General Terms and Conditions for Checkmk Cloud (SaaS)

Version 1.0 (January 2025)

1 Scope of application

1.1 These general terms and conditions including its appendices ("**GTC**") govern the provision of Checkmk Cloud (SaaS) (as defined below) and the provision of Support Services (as defined below) by Checkmk GmbH (the **"Provider"**) to its customer (the "**Customer**") for the Customer's internal business operations as specified either in the designated order form, provided that such order form is duly signed by both parties, or through the designated sign-up process ("**Order**").

1.2 The GTC form an integral part of any Order in respect of the provision of Checkmk Cloud (SaaS) and any related services as described hereinafter. The Order and the GTC together constitute the agreement between the Provider and the Customer for the provision of Checkmk Cloud (SaaS) and related services (the "**Subscription Agreement**").

1.3 The Subscription Agreement will become legally binding upon the date of the Provider's receipt of the Order from the Customer ("**Effective Date**"). No services will be provided by the Provider to the Customer before the Effective Date.

1.4 Access to and use of Checkmk Cloud (SaaS) is offered to natural or legal persons under private and public law or partnerships with legal capacity, who act in exercise of their trade, business or profession. Any information provided by the Customer in this regard must be provided completely and truthfully.

2 Definitions

2.1 The terms defined in this section 2 apply to the GTC. The appendices may contain additional definitions for specific terms. Terms in the GTC include both the singular and plural forms, unless the context indicates otherwise.

2.2 "**Action**" has the meaning given to it in section 17.1.

2.3 "**Affiliate**" means any entity controlling, controlled by or under common control with a party. For purposes of this definition, control means ownership of more than fifty percent (50%) of the voting securities in an entity or the power to direct the management and policies of an entity.

2.4 "**AI**" means AI systems and/or AI based models. An AI system is a system that falls within the definition of 'AI system' within the meaning in the AI Regulation and functions autonomously to a certain extent (e.g., decides, learns or develops itself) and generates AI Output, including generative AI systems and general purpose AI systems referred to in the AI Regulation. A generative AI system is an AI system that is intended to generate text, images, audio, video and other similar content. A general purpose AI system is an AI system that can be used in and adapted to a variety of applications for which the AI system was not specifically developed. An AI based model, as defined in the AI Regulation, refers to an AI model that has been trained on the basis of extensive data, is designed for diverse AI Output and can be adapted to a wide range of different tasks (e.g., large language models). Other machine learning applications do not fall under the definition of AI systems unless they are covered by the provisions of the AI Regulation.

2.5 "**AI Act**" means the Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 on Artificial Intelligence (AI Act), published in the Official Journal of the European Union on 12 July 2024.

2.6 "**AI Output**" means the results generated by AI, e.g., text, images, videos, code, tests, predictions, recommendations or decisions.

2.7 "**AI Regulation**" means the AI Act and other legal acts on artificial intelligence regardless of their jurisdiction.

2.8 "**Checkmk Cloud (SaaS)**" means, collectively, the Provider's software-as-a-service offering, with functionalities and features defined in the applicable Service Edition, to which the Customer has

subscribed pursuant to the Subscription Agreement, as further described in the Documentation and as updated from time to time.

2.9 "**Documentation**" means the product documentation published by the Provider describing the properties of Checkmk Cloud (SaaS) and comprises configuration, integration and administration guidelines updated from time to time. For each version of Checkmk Cloud (SaaS), only the Documentation that refers to this version is valid. The Documentation is available at https://docs.checkmk.com/saas.

2.10 "**Commercial Distribution**" has the meaning given to it in section 4.7.

2.11 "**Customer**" has the meaning given to it in section 1.1.

2.12 "**Customer Misuse Claim**" has the meaning given to it in section 17.3.

2.13 "**Effective Date**" has the meaning given to it in section 1.3.

2.14 "**End User**" means any individual authorized by the Customer to access and use Checkmk Cloud (SaaS), either directly or indirectly, for the Customer's internal business purposes, including the Customer's employees, contractors, agents or other third parties acting on behalf of the Customer in accordance with the Subscription Agreement.

2.15 "**Export Control Regulations**" has the meaning given to it in section 18.1.

2.16 "**Export Data**" has the meaning given to it in section 18.1.

2.17 "**Force Majeure**" has the meaning given to it in section 20.

2.18 "**GDPR**" has the meaning given to it in section 12.1.

2.19 "**GTC**" has the meaning given to it in section 1.1

2.20 "**Intellectual Property Rights**" has the meaning given to it in section 10.1.

2.21 "**Licensed Services**" means the number of Services defined in the Subscription Agreement that may be monitored with Checkmk Cloud (SaaS). A "**Service**" consists of a monitored data point, e.g., the CPU load of a specific device. A monitored device may therefore generate many monitored Services in Checkmk Cloud (SaaS).

2.22 "**Order**" has the meaning given to it in section 1.1.

2.23 "**Provider**" has the meaning given to it in section 1.1.

2.24 "**Separate Terms**" has the meaning given to it in section 4.8.

2.25 "**Separately Licensed Third Party Technology**" has the meaning given to it in section 4.8.

2.26 "**Sensitive Uses**" has the meaning given to it in section 18.2.2.

2.27 **"Service Edition"** are different variants of Checkmk Cloud (SaaS) that may be differentiated by product functionality or functionality limits, performance and performance limits and/or different service offers. These variants – if any – are detailed at https://checkmk.com/pricing.

2.28 "**Service Generated Data**" has the meaning given to it in section 12.2.

2.29 "**Subscription Agreement**" means the agreement between the Provider and the Customer for a subscription of Checkmk Cloud (SaaS) as defined in section 1.2.

2.30 **"Subscription Period"** means, unless explicitly otherwise agreed in an Order, a period starting on the Effective Date lasting for twelve (12) months from the Effective Date (or any longer or shorter period agreed in the Order), and any subsequent period after the initial twelve (12) month period (or the respective longer or shorter period) if the Subscription Agreement has not been terminated in accordance with section 8.

2.31 **"Subscription Fees"** has the meaning given to it in section 9.1.

2.32 "**Support Contacts**" are the persons designated by the Customer who are authorized to submit support requests for the Customer.

2.33 "**Support Services**" means the support services described in section 5 and further specified in **Appendix 1 – Support Services and SLA**.

2.34 "**Transfer of the Export Data**" has the meaning given to it in section 18.2.

2.35 "**Trial Version**" has the meaning given to it in section 19.1.

3 Intended utilization of Checkmk Cloud (SaaS)

3.1 Checkmk Cloud (SaaS) is designed to monitor IT systems, devices and applications in data center and cloud environments. Checkmk Cloud (SaaS) is not designed to monitor IT systems, devices and applications, the outage of which can lead to harm to life and limb or to exorbitant financial loss. 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 and minimize the impact of possible outages.

3.2 Checkmk Cloud (SaaS) can be used to perform automated actions. Automated actions can cause severe (technical) issues, including system failure. When setting up and/or scripting such actions, the Customer must therefore take the utmost care to limit the possible effects of automated actions.

4 Provision, access and use of Checkmk Cloud (SaaS)

4.1 Customer's access and usage right: Subject to the Customer's compliance with its obligations under the Subscription Agreement, in particular its payment obligations as set out in section 9, the Provider will grant the Customer on a limited, non-exclusive and (subject to section 4.5) non-transferable basis, the right to access and use Checkmk Cloud (SaaS) for its internal business operations and in accordance with the obligations set out in the Subscription Agreement for the number of Licensed Services defined in the applicable Order and as otherwise agreed therein. Notwithstanding section 4.5, Checkmk Cloud (SaaS) must be accessed and used solely by the Customer, the Customer's employees and relevant service providers of the Customer.

4.2 Provision of Checkmk Cloud (SaaS): The Provider will provide Checkmk Cloud (SaaS) in a data center for access and use by the Customer. Checkmk Cloud (SaaS) is deemed to have been provided ready for access and use upon notification of functional access credentials to the Customer by the Provider. The relevant service delivery point for Checkmk Cloud (SaaS) is the router exit of the data center used by the Provider. The Provider is not responsible for failures or unavailability of hardware and software components, telecommunications networks or other networks after such service delivery point. The Customer's connection to telecommunications networks, the maintenance of the network connection and the procurement and provision of the hardware and software required by the Customer are not subject of the Subscription Agreement and are the sole responsibility of the Customer. Further technical details are set out in the Documentation.

4.3 Subcontractors: The Provider is authorized to provide Checkmk Cloud (SaaS) in whole or in part through subcontractors.

4.4 Acceptable use: The Customer acknowledges and agrees to access and use Checkmk Cloud (SaaS) in accordance with the stipulations set out in **Appendix 3 – Acceptable Use Policy**.

4.5 Access and use of Checkmk Cloud (SaaS) by its Affiliates: The Customer may allow its Affiliates to access and use Checkmk Cloud (SaaS), provided that (i) the right of access and use is limited to the contractual use specified in the Subscription Agreement; (ii) such access and use is solely for the relevant Affiliate's own internal business operations; (iii) such access and use must not be intended, in whole or in part, to

circumvent the restrictions on access and use regulated in the Subscription Agreement; and (iv) the Affiliate complies with all restrictions on access and use and obligations applicable to the Customer.

4.6 Responsibility of the Customer for its Affiliates: The Customer is responsible for ensuring that its Affiliates comply with the terms of the Subscription Agreement when using Checkmk Cloud (SaaS), in particular as set out in section 4.5. The Customer will be responsible for the fault of its Affiliates to the same extent as for its own fault.

4.7 No commercial distribution: Notwithstanding the foregoing sections 4.5 and 4.6, the Customer must not access and use Checkmk Cloud (SaaS) to provide services to any third party or otherwise make commercial use of Checkmk Cloud (SaaS) without entering into a separate agreement with the Provider. For purposes hereof, "**Commercial Distribution**" includes (i) providing or offering to provide, any service using Checkmk Cloud (SaaS), on any basis; (ii) receiving compensation from any third party with respect to access and/or use of Checkmk Cloud (SaaS); and/or (iii) receiving compensation for any service that uses Checkmk Cloud (SaaS), including Support Services. The Provider has the right to determine, in its sole discretion, whether any and all access and/or use of Checkmk Cloud (SaaS) by the Customer is to be regarded as a Commercial Distribution.

4.8 Third-party technology: Checkmk Cloud (SaaS) may contain third-party technology (including third party open-source software) which will be made available to the Customer as part of Checkmk Cloud (SaaS) ("**Separately Licensed Third Party Technology**") and which are governed by separate license terms ("**Separate Terms**"). The Customer's rights to use Separately Licensed Third Party Technology under the Separate Terms are not restricted by the Subscription Agreement. The Provider ensures that it uses all Separately Licensed Third Party Technology in accordance with the respective Separate Terms. The Customer must adhere to the Separate Terms. Upon the Customer's request, the Provider will make available to the Customer all relevant Separate Terms.

4.9 Enhancement of Checkmk Cloud (SaaS): The Customer may have access to new versions of Checkmk Cloud (SaaS) which may include functional enhancements or bug and security fixes. The Provider will automatically include such new versions in Checkmk Cloud (SaaS) at its sole discretion and will further notify the Customer of such new versions to Checkmk Cloud (SaaS) at its sole discretion.

4.10 Changes to the monitored systems: Changes to the monitored systems that are monitored using Checkmk Cloud (SaaS) may affect the functionality of Checkmk Cloud (SaaS). Among other things, Checkmk Cloud (SaaS) provides a large number of 'Check Plug-ins' that can be used to monitor Services from various devices and applications. The manufacturers of these devices and applications regularly change their software and interfaces. The Provider and the relevant 'Check Plug-ins' will be adapted to such changes as part of the Subscription Agreement in accordance with the Provider's product roadmap. However, the Provider is under no obligation to make such adaptations.

4.11 Provider's right to suspension: The Provider has the right to investigate and enforce contractual breaches of the Customer as follows:

4.11.1 The Provider is authorized to investigate any suspected breach of the obligations and provisions set out in the Subscription Agreement and in particular this section 4.

4.11.2 The Provider is authorized to suspend Checkmk Cloud (SaaS) and any related services and resources, such as the Support Services, by the Customer and/or an Affiliate of the Customer – temporarily or permanently – with immediate effect if there are concrete indications of (i) a violation of this section 4; (ii) a violation of applicable law; (iii) a material breach of payment obligations by the Customer and/or an Affiliate of the Customer; or (iv) if the Provider has any other legitimate interests in suspending access to and use of Checkmk Cloud (SaaS).

4.11.3 When deciding to suspend the Customer's access to and the use of Checkmk Cloud (SaaS), the Provider will take the legitimate interests of the Customer into account to an appropriate extent and will give the Customer a reasonable prior warning in text form that Checkmk Cloud (SaaS) will be suspended. In individual cases, the Provider may also suspend Checkmk Cloud

(SaaS) without prior warning in order to protect the legitimate interests pursued by the Provider with the suspension, unless prior warning is required by law or for other legal reasons.

4.11.4   The suspension of Checkmk Cloud (SaaS) does not constitute a termination of the Subscription Agreement. The Provider may only maintain the suspension without termination for a reasonable period of time, up to a maximum of three (3) months.

4.11.5   The Provider's claim to payment of the remuneration for Checkmk Cloud (SaaS) will remain unaffected during the suspension. The Customer will be entitled to reinstatement of access once it has proven that it has ceased the respective use in breach of the Subscription Agreement and prevented any future use in breach of the Subscription Agreement.

4.11.6   The Customer agrees to cooperate with the Provider in remedying any breach of the Subscription Agreement that led to a suspension of Checkmk Cloud (SaaS), regardless of who is at fault. In determining whether such a breach has occurred, the Provider may take into account the Customer's ability and willingness to comply with the obligations and provisions set out in this section 4, including the policies and other procedures the Customer has in place to prevent or detect and stop prohibited activities.

4.12   Technical Limitations of Checkmk Cloud (SaaS): Subject to the Subscription Agreement and the specific Service Edition of Checkmk Cloud (SaaS) agreed therein, and subject to general technical limitations, Checkmk Cloud (SaaS) is restricted to a specific number of End Users and a certain number of Licensed Services that the Customer may monitor using Checkmk Cloud (SaaS). Depending on the further technical development of Checkmk Cloud (SaaS) and if available, the Customer may use the self-service functionality within the 'Checkmk Customer Portal' (available at https://portal.checkmk.com) or contact the Checkmk sales team to request an upgrade to another Service Edition of Checkmk Cloud (SaaS) to increase the number of End Users and/or Licensed Services.

5   Support Services

5.1   Services related to support: The Provider will provide support in the handling of software errors or problems that occur during proper use of Checkmk Cloud (SaaS). The handling of software errors comprises narrowing down the cause of the error, error diagnostics and services directed towards correcting the error (in emergency and incident management situations, this may include cloning the Customer's site, which may allow Checkmk to gain technical access to the Customer's resources), which may be handled by an improved configuration, a patch, a workaround, instructions on how to solve the problem or the provision of a new version of Checkmk Cloud (SaaS). The Provider deploys carefully selected personnel with the necessary qualifications to perform the Support Services. No specific outcome or resolution time is owed. Existing rights of the Customer in case of defects remain unaffected. Support Services are provided exclusively via telecommunications. Services that are not covered by the scope of Support Services are specified in **Appendix 1 – Support Services and SLA**. The Provider will evaluate incoming support requests and inform the Customer if a support request is not covered by the scope of Support Services.

5.2   Support specifications: The details of the Support Services are further specified in **Appendix 1 – Support Services and SLA** with regard to support hours, response times.

5.3   Service recipients: If the Customer is allowed to make Checkmk Cloud (SaaS) available to its Affiliates under the Subscription Agreement, such Affiliates may also use the Support Services in addition to the Customer. This will not create any contractual relationship between the Provider and such Affiliates.

5.4   Fair Use Policy: The Provider does not impose a limit to the number of support tickets the Customer can open via the 'Checkmk Support Portal' (available at https://support.checkmk.com/). However, the absence of a limit does not mean that the Customer can open an excessive number of support tickets. Support Services are provided from a pool of finite resources. It is therefore in the interest of the Customer that Support Services are not overused. If the Provider notices an unusually high number of

support tickets, the Provider will inform the Customer and endeavor to find an amicable solution. In order to preserve the availability of Support Services for the Customer and other customers, the Provider ultimately reserves the right to limit the number of support tickets for the Customer in case of excessive use.

6   Modifications and discontinuation of service components

6.1   Subject to this section 6, the Provider may modify Checkmk Cloud (SaaS) to align with current technical developments or comply with changes in the law or jurisdiction, adapt to changes in subcontractor services or with economic circumstances arising after the conclusion of the Subscription Agreement. These modifications may include changes to the technical features and functionalities, provided they remain within the scope defined by this section 6.

6.2   If a modification of Checkmk Cloud (SaaS) not only enhances Checkmk Cloud (SaaS) from the Customer's point of view, but reduces the scope of services specified in the Subscription Agreement or changes it in a manner that is unreasonable for the Customer, the Provider will announce the relevant modification of Checkmk Cloud (SaaS) through appropriate electronic channels in a manner visible to the Customer (e.g., notification by email, publication in the Documentation, the Provider's website or within Checkmk Cloud (SaaS)) within a reasonable period of time, but no later than six (6) weeks in advance, unless a shorter-term adjustment or modification of Checkmk Cloud (SaaS) is necessary to remedy security problems or to implement regulatory changes or changes in the law. For clarification, the following modifications are not to be considered as reducing the scope of services specified in the Subscription Agreement or as unreasonable within the meaning of this provision: (i) the release of new features or functionalities; (ii) routine updates, patches or bug fixes that do not have a material adverse effect on the Customer's access to or use of Checkmk Cloud (SaaS); and (iii) changes to the user interface that do not materially reduce functionality.

6.3   The provisions of the Subscription Agreement apply accordingly to the provision of new features, functionalities, updates or upgrades as well as patches to rectify defects.

6.4   The Provider may discontinue functions of Checkmk Cloud (SaaS) at any time at its own discretion. The Provider will announce such discontinuation or deactivation of a function of Checkmk Cloud (SaaS) at least three (3) months prior to the deactivation, unless (i) an earlier deactivation is necessary due to legal requirements or requirements from an agreement with a third party; or (ii) the continued provision of the function in question represents a security risk for the Provider, the Customer or other customers or represents a significant economic or technical burden for the Provider.

6.5   The Provider may make restrictive changes to Checkmk Cloud (SaaS) if (i) the Provider determines that an unusual low level of use across its customers, including the Customer, of a function, feature or part takes place; (ii) such unusual low level of use is disproportionate to the costs and efforts occurring from the provision of the respective function, feature or part to the Customer; and (iii) such function, feature or part does not form an essential part of the product for the performance of the fundamental contractual obligations. If the defined conditions are met, the Provider may amend the respective Subscription Agreement and the Documentation accordingly. Such modifications may relate to any features or functionality and/or the limitations of Checkmk Cloud (SaaS).

6.6   The Provider will in any case take into account the Customer's interests when discontinuing or modifying any feature or functionality of Checkmk Cloud (SaaS).

7   Customer's duty to cooperate

7.1   For contractual communication and for the provision of access credentials, the Customer must designate a 'Super User'. During the term of the Subscription Agreement, the Customer must keep the contact details of the 'Super User' up to date and inform the Provider of any changes without undue delay. For support requests, the Customer must designate Support Contacts up to the maximum number corresponding to the Customer's support package.

7.2 The Customer is solely responsible for the use and the distribution of access credentials that enable access to Checkmk Cloud (SaaS) or its functionalities by and to relevant third parties, in particular Affiliates (subject to section 4.5) or third-party suppliers of the Customer (e.g., service providers that qualify as 'Checkmk Partners'). The Customer must implement and maintain processes and procedures to prevent unauthorized access to and use of Checkmk Cloud (SaaS) and must notify the Provider as soon as practicable after the Customer becomes aware of any such unauthorized access and/or use and mitigate the root cause, as well as any potential impacts on the Checkmk Cloud (SaaS), e.g., by offboarding/deactivating the respective End User, changing the respective access credentials, etc.

7.3 Support Services may require remote access to a user's screen via screen sharing. If screen sharing is not possible although required for handling the problem, the Provider is under no obligation to provide Support Services.

7.4 Appropriate assistance by the Customer is a prerequisite for a successful processing of support requests. In particular, the Customer must provide a detailed and comprehensible description of the problem and information on the system to be serviced. The Customer must also make the documentation of the system to be serviced available to the Provider upon request. The Customer must respond to additional questions from the Provider without delay.

7.5 The Customer acknowledges that Checkmk Cloud (SaaS) produces regular (daily) backups (backups include the Customer's configuration of Checkmk Cloud (SaaS) and the data generated in relation to the monitoring activities (metrics) in respect of the Licensed Services) and will store such backups for a minimum of fourteen (14) days and a maximum of thirty (30) days. If the Customer requires any additional backups, it is the Customer's responsibility to initiate any additional backups in the admin panel of Checkmk Cloud (SaaS).

7.6 The Customer is obliged to provide the Provider on request with all information about the Customer, its Affiliates and End Users that is necessary for the Provider to fulfill its legal obligations.

8 Term and termination

8.1 Except as otherwise provided in the Subscription Agreement, the Subscription Agreement will remain in effect until terminated.

8.2 The term of the Subscription Agreement will commence on the Effective Date (or, if specified, on the start date indicated in the Order) and will continue for the duration of the Subscription Period. Enhancements, upgrades and add-ons added during a current Subscription Period will run concurrently with the underlying Subscription Period, without establishing a new Subscription Period or separate term, unless expressly agreed otherwise.

8.3 If the Subscription Agreement is not terminated by either party with at least three (3) months notice to the end of the current Subscription Period, the Subscription Period will automatically renew for another Subscription Agreement of the same duration as the current Subscription Period. Any changes to the Subscription Agreement or partial termination of the Subscription Agreement are only possible with effect from the next Subscription Period, subject to the three (3) month notice period.

8.4 Any contractual termination rights expressly granted, including the right to terminate for failure to meet the agreed monthly uptime level of Checkmk Cloud (SaaS) as set out in section 2.3 of **Appendix 1 – Support Services and SLA,** and the right to termination for good cause remain unaffected.

8.5 All notices of termination must be made in text form (e.g., by postal mail, email or fax).

8.6 Upon termination of the Subscription Agreement, the usage rights granted by the Provider to the Customer will terminate.

9 Payment and invoicing

9.1 The Customer must pay the Provider the price stated in the Order as part of the Subscription Agreement in the specified currency for the provision of Checkmk Cloud (SaaS) (the "**Subscription Fees**"). The Provider will invoice the Subscription Fees in advance at the beginning of each Subscription Period. Invoices will be due immediately upon receipt and payable within fourteen (14) days, unless a different payment term is mutually agreed in the Order.

9.2 Checkmk Cloud (SaaS) is offered in different Service Editions. The Customer must select the Service Edition that is expected to cover the required number of Services monitored under the Subscription Agreement during the current Subscription Period.

9.3 The Provider reserves the right to adjust the Subscription Fees at the beginning of each new Subscription Period. The Provider will notify the Customer of any price adjustment at least three (3) months in advance. In the event that the Customer is not in agreement with the price adjustment, the Customer may terminate the Subscription Agreement with effect as of the end of the current Subscription Period. If the Customer does not terminate the Subscription Agreement, the adjusted Subscription Fees will apply as of the beginning of the respective renewal.

9.4 All Subscription Fees are net prices and may be subject to additional taxes (VAT, GST, or similar taxes) at the legal rate currently in effect.

10 Proprietary rights

10.1 Retention of rights: Except as expressly set out in the Subscription Agreement, neither party will receive any right, title or interest in or to any intellectual property or proprietary rights, including copyright rights, moral rights, patent rights (including patent applications and disclosures), know-how, rights of priority, trademark rights and trade secret rights recognized in any country or jurisdiction in the world, including any modifications or enhancements made thereto (collectively and generally, "**Intellectual Property Rights**"), owned by the other party. All rights not expressly granted in the Subscription Agreement are reserved by the parties or their respective licensors. For the avoidance of doubt and except as expressly set out in the Subscription Agreement, the Provider (or, as applicable, its subcontractors and licensors of third-party technology, as set out in section 4.8) own(s) Intellectual Property Rights in Checkmk Cloud (SaaS) and all modifications, enhancements, improvements, derivative works, upgrades, new releases and other alterations of either of the foregoing (even if requested or directed in any form, by the Customer).

10.2 Feedback license: The Customer grants and ensures that the Customer and every of its Affiliates grants (if applicable) to the Provider a worldwide, royalty-free, transferable, sublicensable, irrevocable, perpetual license to use and incorporate into Checkmk Cloud (SaaS) and otherwise to freely exploit without restriction, any recommendations, enhancements, requests, corrections, suggestions or other feedback provided by or on behalf of the Customer relating to the functionality or utilization of Checkmk Cloud (SaaS).

11 Confidentiality

11.1 Each party will treat as confidential all information that it receives from the other party in connection with the Subscription Agreement, its conclusion and/or its execution unless such information is expressly marked as non-confidential or the information is by its nature non-confidential such as, e.g.,

11.1.1 information which the receiving party can demonstrate was already lawfully known to it, other than under an obligation of confidentiality, before the disclosing party first disclosed the information to it;

11.1.2 information which was already in the public domain or readily available at the time of its disclosure or which later enters the public domain or becomes readily available through no breach of the receiving party's duty of confidentiality;

11.1.3   information which one party received in good faith from a third party who had lawfully obtained the information and who was under no duty of confidentiality in relation to the information; or

11.1.4   information which the receiving party independently gained without using confidential information from the disclosing party.

Confidential information includes but is not limited to components of Checkmk Cloud (SaaS) that are not also licensed under an open-source license, access credentials and the prices and contractual conditions individually agreed with the Customer. The duty of confidentiality covers information that one party discloses to an Affiliate of the other party.

11.2   If any information pursuant to section 11.1 does not meet the statutory requirements for a business secret, it will nonetheless be subject to the confidentiality obligations pursuant to this section 11.

11.3   Each party undertakes to treat the other party's confidential information confidentially and to only use it for contractual purposes. Except where the disclosure of confidential information is necessary for the purposes of contractual performance, it may only be disclosed to a third party with the prior written consent of the party to whom it belongs (text form being sufficient). The third party must agree in writing to adhere to the confidentiality obligations contained in this section 11 before the confidential information may be disclosed to it (text form being sufficient).

11.4   Each party undertakes to protect the other party's 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.

11.5   The parties will also bind their employees to comply with confidentiality obligations at least as strict as those set forth under this section 11. Each party is only permitted to share the other party's confidential information with its employees or make the same available to them if they need to know such confidential information for contractual performance.

11.6   The duties of confidentiality will remain in force for the term of the Subscription Agreement and for an additional period of five (5) years thereafter.

12   Data Protection and data utilization by the Provider

12.1   The Provider will process personal data of the Customer and the Customers' employees and other relevant third parties only to the extent necessary for contractual performance. The parties agree on the data processing agreement within the meaning of Art. 28 of the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("**GDPR**"), as set out in **Appendix 2 – Data Processing Agreement**.

12.2   During and after the term of the Subscription Agreement and for the purpose of analyzing the performance of, developing and improving Checkmk Cloud (SaaS) and any other offerings of the Provider, the Provider may collect, aggregate, reproduce, run, create derivative works of, process, use and analyze Service Generated Data. "**Service Generated Data**" means telemetry data, information and all related data about the utilization, delivery, usage or performance and any other analytics functionality of Checkmk Cloud (SaaS) and Licensed Services, including AI Output (if applicable), in an anonymized or aggregated form, generated or derived automatically by Checkmk Cloud (SaaS) or manually by or on behalf of the Provider and conveyed to the Provider by Checkmk Cloud (SaaS) via the internet from time to time. If the Customer actively submits Service Generated Data to the Provider in the context of any additional services or otherwise, e.g., agent dumps or crash dumps, such Service Generated Data may also be used as described in this section 12.2, unless the Customer instructs the Provider otherwise when submitting such Service Generated Data.

12.3   The Provider may also collect, aggregate, reproduce, run, create derivative works of, process, use and analyze Service Generated Data for training, testing, validation and development of algorithms for

machine learning and finding patterns and correlations for purposes in connection with purposes related to AI (e.g., to improve Checkmk Cloud (SaaS) predictive monitoring capabilities and enhance the Customer's experience and interaction with Checkmk Cloud (SaaS)).

13 Utilization of Checkmk Cloud (SaaS) in the context of AI

13.1 The Customer acknowledges and agrees that Checkmk Cloud (SaaS) may utilize AI and/or offer the Customer the ability to generate AI Output, unless expressly agreed otherwise in the Subscription Agreement (e.g., in the form of a chatbot function that enables the Customer to directly ask for specifications of the Documentation). AI Output generated with AI as part of Checkmk Cloud (SaaS) will be labeled as being output of AI.

13.2 Any AI Output generated with AI as part of Checkmk Cloud (SaaS) does not constitute part of the contractual services provided by the Provider to the Customer under the Subscription Agreement.

13.3 The Customer is solely responsible for the use of AI within Checkmk Cloud (SaaS) and any AI Output generated with Checkmk Cloud (SaaS).

13.4 Insofar as Checkmk Cloud (SaaS) contains AI and the Customer uses such AI as part of Checkmk Cloud (SaaS) to generate AI Output or utilize such AI in any other way, the Customer

13.4.1 acknowledges that AI Output is based on technology that may produce incorrect or inaccurate output;

13.4.2 ensures and documents that any AI Output generated utilizing Checkmk Cloud (SaaS) is not processed automatically, but must be carefully reviewed and vetted by a human (including supervision) before being used by the Customer in any way, in particular addressing any logic or syntax errors with the AI Output;

13.4.3 will, as reasonably requested by the Provider, support the Provider to further develop, validate, train and test the AI to meet quality or regulatory requirements (including by providing relevant information and feedback about the AI's capabilities and limitations), in particular to avoid erroneous, distorting or discriminatory AI Output; and

13.4.4 ensures and documents that AI as part of Checkmk Cloud (SaaS) is not utilized to generate discriminatory, distorting or unfair AI Output as well as infringe, misappropriate or otherwise violate Intellectual Property Rights and provide the relevant documentation to the Provider upon request.

13.5 The Provider does not assume or claim any ownership in AI Output, in particular with regard to Intellectual Property Rights. To the extent that under any applicable law or jurisdiction the Provider has any right in the generated AI Output, the Provider assigns such ownership to the Customer, in particular with regard to Intellectual Property Rights.

13.6 Insofar as AI Regulation applies to the provision of Checkmk Cloud (SaaS) or to the Customer's intended utilization of Checkmk Cloud (SaaS), the Customer must only utilize Checkmk Cloud (SaaS) in such a way that compliance with AI Regulation is ensured.

14 Remedies for defects of Checkmk Cloud (SaaS)

14.1 The Provider warrants that Checkmk Cloud (SaaS) will substantially conform to the Subscription Agreement.

14.2 If the Provider is in breach of section 14.1 above, the Provider will remedy the breach upon notice by the Customer if given in text form and in accordance with section 5 and **Appendix 1 – Support Services and SLA**. If the Provider does not comply with such request in due time and subject to section 14.3 and 16 below, further statutory rights remain unaffected.

14.3 The Provider will not be liable if the use of Checkmk Cloud (SaaS) is impaired due to improper utilization of Checkmk Cloud (SaaS) by the Customer.

14.4 The Customer's rights to claim damages due to defects present at the conclusion of the Subscription Agreement, defects arising subsequently due to circumstances for which the Provider is responsible or due to the Provider's delay in remedying such defects, are excluded insofar as they are based on liability regardless of fault. The Customer's right to remedy defects themselves and demand reimbursement of necessary expenses, in cases where the Provider is in default in remedying the defect or immediate action is required to preserve or restore the state of Checkmk Cloud (SaaS), is expressly excluded.

14.5 The Provider assumes no warranty for pre-release versions (e.g., beta versions), versions of Checkmk Cloud (SaaS) provided free of charge. Such versions, functions and functionalities are made available exclusively for testing and evaluation purposes and under no circumstances for productive systems. The Provider will only be liable for such versions, functions and functionalities in case of intent or gross negligence and where the Provider fraudulently conceals a breach of section 14.1 above.

14.6 Any statements regarding the features or fields of use of Checkmk Cloud (SaaS) do not constitute guarantees or guaranteed features in a legal sense, unless they are expressly designated as such.

14.7 Notwithstanding section 16.6 the limitation period for all warranty claims is one (1) year.

15 Remedies for defective Support Services

If the Provider fails to provide the Support Services in conformity with the Subscription Agreement, the Provider will be entitled, at no charge, to re-perform the relevant Support Services to the extent that they can be re-performed and the Customer can be reasonably expected to accept this. The Customer will grant the Provider a reasonable grace period for re-performance. If the Provider fails or refuses to re-perform during the grace period, the Customer may terminate the Subscription Agreement for cause. Any claims for damages or reimbursement of expenses will be limited pursuant to section 16.

16 Limitation of liability

16.1 The Provider will only be liable for damage caused by slight negligence where the damage results from the breach of a material duty that jeopardizes the achievement of the purpose of the contract or from a breach of a duty whose fulfillment is of the very essence for the proper execution of the contract.

16.2 In the cases covered by section 16.1, the Provider's liability is limited to the damage which can be reasonably foreseen for such type of contract.

16.3 In the cases covered by section 16.1, the amount of the Provider's liability is in any event limited as follows:

16.3.1 For each individual occurrence of damage, to a maximum of twenty-five percent (25%) of the Subscription Fees paid to the Provider in the respective Subscription Period; and

16.3.2 for all occurrences of damage during one Subscription Period, to a maximum of fifty percent (50%) of the Subscription Fees paid to the Provider in the respective Subscription Period.

In the case of a multi-year Subscription Period, the limitation of liability applies to the respective current period of twelve (12) month period starting from its respective commencement date. The maximum liability amount is calculated pro rata temporis for this twelve (12) month period.

16.4 The Provider excludes all liability for lost profits in the cases covered by section 16.1.

16.5 The Provider will only be liable for loss of data and programs and outages if (i) the damage could not have been avoided even by taking appropriate precautions to avoid loss of data (in particular, by creating, at least on a daily basis, backups of all programs and data) and by taking appropriate precautions in line with the state-of-the-art technology to avoid outages (in particular by preparing

disaster recovery plans); or (ii) the damage was caused by gross negligence or intentional wrongdoing on the Provider's part. All liability for loss of data is subject to the other restrictions in this section 16.

16.6   All claims for damages and indemnification by the Customer arising from or in connection with the Subscription Agreement are time-barred no later than one (1) year from the date the respective reason of the claim arises.

16.7   Except in cases where a guarantee has been provided, damage results from intentional wrongdoing or fraudulent concealment of errors or where personal injuries occur, the above limitations on liability apply to all claims for damages and reimbursement of expenses, irrespective of their legal basis and including claims based on tort.

16.8   The above limitations on liability also apply where a claim for damages is brought against an employee or an agent of the Provider.

17   Indemnification

17.1   The Provider will defend the Customer from and against any and all claims, demands and actions (hereinafter each an "**Action**") incurred by or asserted against the Customer by a third party to the extent that such Action results from the infringement of the contractually permitted use of Checkmk Cloud (SaaS) upon the third party's Intellectual Property Rights and will as a result reimburse the Customer for any damages (including reasonable attorney's fees incurred by the Customer that are specifically attributable to such Action) finally awarded against the Customer by a competent court or those costs and damages agreed to in a monetary settlement of such an Action (to which the Provider has expressly consented), provided that the Customer (i) promptly, but not later than within ten (10) days from the knowledge of the Action, notifies the Provider of such Action after it becomes aware of it; (ii) gives the Provider the right to control and direct the preparation of a defense at the Provider's expense to the extent permitted by applicable law; (iii) provides reasonable cooperation to the Provider for the defense of such Action at the Provider's sole cost and expense; and (iv) does not make any admission in respect of the liabilities without the consent of the Provider.

17.2   The Provider will have no obligation of defense or indemnification or otherwise with respect to any Action relating to (i) any cases as described in section 14.5; (ii) any situation where the Customer continues the allegedly infringing activity after being notified thereof and is provided with reasonably acceptable modifications, replacements or other remedies that would have avoided the alleged infringement; (iii) an Action that does not relate with specificity to Checkmk Cloud (SaaS); (iv) the use or combination of Checkmk Cloud (SaaS) or any part thereof with materials not developed by the Provider where Checkmk Cloud (SaaS) or use thereof would not constitute infringement but for said combination; or (v) with regard to patent claims, an Action where Checkmk Cloud (SaaS) consists of a function, system or method that utilizes functionality that is in general use in the industry.

17.3   The Customer must defend, indemnify and hold the Provider harmless against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim (i) that alleges that a use of Checkmk Cloud (SaaS) by the Customer, which is not in accordance with the Subscription Agreement, infringes or misappropriates any right of a third party, in particular Intellectual Property Rights of a third party; (ii) that results or arises from the Customer providing access credentials or any other access data regarding Checkmk Cloud (SaaS) to unauthorized third parties contrary to the terms of the Subscription Agreement; (iii) that results or arises from any data, information or other input entered into Checkmk Cloud (SaaS) by the Customer, as well as any use that violates the acceptable use of Checkmk Cloud (SaaS) as set out in **Appendix 3 – Acceptable Use Policy**; or (iv) that results or arises from Customer's violation of applicable law (each a "**Customer Misuse Claim**"), provided that a Customer Misuse Claim is caused by the Customer's fault or negligence. The Provider will (i) promptly give the Customer written notice, including a copy of all related communication, after becoming aware of a Customer Misuse Claim (text form being sufficient); (ii) give the Customer sole control of the defense, litigation, negotiation and settlement of a Customer Misuse Claim (provided that

the Customer may not settle or defend any Customer Misuse Claim unless it unconditionally releases the Provider of all liability); and (iii) give the Customer all reasonable assistance at the Customer's expense.

18 Export control

18.1 The Customer must comply with all relevant national, European and – if applicable – U.S. export control laws and regulations, including their sanctions and embargoes, in their respective valid versions ("**Export Control Regulations**") when accessing, using, and, if applicable, making available Checkmk Cloud (SaaS), data and information ("**Export Data**") that the Provider provides.

18.2 Prior to accessing, using and/or making available the Export Data or carrying out any other activity in connection with the Export Data provided by the Provider ("**Transfer of the Export Data**"), the Customer must, inter alia, verify and ensure through the adoption of suitable measures

    18.2.1 that the Transfer of the Export Data does not violate the provisions of any EU and – if applicable – U.S. embargo including account restrictions on domestic transactions and prohibitions of circumvention that are specified therein;

    18.2.2 that the Export Data will not be used for nuclear purposes, purposes related to weapons of mass destruction WMD or for military purposes in a country under an arms embargo ("**Sensitive Uses**") or transferred to third parties who intend to use the data for Sensitive Uses;

    18.2.3 that the EU and – if applicable – U.S. sanctions lists (i.e., those of the U.S. authorities BIS and OFAC) concerning business transactions with the persons, companies and organizations specified therein are complied with; and

    18.2.4 that the Export Data will, in particular, not be passed on to persons or companies based in Belarus, on Crimea, in Cuba, in Iran, in North Korea, in Russia, in Sudan or in Syria.

18.3 The Subscription Agreement is concluded and performed by the Provider subject to the condition that there are no restrictions based on the Export Control Regulations (i.e., prohibitions, licensing obligations), which stand in the way of conclusion of contract or performance.

18.4 The Customer must indemnify and hold the Provider harmless from and against all actions and claims resulting from a violation of this section 18, unless the Customer is not responsible. The Customer must compensate the Provider for any damage, loss or costs that the Provider incurs due to a violation of section 18, unless the Customer is not responsible.

19 Trial Version

19.1 The Provider may provide the Customer with the one-time possibility to access and use Checkmk Cloud (SaaS) or parts thereof restricted to a limited number of Licensed Services on a trial basis and/or free of charge basis ("**Trial Version**") by means of a self sign-up process on the Provider's website or through other sign-up channels made available by the Provider. The statutory provisions of the law on gratuitous loans apply.

19.2 The Provider will provide details about the duration and scope of such Trial Version directly on its website. The Trial Version will automatically terminate after the period specified there.

19.3 The Customer must only use a Trial Version for internal evaluation and testing purposes. In particular, the Customer is not authorized

    19.3.1 to use a Trial Version in a productive environment (meaning any environment in which Checkmk Cloud (SaaS) is used to process operational or business activities, in particular in connection with the processing of real data of the Customer or any third party that have a direct impact on the business activities of the Customer or third parties); and

19.3.2 to exchange or change authorized users without the express consent of the Provider (at least in text form) or to enable third parties, other than relevant third-party suppliers engaged by the Customer, to access the Trial Version, in particular by passing on access data;

19.3.3 to use a Trial Version to provide and/or make available services to third parties or to offer the provision and/or making available of services using a Trial Version.

The Provider will decide in its sole discretion whether the use of a Trial Version meets the requirements of this section 19.3.

19.4 The Provider may offer the Customer continuation and/or upgrade of a Trial Version against payment of the applicable Subscription Fees. In such a case, section 9 applies accordingly.

19.5 The Provider provides any Trial Version to the Customer in any case on an "as-is" basis. In this regard, the Provider does not warrant any functionalities or other specifications for the respective Trial Version, in particular regarding its availability (as described in **Appendix 1 – Support Services and SLA**).

19.6 The Provider may at any time, at its sole discretion, without prior notice and without cause, modify, expand, limit or terminate the content, structure and scope of any Trial Version.

19.7 The Provider is not obliged to provide Support Services for a Trial Version.

19.8 With the exception of cases (i) of willful misconduct or gross negligence; or (ii) where the Provider fraudulently conceals a breach of section 14.1 above, the Provider neither warrants nor is liable for any features, functions, functionalities of any Trial Version.

19.9 The Customer acknowledges that Checkmk Cloud (SaaS) may not produce regular backups of any data of the Customer when used within a Trial Version.

20 Force Majeure

If the provision of Checkmk Cloud (SaaS) is delayed or temporarily impossible due to circumstances which the Provider could not have foreseen even with the greatest care that could reasonably be expected (e.g., epidemics, pandemics, fires, explosions, power failures, earthquakes, floods, severe storms, strikes, embargoes, acts of civil or military authorities, war, terrorism (including cyber-terrorism), a network failure for which the Provider is not responsible) (hereinafter each such cause a "**Force Majeure**"), the performance deadlines will be extended by a period corresponding to the duration of the Force Majeure. The Provider will immediately inform the Customer in text form of the impossibility of providing Checkmk Cloud (SaaS). If the Force Majeure lasts for a continuous period of more than ninety (90) days, the Customer will be entitled to terminate the Subscription Agreement in text form with immediate effect and without notice. In this case, the Customer will pay the Provider the agreed Subscription Fees for Checkmk Cloud (SaaS) already provided; the Provider reserves the right to assert further statutory claims against the Customer.

21 Final provisions

21.1 The Subscription Agreement comprises the entire agreement between the parties concerning the subject matter hereof and supersedes any prior agreements between them. Any provisions in the Customer's general terms and conditions which conflict with, vary from or add to the GTC will only become part of the Subscription Agreement if and to the extent that the Provider has expressly consented to them. This requirement of consent will apply in any case, even if the Provider, for example, provides goods and services without reservation despite being aware of the Customer's general terms and conditions. The registration of the Provider at a supplier portal of the Customer or another platform, which is necessary for the execution of the contractual relationship and which requires consent to terms and conditions of the Customer, will not be considered as explicit consent. Such terms and conditions will not become part of the Subscription Agreement.

21.2   To the extent there is a conflict between different elements of the Subscription Agreement, the following precedence will apply: (i) **the Order**; (ii) **Appendix 1 – Support Services and SLA**; (iii) **Appendix 2 – Data Processing Agreement**; (iv) **Appendix 3 – Acceptable Use Policy**; (v) the main body of the GTC; and (vi) any other referenced documents.

21.3   Amendments or additions will only be effective if the Provider has made the relevant declaration of intent at least in text form (e.g., by postal mail, email or fax). The same applies to any waiver of the text form requirement.

21.4   Should any provision be or become invalid in whole or in part, this will not 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.

21.5   The Provider reserves the right to amend or update the GTC at any time if this is necessary for legal, technical or operational reasons. Amendments to the GTC will be communicated to the Customer at least six (6) weeks before they enter into force. The amended GTC will become part of the Subscription Agreement, provided that the Customer agrees to the amendments. If the Customer does not agree to the amendments within a period specified by the Provider, which will be at least thirty (30) days, the Subscription Agreement will remain unchanged. In this case, the Provider will be entitled to termination for cause of the Subscription Agreement with six (6) weeks' notice if, for technical or legal reasons, the continued contractual performance is impossible or cannot reasonably be expected without the amendments to the GTC. In the notification concerning the GTC amendments, the Provider will inform the Customer of the possibility of termination for cause.

21.6   Customer grants the Provider the right to use Customer`s company name and logo on the Provider`s website, customer lists and marketing materials to represent that the Customer is a Customer of Provider and uses Checkmk Software products and services.

21.7   German law applies, 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.

21.8   The courts of Munich, Germany, will have exclusive jurisdiction over any disputes arising out of or in connection with the Subscription Agreement, including its validity. The Provider reserves the right to bring action at the place of performance or at the Customer's general place of jurisdiction. Overriding statutory provisions, in particular on exclusive jurisdiction, will remain unaffected.

Appendices to the GTC:

Appendix 1 – Support Services and SLA

Appendix 2 – Data Processing Agreement

Appendix 3 – Acceptable Use Policy

Appendix 1 – Support Services and SLA

1   General

1.1   All terms defined elsewhere in the Subscription Agreement apply mutatis mutandis to this **Appendix 1 – Support Services and SLA**.

1.2   The Provider warrants a certain monthly uptime of Checkmk Cloud (SaaS) as set out in section 2 of this **Appendix 1 – Support Services and SLA** and, in addition, certain Support Services as described in section 5 of the main body of the GTC and further specified in sections 4, 5 and 6 of this **Appendix 1 – Support Services and SLA**.

2   Uptime of Checkmk Cloud (SaaS)

2.1   In the context of availability, the following additional definitions apply:

2.1.1   **"Downtime"** is the total accumulated minutes in a calendar month during which no End User of the Customer is able to access Checkmk Cloud (SaaS) subscribed to by the Customer as defined in the Subscription Agreement (i.e., no End User is able to log in to the Checkmk Cloud using the access credentials provided by the Provider). Downtime does not include (i) Events beyond the Provider's Control as defined below in section 2.1.2 of this **Appendix 1 – Support Services and SLA**; (ii) Downtimes during Maintenance Windows as defined below in section 2.1.3 of this **Appendix 1 – Support Services and SLA** and/or Downtimes of less than one (1) minute per hour; and (iii) Downtimes required for the installation of security fixes (proactive risk management). The point of delivery relevant for the calculation of Downtimes is the interface between the servers on which Checkmk Cloud (SaaS) is hosted and the Internet.

2.1.2   **"Events beyond the Provider's Control"** are the events as further specified in section 3 of this **Appendix 1 – Support Services and SLA** below.

2.1.3   **"Maintenance Windows"** are periods of time during which the Provider performs maintenance works that cause unavailability of Checkmk Cloud (SaaS) as defined at https://checkmk.atlassian.net/wiki/x/AYA4E and updated by the Provider from time to time, including, in particular, daily and planned maintenance windows for Checkmk Cloud (SaaS). The Provider offers the possibility to subscribe to the notification process via-email to inform the Customer about planned maintenance windows or other bigger outages at status.checkmk.cloud

2.1.4   **"Monthly Uptime Percentage"** means the total number of minutes in a calendar month, minus the number of minutes of Downtime in such month, the result of which being divided by the total number of minutes in such month, multiplied by 100.

2.2   The Provider warrants a Monthly Uptime Percentage of 99.5% for Checkmk Cloud (SaaS).

2.3   In the event that the Monthly Uptime Percentage is not met in two (2) consecutive calendar months with respect to the provision of Checkmk Cloud (SaaS), the Customer is entitled to terminate the Subscription Agreement with immediate effect. This right must be exercised within thirty (30) days after the end of the second consecutive calendar month in which the Monthly Uptime Percentage was not met by sending a notification via email to sales@checkmk.com including all information reasonably technically necessary for the Provider to verify the request.

3   Events beyond the Provider's Control

3.1   The following events are beyond the reasonable control of the Provider and are not taken into account for determining the Monthly Uptime Percentage, meaning they are therefore not included as Downtimes in the calculation of the Monthly Uptime Percentage:

3.1.1   Events in public cable networks, computer networks or the internet that occur outside the

sphere of influence of the Provider and temporarily or permanently impair or even exclude the access to and use of Checkmk Cloud (SaaS) and for which the Provider is not responsible;

3.1.2 events beyond the control of the Provider in which the availability of the servers of the Provider or its subcontractors is impaired or even excluded due to technical or other problems (including but not limited to Force Majeure, fault of third parties including denial-of-service (DoS) and distributed-denial-of-service (DDoS) attacks, network intrusions, etc.) for which the Provider is not responsible, taking into account customary market standards;

3.1.3 suspension of access to or use of Checkmk Cloud (SaaS) in exercise of the Provider's rights in accordance with the terms of the Subscription Agreement in the event of a breach of obligations by the Customer;

3.1.4 events resulting from the use of services, hardware or software provided by a third party and not within the control of the Provider, including issues resulting from inadequate bandwidth;

3.1.5 events resulting from the Customer's unlawful or contract-violating action or lack of action when required, including those of the End Users or by means of the Customer's passwords; and

3.1.6 unavailability due in whole or in part to any of the following: failure by the Customer to take any remedial action in relation to Checkmk Cloud (SaaS) as contractually agreed or reasonably required by the Provider or otherwise preventing the Provider from doing so or the Customer's failure to provide information reasonably and lawfully required by the Provider in order to provide Checkmk Cloud (SaaS).

4 Specifications of the Support Services

The Support Services are further specified as follows:

		Specifications
Number of Support Contacts		7
Interactive ticket system[1]		yes
Support availability[2]		10 hours / 5 days
Support hours		8am - 6pm CET/CEST
Response time[3]	Critical (L1)	4 hours
	Significant (L2)	8 hours
	Limited (L3)	next business day
	Minimal (L4)	2 business days

1) Support requests can be made by the Support Contacts via the 'Checkmk Support Portal' (available at https://support.checkmk.com/).
2) Support is available Monday through Friday except for national public holidays in Germany.
3) Response time means that the Provider responds to the Customer's support request via the 'Checkmk Support Portal' (available at https://support.checkmk.com/) within the agreed period after having received a sufficiently detailed description of the specific error or problem and begins processing the support request. Response times are tiered according to severity level. Response times are measured only during the applicable support hours. Time lying outside the applicable support hours will not count towards the response time.

5 Exclusions

5.1 Support Services do not include the following services, which may be obtained under a separate agreement:

5.1.1 Handling of problems caused by third-party systems (e.g., firewall or ESX configurations) or by the use of Customer-specific scripts (e.g., scripts to link third-party systems);

5.1.2 Handling of problems in connection with functions and functionalities (including language versions) that are marked as "not supported";

5.1.3 Development, customization or enhancement of features and functionalities (e.g., of check plug-ins or of robot framework tests in the context of 'Synthetic Monitoring');

5.1.4 Development of Customer-specific integrations or scripts;

5.1.5 Installation or configuration of Checkmk Software and of integrations as well as installation of updates and upgrades. Assistance with specific questions or problems in this context is included in the Support Services, but no detailed step-by-step guidance will be provided;

5.1.6 Optimization of the configuration or performance enhancements.

6 Definition of severity levels

The severity level is determined by the Provider at its reasonable discretion on the basis of the Customer's problem description in accordance with the definition of severity levels.

6.1 Level 1: Critical business impact

6.1.1 Full loss of service that cannot be resolved by restarting.

6.1.2 No workaround is immediately available.

6.1.3 Impact on business operations must be critical.

6.2 Level 2: Significant business impact

6.2.1 The monitoring is usable, but major functionality is severely impaired and no acceptable workaround is available.

6.2.2 Issue is critical to the Customer's business operations:

    i. Critical component returning error / not responding, but Checkmk overall remains operational.
    ii. A degraded Checkmk performance with serious negative business impact.

6.3 Level 3: Limited business impact

6.3.1 Checkmk is usable, but non-critical functionality is impaired:

    i. An issue important to long-term productivity that is not causing an immediate work stoppage.
    ii. A noncritical issue important to long-term productivity that is not causing an immediate work stoppage.
    iii. Degraded performance of Checkmk that leads to minor disruptions to business operations; an acceptable workaround exists.

6.3.2 Performance issues of Checkmk that only occur with a small part of the Customer's group.

6.3.3 All problems with plug-ins or local checks.

6.4 Level 4: Minimal business impact

The problem has no significant impact on business operations or an acceptable workaround has been implemented:

    i. General information requests, such as "how-to".
    ii. Issue with little or no impact on quality, performance, or functionality.
    iii. Issues in the Documentation or non-functional issues in the user interface (such as translation errors or editorial errors).
    iv. The issue is essentially resolved but remains open for Customer confirmation.

Appendix 2 – Data Processing Agreement

1 General

This **Appendix 2 – Data Processing Agreement** (hereinafter "**DPA**") applies to the offering provided by the Provider to the Customer based on the Subscription Agreement effective from the Effective Date regarding the provision of Checkmk Cloud (SaaS).

2 Definitions

All terms defined elsewhere in the Subscription Agreement apply mutatis mutandis to this DPA. In addition, the following definitions apply:

2.1 "**Business Operations**" means such Personal Data processing activities where the Customer and the Provider agree that the Provider may carry out for its own internal purposes.

2.2 "**Controller**" means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data; for the purposes of this DPA.

2.3 "**Data Protection Law**" means the applicable legislation, in multiple jurisdictions worldwide, that relate to (i) protecting the fundamental rights and freedoms of persons and their right to privacy with regard to the processing of Personal Data under the Subscription Agreement; or (ii) protecting, securing, processing, transferring, storing or preventing unauthorized access to Personal Data. Data Protection Law includes, as far as it concerns the relationship between the parties regarding the processing of Personal Data by the Provider, the GDPR as a minimum standard, irrespective of whether the Personal Data is subject to GDPR or not.

2.4 "**Data Subject**" means an identified or identifiable natural person as defined by Data Protection Law.

2.5 "**EEA**" means the European Economic Area, namely the European Union member states along with Iceland, Liechtenstein and Norway.

2.6 "**EU**" means the European Union.

2.7 "**Personal Data**" means any information relating to a natural person that is subject to Data Protection Law. For the purposes of this DPA, it includes only personal data which is (i) entered by the Customer into or derived from their use of Checkmk Cloud (SaaS); or (ii) supplied to or accessed by the Provider and/or its Sub-processors in order to provide any additional services under the Subscription Agreement (as set out in the Subscription Agreement).

2.8 "**Personal Data Breach**" means a confirmed (i) accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or unauthorized third-party access to Personal Data; or (ii) similar incident involving Personal Data, in each case for which the Customer is required under Data Protection Law to provide notice to competent data protection authorities and/or Data Subjects.

2.9 "**Processor**" means a natural or legal person, public authority, agency or other body which processes personal data on behalf of its client, be it directly as the processor of a client or indirectly as sub-processor of the processor which processes personal data on behalf of the client.

2.10 "**Sub-processor**" means the Provider's Affiliates and third parties engaged by the Provider in connection with Checkmk Cloud (SaaS) and which process Personal Data in accordance with this DPA.

3 Structure

3.1 The Provider will process Personal Data as Processor on behalf of the Customer as Controller, except where the Provider processes Personal Data carrying out its Business Operations in which case the

Provider acts as Controller (this concerns the processing of Service Generated Data in accordance with section 12.2 of the GTC).

3.2   The parties agree that it is each party's responsibility to review and adopt requirements imposed on controllers and processors by the GDPR.

3.3   The **Schedule** to this DPA is incorporated into and forms part of this DPA. It sets out the agreed subject-matter, the nature and purpose of the processing, the type of Personal Data and categories of Data Subjects.

4   Security of processing

4.1   Appropriate technical and organizational measures: The Provider has implemented and will apply appropriate technical and organizational measures throughout the term of the Subscription Agreement (as set out at https://trust.checkmk.com//d/technical-and-organizational-measures-to-ms/gz3Fx9 as of the Effective Date).

4.2   Changes: The Provider may change the implemented measures (as set out at https://trust.checkmk.com//d/technical-and-organizational-measures-to-ms/gz3Fx9 as of the Effective Date) at any time without notice so long as it maintains a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data.

5   The Provider's obligations

5.1   Instructions from the Customer: The Provider will process Personal Data only in accordance with documented instructions from the Customer. The Subscription Agreement (including this DPA) constitutes such documented initial instructions and each use of Checkmk Cloud (SaaS) by the Customer then constitutes further instructions. The Provider will follow any other instructions of the Customer, as long as they are required by Data Protection Law, technically feasible and do not require changes to Checkmk Cloud (SaaS), except for standard configurations. If any of the before-mentioned exceptions apply or the Provider otherwise cannot comply with an instruction or is of the opinion that an instruction infringes Data Protection Law, the Provider will immediately notify the Customer (email permitted).

5.2   Processing on legal requirement: The Provider may also process Personal Data where required to do so by applicable EU or member state law. In such a case, the Provider will inform the Customer of that legal requirement before processing unless that law prohibits such information on important grounds of public interest.

5.3   Personnel: To process Personal Data, the Provider and its Sub-processors will only grant access to authorized personnel who have committed themselves to confidentiality. The Provider and its Sub-processors will regularly train personnel having access to Personal Data in applicable data security and data privacy measures.

5.4   Cooperation: At the Customer's request, the Provider will reasonably cooperate with the Customer in dealing with requests from Data Subjects or regulatory authorities regarding the Provider's processing of Personal Data or any Personal Data Breach. The Provider will promptly and in any event not later than reasonably required under applicable Data Protection Law, notify the Customer as soon as reasonably practical about any request it has received from a Data Subject in relation to the Personal Data processing, without itself responding to such request without the Customer's further instructions, if applicable. The Provider will provide functionality that supports the Customer's ability to correct or remove Personal Data from Checkmk Cloud (SaaS) or block access to or restrict its processing in line with Data Protection Law. Where such functionality is not provided, the Provider will correct or remove any Personal Data or block access to or restrict its processing, in accordance with the Customer's instruction and Data Protection Law; apart from this, the Customer may also access its Personal Data at any time during the term of the Subscription Agreement. The Provider may upon mutual agreement

between the parties, provide other information and reasonable assistance as may be required – beyond sentence 1 of this section 5.4 of this DPA or the purpose of responding to any such Data Subjects or otherwise to comply with duties under applicable Data Protection Law.

5.5 Personal Data Breach notification: The Provider will notify the Customer without undue delay if required by Data Protection Law, after becoming aware of any Personal Data Breach and provide reasonable information in its possession regarding the Personal Data Breach to assist the Customer to report a Personal Data Breach as the Provider is required to under Data Protection Law; other assistance may be provided upon mutual agreement. The Provider may provide such information in phases as it becomes available. Such notification must not be interpreted or construed as an admission of fault or liability by the Provider. Unless required by Data Protection Law, the Provider will not inform any third party of any Personal Data Breach without first obtaining the Customer's prior consent at least in text form.

5.6 Data protection impact assessment: If, pursuant to Data Protection Law, the Customer is required to perform a data protection impact assessment or prior consultation with a regulator, at the Customer's request, the Provider will provide such documents as are generally available for Checkmk Cloud (SaaS) (e.g., this DPA, the GTC, audit reports or certifications). Any additional assistance will be mutually agreed between the parties.

6 Data return and deletion

Upon termination of the Subscription Agreement, the Customer must instruct the Provider whether the Personal Data should be deleted or returned to the Customer (i.e., by means of a technical export, which will constitute a "return") in accordance with Data Protection Law. Following such return or deletion, the Provider will retain Personal Data only if and to the extent required under EU or member state law. If the Customer fails to provide such instructions, the Provider will retain the relevant Personal Data for a reasonable period of time and then delete it.

7 Audits

7.1 Customer audit: The Customer or its independent third-party auditor reasonably acceptable to the Provider (which will not include any third-party auditors who are either a competitor of the Provider or not suitably qualified or independent) may audit the Provider's control environment and security practices relevant to Personal Data processed by the Provider if:

7.1.1 the Provider has not provided sufficient evidence of its compliance with the technical and organizational measures that protect the systems of Checkmk Cloud (SaaS) through providing either (i) a certification as to compliance with ISO 27001 or other standards (scope as defined in the certificate); or (ii) a valid ISAE3402 and/or ISAE3000 or other SOC1-3 attestation report. Upon the Customer's request audit reports or ISO certifications are available through the third-party auditor or the Provider;

7.1.2 a Personal Data Breach has occurred;

7.1.3 an audit is formally requested by the Customer's data protection authority; or

7.1.4 Data Protection Law provides Customer with a direct audit right and provided that Customer will only audit once in any twelve (12) month period unless Data Protection Law requires more frequent audits.

7.2 Further requirements: Audits of the Provider's control environment and security practices relevant to the Customer's Personal Data processed by the Provider under this DPA are subject to the condition that it can be technically ensured that during an audit no access can be gained to data that is not processed within the scope of the Subscription Agreement with the Customer and in particular to data of other customers of the Provider. The Provider may refuse to provide information or access to the Provider's business premises and IT systems if and to the extent that this could violate confidentiality obligations

of the Provider. The Provider makes available to the Customer all information necessary to demonstrate compliance with its obligations which are hereby agreed upon.

7.3 Scope of audit: Except in the event of a Personal Data Breach, the Customer will provide at least sixty (60) days advance notice of any audit unless mandatory Data Protection Law or a competent data protection authority requires shorter notice (or sooner if mutually agreed upon by the parties). The Customer audits will be limited in time to a maximum of three (3) business days, unless otherwise agreed to between the parties. The Customer will provide the results of any audit to the Provider.

7.4 Cost of audits: The Customer will bear the costs of any audit unless such audit reveals a material breach by the Provider of this DPA, then the Provider will bear its own expenses of an audit. If an audit determines that the Provider has breached its obligations under this DPA, the Provider will promptly remedy the breach at its own cost.

8 Sub-processors

8.1 Permitted use: The Provider is granted a general authorization to subcontract the processing of Personal Data to Sub-processors, as follows:

8.1.1 The Provider will engage Sub-processors under a written (including in electronic form) contract consistent with the terms of this DPA in relation to the Sub-processor's processing of Personal Data and the Provider will be fully liable for any breaches by and all acts and omissions of its Sub-processors in accordance with this DPA.

8.1.2 The Provider will exercise appropriate due diligence in selecting Sub-processors and will evaluate the security, privacy and confidentiality practices of a Sub-processor prior to selection to establish that it is capable of providing the level of protection of Personal Data required by this DPA and the Provider will regularly evaluate each Sub-processor's security practices as they relate to data handling.

8.1.3 The Customer authorizes the Provider to subcontract the Sub-processors to provide Checkmk Cloud (SaaS) (as listed at trust.checkmk.com/#subprocessors as of the Effective Date, including the name, location of processing and role of each Sub-processor).

8.2 New Sub-processors: The Provider will update the list of Sub-processors (as listed at trust.checkmk.com/#subprocessors) when appointing a new Sub-processor, including name, location of processing and role of the new Sub-processor. Customers can automatically be notified of changes to Sub-processors by subscribing to receive Trust Center notifications at https://trust.checkmk.com/#subprocessors. The Customer may object to such changes as set out in section 8.3 of this DPA below.

8.3 Objections to new Sub-processors: The Customer may object to any new proposed Sub-processors as follows:

8.3.1 If the Customer has a legitimate reason to object to the new Sub-processors' processing of Personal Data, the Customer may terminate the Subscription Agreement for which the new Sub-processor is intended to be used on written notice to the Provider (text form being sufficient). Such termination will take effect at the time determined by the Customer which will be no later than fourteen (14) days from the date of the Provider's notice to the Customer informing the Customer of the new Sub-processor. If the Customer does not terminate within this fourteen (14) day period, the Customer is deemed to have accepted the new Sub-processor.

8.3.2 Within the fourteen (14) day period from the date of the Provider's notice to the Customer informing the Customer of the new Sub-processor, the Customer may request that the parties come together in good faith to discuss a resolution to the objection. Such discussions will not extend the period for termination and do not affect the Provider's right to use the new Sub-processor(s) after the fourteen (14) day period.

8.3.3 Any termination under this in section 8.3 of this DPA will be deemed to be without fault by either party and will be subject to the terms of the Subscription Agreement; provided, that no fee or penalty will be payable by the Customer in connection with such termination.

8.4 Emergency replacement: The Provider may replace a Sub-processor without advance notice where the reason for the change is outside of the Provider's reasonable control and prompt replacement is required for security or other urgent reasons, subject to sections 8.1.1 and 8.1.2 of this DPA above. In this case, the Provider will inform the Customer of the replacement Sub-processor as soon as possible following its appointment. Section 8.3 of this DPA applies accordingly.

9 International processing

The Provider is authorized to transfer Personal Data to countries outside the EU/EEA. If Personal Data processed under the Subscription Agreement and this DPA is transferred from a country within the EU/EEA to a country outside the EU/EEA, the parties will ensure that the Personal Data are adequately protected. To achieve this, the Provider will, unless agreed otherwise, only transfer Personal Data outside the EU/EEA in accordance with the requirements of chapter V of the GDPR.

10 Documentation; records of processing

Each party is responsible for its compliance with its documentation requirements, in particular maintaining records of processing where required under Data Protection Law. Each party will reasonably assist the other party in its documentation requirements, including providing the information the other party needs from it in a manner reasonably requested by the other party (such as using an electronic system), in order to enable the other party to comply with any obligations under Data Protection Law relating to maintaining records of processing. The Provider will make such records available to the Customer or a supervisory authority upon request, both in accordance with Data Protection Law.

Schedule to this DPA:

Schedule – Details of the Data Processing

Schedule – Details of the Data Processing

Description	Details
Categories of Data Subjects	The Data Subjects include (i) users authorized by the Customer to use Checkmk Cloud (SaaS) and (ii) users of monitored systems as determined at the Customer's sole discretion.
Categories of Personal Data	- The Customer is required to provide certain Personal Data in order to use Checkmk Cloud (SaaS) (including master data such as first and last name, job title, telephone number, address and email addresses of End Users and Support Contacts (as applicable). - Data required for client authorization (including names of End Users, email addresses, permission roles of specific administrators and/or end-users as well as access credentials). - Client log files and application log files related to the use of Checkmk Cloud (SaaS) itself (including IP addresses, email addresses, system status data). - Data required for Checkmk to perform the Support Services. - Telemetry data such as (but not limited to) (i) number and types of hosts and services; (ii) ruleset configurations; (iii) user admin panel interactions; (iv) number and type of notifications sent; and (v) log in frequency. - The Customer may submit additional Personal Data to Checkmk Cloud (SaaS), the extent of which is determined and controlled by the Customer at its sole discretion.
Sensitive data processed (if any) and any restrictions or safeguards applied that are appropriate to the nature of the data and the risks associated with it, such as strict purpose limitation, access restrictions (including access only for employees who have received special training), records of access to the data, restrictions on further transfers or additional security measures	The Provider aims for a protection level for the parties concerned by data processing appropriate to the nature and extent of the risk for rights and liberties. The Provider is using the principle of least privilege for all its internal access needs, with a focus on limiting any access to the system environment of Checkmk Cloud (SaaS). Access to all systems of the Provider is automatically logged within their respective environment and the log data is also shipped to a designated account that only auditors and security engineers can access. The logs of the Customer are kept separate from the application logs of the Provider, within the region, where they can only be accessed with consent from the Customer during an investigation.
Frequency of transmission (e.g., whether transmission is one-time or	- Master data is collected once for the authentication and

ongoing)	authorization of the Customer and relevant End Users.
	- Client log files and application log files are transmitted on an ongoing basis for each user session.
	- Frequent monitoring of related data with each scan interval (typically once per minute but can be more frequent depending on the scan and configuration).
Purpose(s) of the processing	- To enable the Provider to provide services to the Customer based on the Subscription Agreement effective from the Effective Date regarding the provision of Checkmk Cloud (SaaS) including the Support Services and exercise its right and obligations under the Subscription Agreement.
	- To enable the Provider to collect and analyze Service Generated Data, in particular telemetry data, for the purpose of performance analysis and improvement of Checkmk Cloud (SaaS).
Duration for which the Personal Data will be stored or, if this is not possible, the criteria for determining this duration	The Provider stores Personal Data for the duration of the term of the Subscription Agreement regarding the provision of Checkmk Cloud (SaaS) and Support Services and for as long as needed for the respective purpose.

Appendix 3 – Acceptable Use Policy

1 General

1.1 In order for the Provider to provide Checkmk Cloud (SaaS) to the Customer, the Customer agrees to access and use Checkmk Cloud (SaaS) in accordance with the terms of this **Appendix 3 – Acceptable Use Policy**, as set out in section 4.4 of the main body of the GTC.

1.2 All terms defined elsewhere in the Subscription Agreement apply mutatis mutandis to this **Appendix 3 – Acceptable Use Policy.**

1.3 The Customer must address the provisions contained hereunder or any similar acceptable use policy, which contains at least the same level of provisions and obligations, as this **Appendix 3 – Acceptable Use Policy**, to its Affiliates, if applicable.

1.4 For the sake of clarification: Any failure to comply with the provisions of this **Appendix 3 – Acceptable Use Policy** by the Customer, an Affiliate of the Customer or any other third party for which the Customer is responsible may result in suspension or termination or both of Checkmk Cloud (SaaS) in relation to such non-compliance in accordance with the Subscription Agreement. In such cases the Provider will not be liable to the Customer for any claims and/or allegations of such a user resulting from or related to the exclusion from Checkmk Cloud (SaaS). The Customer is responsible for violations of the provisions of this **Appendix 3 – Acceptable Use Policy** and must take best efforts to prevent such violations.

2 No misuse

The Customer must ensure that it doesn't use and doesn't allow any third parties to use Checkmk Cloud (SaaS) to:

- probe, scan or test the vulnerability of any system or network;
- conduct performance, load or stress testing on Checkmk Cloud (SaaS) or otherwise test the service's capacity limits;
- test or reverse-engineer Checkmk Cloud (SaaS) in order to find limitations, vulnerabilities or evade filtering capabilities;
- interfere with the use of Checkmk Cloud (SaaS) – or the equipment used to provide Checkmk Cloud (SaaS) – by customers of the Provider, authorized resellers or other authorized users;
- monitor data or traffic on any network or system without authorization of the respective owner of the system or network;
- collect or use information, such as email addresses, nicknames or other identifiers, by deceit (for example by phishing, scamming, password robbery, spidering and harvesting);
- perform or participate in denial-of-service (DoS) attacks, distributed denial-of-service (DDoS) attacks, or any other activity designed to disrupt, degrade, or impair the functionality or availability of any third-party system or network;
- promote any behavior that may result in retaliation against the Provider's services, network or website or Provider's employees, officers, agents, affiliates, for example like resulting in denial-of-service attack;
- arrange directly or indirectly that any of Provider's intellectual property being listed on an abuse database;
- where failure or fault of Checkmk Cloud (SaaS) could lead to death or injury of any person or to physical or environmental damages;
- allow access by persons, organizations, companies or any such legal entities, including affiliates, which are involved or suspected of involvement in activities or causes relating to illicit gambling, terrorism,- illicit narcotics trafficking, illicit arms trafficking or illicit proliferation; this applies to any affiliation or participation in such activities whatsoever; and

- create an unusual level of load on Checkmk Cloud (SaaS) via non-intentional use of the products included in Checkmk Cloud (SaaS) or by using scripts or applications to access the APIs of Checkmk Cloud (SaaS).

3 No circumvention

The Customer must ensure that it doesn't use and doesn't allow any third parties to use Checkmk Cloud (SaaS) to:

- breach or otherwise circumvent any security or authentication measures;
- alter, disable, interfere with or circumvent any aspect of Checkmk Cloud (SaaS);
- access, tamper with or use non-public areas of Checkmk Cloud (SaaS) or shared areas of Checkmk Cloud (SaaS) the user has not been invited to;
- access or search Checkmk Cloud (SaaS) by any means other than the Provider's publicly supported interfaces (for example by 'scraping');
- actively withhold or disguise identity or contact information, such as omission, deletion or misreporting of identification or transmission information; and
- access or use Checkmk Cloud (SaaS) in a way intended to avoid incurring any applicable fees or charges or purchasing additional licenses or access rights.

4 Spam, privacy, marketing and unsolicited content

The Customer must ensure that it doesn't use and doesn't allow any third parties to use Checkmk Cloud (SaaS) to:

- overload, flood spam, broadcast attacks or mail-bomb any part of Checkmk Cloud (SaaS);
- send unsolicited communications, promotions or advertisements or spam;
- send altered, deceptive or false source-identifying information, including 'spoofing' or 'phishing';
- promote or advertise products or services other than its own without appropriate authorization; and
- promote and/or foster in any way businesses relating to illicit gambling, illicit multi-level-marketing, illicit credit repair, illicit list brokers or illicit rental services, illicit pharmaceutical products or social media related services like selling retweets, fake users, likes, etc.

5 Prohibited content

The Customer must ensure that it doesn't use and doesn't allow any third parties to use Checkmk Cloud (SaaS):

- to violate or encourage the violation of the legal rights of others;
- for any unlawful, invasive, infringing, defamatory or fraudulent purpose or other malicious or morally repugnant purposes;
- to intentionally distribute viruses, worms, Trojan horses, corrupted files, hoaxes or other terms of destructive or deceptive nature;
- to impersonate or misrepresent any affiliation with any person or entity;
- to publish or share materials that are unlawfully pornographic or indecent or that advocate bigotry, religious, racial or ethnic hatred;
- to publish or share content or links to content that is excessively violent or promotes, contains or incites violence, hate speech or creates risks for the safety or health of a person or the public as well as for national security or interferes with an investigation by law enforcement;
- by distributing software that covertly gathers or transmits user information; and
- to defame or violate a person's privacy.

6   Intellectual property and other proprietary rights

The Customer must ensure that it doesn't use and doesn't allow any third parties to use Checkmk Cloud (SaaS):

- to infringe or misappropriate any Intellectual Property Rights of a third party;
- to assist in such behavior by displaying another person's trademark without permission;
- to publish another person's trade secrets or violate confidentiality duties; and
- to use Checkmk Cloud (SaaS) to download, publish, torrent, distribute, use or otherwise copy in any manner any text, music, software, art, image or other work protected by copyright law unless permission from the owner of the work to use or copy the work in that manner was obtained or can be derived otherwise from established intellectual property law to copy or use the work or rights in that manner.