

# END-USER LICENSE TERMS CENTREON IMP On Premise Subscription based license

These general terms and conditions of license (hereinafter the “**General Conditions**”) define the applicable terms to software and services supplied by CENTREON SOFTWARE SYSTEMS FRANCE, a limited liability company with a share capital of 10.000 EUR, registered in France under number 842 894 743 RCS Paris, and having its registered office at 46/52 rue Albert, 75013 Paris, whose SIRET number is 842 894 743 00017 and intra-community VAT number is FR68842894743 (hereinafter “**CENTREON**”) to the client for his professional needs (hereinafter the “**User**”).

CENTREON and the Client are hereinafter referred to jointly as the “**Parties**” and individually as “**Party**”.

## 1. PURPOSE AND CONTRACTUAL DOCUMENTS

These General Conditions define the terms under which CENTREON grants to the User an end-user on premise subscription based license on the Products (as this term is defined hereinafter) ordered by the User, excluding the Open Source and free Centreon Product package released by CENTREON under GPL v2 or Apache.

Products ordered, subject of this end-user license, enable to extend the use of the Centreon product package and offers new functionalities. Their use requires the use of the Centreon product package.

These General Conditions apply only to products ordered as part of IMP offer. This offer is not limitative and the User may at any time order other Products and/or extend its level of support by separate agreement.

This General Conditions include all rights and obligations of the Parties with respect to the subject matter hereof. They cancel and replace all document formerly exchanged between the Parties with respect to the subject matter hereof. The Parties expressly agree that the data recorded by CENTREON constitutes the evidence of all commercial operations entered into between them.

## 2. DEFINITIONS

“**Documentation**” refers to guides and instruction manuals and all other document required for their use and relating to the Product, whatever its medium, delivered to the User with the Product describing the functionalities and the operating instructions.

“**Hardware**” refers to the User’s computer system, including the server and the network connections required for the proper functioning of the Products.

“**Product**” refers to the computer program(s) developed by CENTREON, including the adaptations, developments and upgrades, as the case may be, as well as the relating Documentation, on which CENTREON grants to the User an end-user on premise subscription based license for the duration of the subscription. Products include and require the use of Centreon product package, developed and published by CENTREON under GPL v2 or Apache license, which the User acknowledges having read the terms and accepting them.

“**Source code**” refers to the instructions list constituting the Product and the relevant Documentation, that enable to understand how the Product was created, including notably the analysis documents, the algorithms, the flow diagrams, the description of the Product layout and of their elementary procedures, as well as the used language syntax, to the extent that this is not well-known. This term refers to the procedures that enable to re-generate and to install an executable Product version and/or packaged of the Product. Source code of certain Products (to the exception of Centreon product package developed and published by CENTREON under GPL v2 or Apache license, which the User acknowledges having read the terms and accepting them) is not accessible to Users.

« **CEIP** » refers to the « **Customer Experience Improvement Program** » implemented by Centreon to bring continuous improvement on the CENTREON user experience.

For further information refer to [ceip.centreon.com](http://ceip.centreon.com).

## 3. OBLIGATIONS OF THE PARTIES

### 3.1 Obligations of the Parties

The Parties undertake to cooperate in good faith and to facilitate the execution of their respective obligations. The Parties undertake therefore to closely, actively and regularly collaborate under this Agreement and to communicate each other all information necessary.

### 3.2. CENTREON’ obligations

CENTREON undertakes to deliver the Product, in conformity with these General Conditions. The delivery is effective upon the provision by CENTREON to the User of a Product activation key (token) on a digital medium for the duration of the subscription.

CENTREON endeavors to ensure the availability of its servers to allow authentication of the User and provision of services, technical support and updates, subject to maintenance periods.

### 3.3. User’s obligations

The User is solely liable for the choices of the Product and the Product compatibility with its needs and its computer system. The User has the liability to define and, if required, to configure the Product in conformity with its needs and its internal processes. CENTREON cannot warrant either the Product capacity to satisfy the User’s objectives, or that they are adapted to its specific needs or capable of integration and personalization processes planned by the User. The User agrees that it is liable to ensure, if required with third-expert assistance, the Product compatibility with its needs and to check that the Product enables to achieve its own objectives (notably configuration of its IT resources with the support of manufacturers and software publishers to ensure Product compatibility).

To enable CENTREON to execute its obligations in conformity with this Agreement, the User undertakes to fulfill its obligations under this Agreement and notably:

- To ensure that its servers can connect with the authentication server of CENTREON ;
- To comply with the terms of the end-user license ;
- To process to all necessary back-up of data, files, programs and other information to ensure their securities, in order to avoid all loss and, if required, for allowing a recovery of the concerned elements without delay, to implement recovery procedures following a daily periodicity, and to check the medium readability;
- To subscribe appropriate insurance policies, if required, with respect to all consequence of an eventual loss of data, files, programs and other information ;
- To apply all CENTREON’ recommendations relating to Product use.

## 4. LICENSE

Under the condition of the entire payment of the license subscription price by the User, CENTREON, intellectual property rights’ holder of the Product and its Documentation, grants to the User a personal, exclusive and non-transferrable right to use the Product for its internal needs on premise and in compliance with its Documentation and its objectives.

This right to use is subject to the following limits and conditions:

- The User undertakes to use the Product only on the site and the servers authenticated by CENTREON ;
- The User acknowledges that the Product contains an activation key system. CENTREON provides the User an activation key (token) for the duration of its subscription allowing it to use and install the Product on premise ;
- To the exception of one back-up copy of the Product, the User is not authorized to copy the Product without prior written approval of CENTREON;
- CENTREON reserves the right to fix Product defects within the framework of a separate maintenance agreement. Therefore, the User forbids itself to make any intervention on the Product for the purposes of correction, without prior written approval of CENTREON;

- The User has the ability to observe, to study and to test the Product within the limits of the applicable legal provisions, with the clarification that the User has the obligation to inform CENTREON, by registered letter with an acknowledgement of receipt, of its intention to decompile the Product for interoperability to enable CENTREON to appreciate the lawfulness of this demand and, if required, to supply the necessary information, as referred to the article L.122-6 of the French Intellectual Property Act.

The User undertakes to respect and to ensure its employees respect the intellectual property rights of CENTREON, especially on the Product, the brands and the logos belonging to CENTREON.

The User obliges itself to respect and to ensure its employees respect the property provisions appearing on the Product and the Documentation.

## 5. INSTALLATION

The User acknowledges that the installation and Product use imply that the User's computer system complies with the technical prerequisites defined in the Documentation and that its servers can connect to the authentication server of CENTREON.

The User acknowledges that the Product contains an activation key (token) for the duration of the subscription for the authenticated server of the User. Installation is performed automatically through CENTREON's authentication server. The User is not allowed to use the Product without the activation key (token). This system prevents the use of the Product on unauthenticated servers. As a consequence, if the User needs to transfer the Product from one server to another, it shall inform CENTREON by completing on-line a request for a new activation key (token). In such case, the User undertakes to uninstall the Product from the initial server within two (2) weeks in case of installation on another server.

The Product is supplied to the User on a digital medium via the Internet.

In order to enable the User to use the Product, CENTREON provides the User:

- An activation key (token) for the duration of its subscription allowing it to use the Product on premise on its authenticated servers ;
- Different programs constituting the Product under readable and executable format in the exploitation environment, in conformity with the Documentation ;
- The Documentation under electronic or paper format.

The User undertakes to proceed to the Product installation and configuration, as its own cost and under its liability, in compliance with the installation instructions appearing in the Documentation of the Product supplied by CENTREON.

It is up to the User to ensure that it has received, as well as its employees, the necessary training to correctly use the Product.

## 6. TECHNICAL SUPPORT

Under the on premise on line subscription based license, CENTREON provides to the User a first level of technical support and assistance relating to the Product. This technical support is provided via email without warranty of resolution time.

Any support service that is not expressly included in the subscription is subject to additional fees. The User may extend at any time its level of support by entering into a separate agreement.

The technical support includes correction of errors and basic guidance on installation and configuration through access to tutorials, CENTREON's on-line knowledge database and a dedicated communication reporting incidents tool allowing the User to post questions and track answers.

Under the technical support, CENTREON provides on-line answers to questions posted by the User and reasonable assistance to the User in relation to the use of Product. CENTREON is bound by an obligation of means.

Technical support is subject to compliance with technical prerequisites.

## 7. UPGRADES

During the subscription, the User benefits from upgrades, improvements and modifications of the Product for the supported versions of the Product.

CENTREON provides the User the maximum of information concerning the scope of upgrades, whether it is minor or major, as well as the nature of the operated modifications.

CENTREON may, in exceptional circumstances, demand to install imperatively an upgrade if this upgrade is essential for the proper execution of the support service, to the exclusion of updates that require payment of additional cost. Installation of upgrades is performed by the User.

The User is aware that the upgrade installation can possibly lead to incompliance with some third-party product.

Subject to the full payment of the subscription price, CENTREON grants to the User a right to use all upgrades of Product under the same conditions of license than the license terms.

## 8. FEES AND PAYMENT TERMS

The price of software depends on the duration of the subscription. Any on-line order is fully payable upon processing of the order. In such case, the invoice can be accessed and downloaded on-line from the user account.

Alternatively, invoices are due and payable within thirty (30) days of the date of the invoice issue, net without any discount, in advance.

The license-fees are invoiced in Euros, the risk of a change rate is supported by the User. All license-fees are exclusive of taxes (including any withholding taxes), which is payable by the User at the rate and in the manner from time to time prescribed by applicable law. The price including all taxes is indicated on the corresponding invoice.

## 9. AUDIT

During the subscription term and during a period of twelve (12) months from its expiration or termination for any reason whatsoever, CENTREON has the right, with a thirty (30) days' prior notice, to audit or to require a third-party to audit at its costs and yearly, in compliance with this Agreement. The audit is performed in the User's premises during normal business hours and ensuring that it doesn't disturb the User's activities.

In case the audit reveals the Product is used beyond the scope defined under this Agreement, CENTREON will charge to the User a license extension corresponding to the difference between the right acquired by the User and its effective Product use at the applicable public price. The User reimburses to CENTREON the audit fees on the presentation of supporting documents.

The payment of the license extension by the User leads to the automatic modification of the license scope, as the case may be.

## 10. WARRANTY

CENTREON warrants that the Product complies with their Documentation. For the duration of the subscription or for a maximum duration of three (3) months from the delivery of the Product, CENTREON undertakes to correct all reproducible defects of the Product.

After the expiry of this warranty, all defects attributable to the Product is addressed by CENTREON for the duration of the subscription under the technical support and upgrades provided, as described above. The User may extend at any time its level of support by entering into a separate agreement.

CENTREON warrants the User against all claims, demands, actions, costs, expenses, losses and damages arising from or incurred by reason of any claim for infringement of any Intellectual Property Right arising from the use of Product.

As such, CENTREON shall indemnify and hold harmless the User against all damages that shall pay further to a definitive court decision and having for exclusive grounds the demonstration of such infringement.

This warranty is subject to the following express conditions:

- The User shall promptly notify CENTREON if any claim or demand is made or action brought against the User;
- CENTREON shall at its own expense conduct any litigation arising therefore and all negotiations in connection therewith in consultation with the User;
- The User shall at the request of CENTREON provide to CENTREON all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the User;
- The alleged infringement could not have been avoided by the installation and use by the User of an upgrade provided by CENTREON.

If any Product provided by CENTREON infringes or is likely to infringe a third party's Intellectual Property Rights, CENTREON will promptly and at its own expense:

- to procure the right for the User to continue using such Product ; or
- to replace the Product to make its use non-infringing ; or
- to modify the Product to make its use non-infringing ; or
- to reimburse to the User the price received under this Agreement.

The previous provisions set the only appeal of which the User has and the limits of the CENTREON's infringement warranty.

## 11. TERM AND TERMINATION

The subscription is for a fixed term of 1 month or 12 months after processing of the order and upon delivery of the Product. The license is then tacitly renewed for successive equivalent periods unless the User cancels his subscription from his user account. If the User subscribes a new license for a longer term than its initial subscription, the User may terminate the subscription at any time before the initial fixed term.

Otherwise, the subscription expires on its term, unless terminated under the conditions defined hereafter. Any unused subscription will not be reimbursed.

In any case, the activation of the Product is performed upon processing of the order and delivery of the Product.

To allow control, activation and deactivation of Products, the User must ensure that its servers can connect with CENTREON's authentication server.

In the case of any serious breach by either Party of its obligations hereunder, the license may be terminated by the non-breaching Party, without having to file any claim before the competent court to this effect ("*de plein droit*") and without prejudice to other remedies available for any damages suffered, subject to a thirty (30) days prior notice from the receipt of the acknowledgement of the registered letter, if the breaching Party does not cure its breach within thirty (30) days of the date of receipt of the failure notification.

In the case of the termination, the User remains liable for the payment of all outstanding amounts until the effective date of termination, and more generally, for the payment of all invoices unpaid despite the effective termination.

Upon expiry of the subscription or termination, the User may continue to use Centreon software package as modified and updated during the term of the subscription, to the exclusion of the auto-discovery tool allowing the automatic detection of supervision target resources. Upon expiry of the subscription or termination, the User will no longer have access to technical support and upgrades.

Upon expiry of the subscription or termination for any reason, the present contract is automatically and immediately terminated.

## 12. CONFIDENTIALITY

Any information provided by one Party to the other Party or to whom a Party has access during the negotiation and/or execution of the Agreement of any nature whatsoever (technical, financial, legal, commercial, strategic, computer-based) transferred either in material form (containing inside a

physical medium of any form or nature whatsoever) or in immaterial form (verbally, digital or audiovisual media, etc.) is confidential.

Any information relating to hardware or Product, the documentation, the commercial proposals of CENTREON, also to the commercial strategies and business processes of one or other of the Parties are notably considered as confidential.

The Parties undertake to keep confidential the aforesaid information and to apply at least the same provisions than those usually applied to protect their own confidential information, and must uphold the same obligation of confidentiality to all their employees of any position whatsoever for any confidential information as defined hereinabove.

The Parties acknowledge that the following information should not be considered as confidential:

- information that is in the public domain ;
- information previously known by the receiving Party, which is not subject to an obligation of confidentiality ;
- information lawfully obtained from a third-party or independently of the execution of the Agreement.

The provisions of this article remain in force during the term of the subscription and for five (5) years from the expiration or the termination for any reason whatsoever.

While using CENTREON Products, CENTREON uses a telemetry system collecting anonymous and non-personal data about the servers use and statistics on the software suite use in order to exploit them in the Customer Experience Improvement Program (CEIP). This information is only used for the purposes of improving the user experience and nothing else. For further information refer to [ceip.centreon.com](http://ceip.centreon.com).

## 13. COMMERCIAL REFERENCE

Unless otherwise expressly agreed in the order form(s), the User authorizes CENTREON to disclose its name as a commercial reference in its presentations, its commercial propositions, its commercial documentation and its website. Any other type of communication shall be specifically subject of prior written approval of the User.

## 14. FORCE MAJEURE

CENTREON shall not, in any case, be liable and no indemnity can be requested for delay or in consequence of damages in the event of force majeure.

Internal or external strike, any destruction for any reason whatsoever of all or part of the CENTREON' premises or installations, any government decisions, any difficulties in oil and energy supply or traffic and communication networks disturbances, on which depend CENTREON, and more generally any unforeseeable event of human or natural origin that prevents or reduces the possibility of execution by CENTREON of its contractual obligations are expressly considered as constituting force majeure or unforeseeable circumstances, except those considered as such by French court.

The event of force majeure suspends the execution of the Agreement and the current orders, except the obligation for the User to pay the due sums until the date of force majeure.

If such force majeure event lasts for more than one (1) month, the license could immediately be terminated at no cost immediately upon a registered letter with an acknowledgement of receipt, without having to file any claim before the competent court to this effect ("*de plein droit*").

## 15. MISCELLANEOUS PROVISIONS

If any provision of this Agreement is held to be invalid or unenforceable for any reason, it will be deemed to be severed from this Agreement and the remaining provisions will continue in full force and effect.

The fact that one or other Party does not require, temporally or definitely, the application of a provision of this Agreement shall not be considered as a waiver of the rights, which are held by this Party.

Any exchange of postal or electronic mail between the Parties cannot modify this Agreement. Any change of this Agreement requires an order form or an amendment signed by the Parties.

The User may not sell, assign or transfer its rights or delegate its duties under this Agreement in whole or in part without prior written approval of CENTREON. CENTREON reserves the right to transfer this Agreement or all or part of its rights or duties under the Agreement to any transferee of its choice.

#### **16. GOVERNING LAW AND JURISDICTION**

The Agreement is governed by the French law.

ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS LICENSE WHICH CANNOT BE SETTLED AMICABLY SHALL BE BROUGHT EXCLUSIVELY BEFORE THE COURT OF PARIS, EVEN IN THE CASE OF A THIRD-PARTY PROCEEDING, A PLURALITY OF DEFENDANT OR A PROCEDURE FOR INTERIM MEASURES.