The user may not alter or remove copyright notices, marks and/or control numbers or marks of tribe29. For alteration or modification of open source components, the duties of the user will be based exclusively on the applicable open source license.
- 4.5 The user 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.
- 4.6 In the event that the user transfers ownership of storage media, storage devices or other hardware used to store software covered by this Agreement (in its entirety or in part) (i) to third parties or (ii) relinquishes actual possession of such media, devices or hardware, the user will ensure that the stored software is first completely and permanently deleted. In such cases, the user may decide at its own discretion whether or not to delete open source components as well.

5. Defects in Quality and in Title

- 5.1 In the event of a defect in quality of the Proprietary Software, the liability of tribe29, its vicarious agents and its legal representatives will be limited to any direct damage incurred by the user due to fraudulent

concealment of a defect and to any consequential damage based on intentional or grossly negligent conduct of tribe29, its vicarious agents and its legal representatives. No further warranty for defects in quality of the Proprietary Software is provided. tribe29 will correct errors only if the user concludes a separate agreement for remuneration or will correct them – on a voluntary basis – by making updates available, provided it still offers the software for download.

- 5.2 tribe29 is not aware of any defects in title of the Proprietary Software. In the event of a defect in title of the Proprietary Software, tribe29, its vicarious agents and its legal representatives will only be liable for damage incurred by the user due to the fraudulent concealment of such defect in title. No further warranty for defects in title of the Proprietary Software is provided.
- 5.3 In relation to the rights holders of the open source components, the warranty provisions of the applicable open source license apply; express reference is made to these.

6. Liability

tribe29, its vicarious agents and its legal representatives will only be liable for intentional misconduct or gross negligence; any further liability is excluded. The foregoing is without prejudice to their liability under the Product Liability Act (*Produkthaftungsgesetz*).

7. Confidentiality

- 7.1 The user will treat as confidential all information that it receives from tribe29 in connection with this Agreement and its execution unless such information is expressly marked as non-confidential or the information is by its nature non-confidential. Confidential information includes but is not limited to the elements of the Checkmk Software which are exclusively licensed under the Checkmk Enterprise License (“Proprietary Software”). If any information does not meet the requirements for a business secret under the Business Secrets Act (*Geschäftsgeheimnisgesetz – GeschGehG*), it will nonetheless be subject to the confidentiality obligations pursuant to this section 7.
- 7.2 The user undertakes to treat confidentially the confidential information and to only use it for the purposes of the Agreement. Any disclosure of confidential information is prohibited. The user undertakes to protect confidential information against unauthorized third-party access by taking appropriate protective measures, applying at least the same degree of care as it would apply to protect its own confidential information.
- 7.3 The duties of confidentiality will remain in force for the term of the Agreement and for an additional period of five (5) years thereafter.

8. Export Controls

- 8.1 The user must comply with the embargo and (re)export control regulations of the Federal Republic of Germany, the European Union and the United States of America (insofar as applicable from the US point of view and German/EU law does not preclude such application) when accessing or transferring software, data and information.
- 8.2 Prior to such access or transfer, the user will in particular determine and take suitable action to ensure,
 - a. that the user is not in violation of any embargo of the European Union, the United States of America and/or the United Nations – also taking into account any restrictions on domestic business and any anti-circumvention provisions – by reason of having accessed or transferred to third parties or made available other economic resources in connection with software, data and information made available by tribe29;

- b. that such software, data and information made available by tribe29 is not intended for any application involving defense, nuclear or weapons technology that is prohibited or requires regulatory approval unless such required approval has been obtained; and
 - c. that the user is in compliance with the provisions of all relevant sanctions lists of the European Union and the United States of America concerning trade with undertakings, individuals or organizations named in such lists.
- 8.3 Performance by tribe29 will be subject to the condition that no obstacles based on national or international provisions of foreign trade law or embargos and/or other sanctions stand in the way of performance.

9. Applicable Law and Jurisdiction

- 9.1 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.
- 9.2 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. If the user is a consumer and does not have his habitual residence in the Federal Republic of Germany, the statutory consumer protection regulations of the state of his habitual residence remain unaffected, if and insofar as these regulations may not be deviated from under the law of the state of his habitual residence. The United Nations Convention on Contracts for the International Sale of Goods (CISG) will not apply.
- 9.3 If the user is a merchant, a legal entity under public law or a special fund under public law, if the user has no general place of jurisdiction in Germany or if the user moves his domicile or habitual residence out of Germany after conclusion of the Agreement, or if the domicile or habitual residence of the user is unknown at the time of the commencement of legal action, the exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement, including the validity of this Agreement, shall be the registered office of tribe29 in Munich. The same applies if the user is an entrepreneur within the meaning of § 14 BGB (*German Civil Code*). tribe29 reserves the right to bring action at the place of performance or at the general place of jurisdiction of the user. Priority statutory provisions, in particular on exclusive jurisdiction, remain unaffected.

10. Dispute Resolution

- 10.1 The European Commission provides a platform for the online resolution of disputes between consumers and businesses (OS platform). The OS platform can be accessed via the following link: <https://ec.europa.eu/consumers/odr>. The e-mail address of tribe29 is info@tribe29.com.
- 10.2 tribe29 is neither obliged nor willing to participate in dispute resolution proceedings before consumer arbitration bodies.