

General Terms and Conditions for Checkmk Cloud (SaaS) (U.S.)

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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, Inc. (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 16.1.
- 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 16.3.
- 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 17.1.
- 2.16 **“Export Data”** has the meaning given to it in section 17.1.
- 2.17 **“Force Majeure”** has the meaning given to it in section 19.
- 2.18 **“GTC”** has the meaning given to it in section 1.1
- 2.19 **“Intellectual Property Rights”** has the meaning given to it in section 10.1.
- 2.20 **“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).
- 2.21 **“Order”** has the meaning given to it in section 1.1.
- 2.22 **“Provider”** has the meaning given to it in section 1.1.
- 2.23 **“Separate Terms”** has the meaning given to it in section 4.8.
- 2.24 **“Separately Licensed Third Party Technology”** has the meaning given to it in section 4.8.
- 2.25 **“Sensitive Uses”** has the meaning given to it in section 17.2.2.
- 2.26 **“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>.
- 2.27 **“Service Generated Data”** has the meaning given to it in section 12.2.
- 2.28 **“Subscription Agreement”** means the agreement between the Provider and the Customer for a subscription of Checkmk Cloud (SaaS) as defined in section 1.2.
- 2.29 **“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.
- 2.30 **“Subscription Fees”** has the meaning given to it in section 9.1.

- 2.31 “**Support Contacts**” are the persons designated by the Customer who are authorized to submit support requests for the Customer.
- 2.32 “**Support Services**” means the support services described in section 5 and further specified in **Appendix 1 – Support Services and SLA**.
- 2.33 “**Transfer of the Export Data**” has the meaning given to it in section 17.2.
- 2.34 “**Trial Version**” has the meaning given to it in section 18.1.

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 The Provider has the right to immediately suspend the Customer’s and/or the Customer’s Affiliate’s (if applicable) access to and use of Checkmk Cloud (SaaS) and/or the Support Services (partially or in full) if the Provider assumes (i) a violation of section 4; (ii) a violation of applicable law; (iii) a breach by the Customer of its material payment obligations, (iv) a security threat or vulnerability that poses a risk to Checkmk Cloud (SaaS), the Provider’s systems or other customers of the Provider; or (v) any activity or use of Checkmk Cloud (SaaS) that causes or is likely to cause degradation, disruption, or other negative impact on the Checkmk Cloud (SaaS) or other customers of the Provider. If the Provider suspends access to and use of the Checkmk Cloud (SaaS), the Provider will notify the Customer of the reason for the suspension without undue delay, to the extent legally permitted. The suspension will be to the minimum extent and for the shortest duration required to resolve the reason for the suspension.
- 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 telecommunication. 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 deprecations of service components

- 6.1 Subject to and in accordance with this section 6, the Provider may modify or discontinue any of Checkmk Cloud (SaaS)'s features or functionality for any reason at any time without liability to the Customer.
- 6.2 In order to maintain a progressive and modern product experience and/or in order to keep up with good industry standards regarding security, reliability or regulatory compliance, the Provider reserves the right to make modifications to Checkmk Cloud (SaaS) from time to time, provided such modifications do not result in a material reduction of the functionality, performance, availability, or security of Checkmk Cloud (SaaS). Such modifications may relate to any features or functionality and/or the limitations of Checkmk Cloud (SaaS).
- 6.3 In the event that the Provider intends to discontinue any material feature or functionality of Checkmk Cloud (SaaS), the Provider will inform the Customer of such intention reasonably in advance before such discontinuation comes into effect, in each case unless the Provider replaces such discontinued material feature or functionality of Checkmk Cloud (SaaS) with a materially similar feature or functionality.

- 6.4 The regulations of this section 6, do not limit the Provider's ability to modify or discontinue Checkmk Cloud (SaaS)'s if required to comply with applicable law, address a material security risk, or apply to new or pre-general availability services or functionality.

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.
- 8.7 Upon termination of the Subscription Agreement in accordance with this section 8, the Customer will not be entitled to any separation compensation or damages of any kind, including indemnification, compensation, reimbursement or damages for loss of prospective compensation, goodwill or loss thereof, or expenditures, investments, leases or any type of commitment made in connection with the business of the Customer or in reliance on the existence of the Subscription Agreement including, but not limited to advertising and promotion costs, costs of supplies, termination of employees, employee salaries and other such costs and expenses.

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 may modify the Subscription Fees at any time up to an amount of eight (8) percent of the annual aggregate pricing of the preceding Subscription Period (where ‘pricing’ includes the Subscription Fees and any other payment obligations of the Customer), unless otherwise expressly agreed in the Order explicitly mentioning this section 9.3. The Provider will notify the Customer at least three (3) months in advance of any such price increases. The Customer’s outstanding payment commitments (if any) that have accrued before the effective date of such termination are not affected.
- 9.4 All payments required by the Subscription Agreement are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies, withholdings and similar assessments including sales taxes, use taxes and value added taxes, and the Customer agrees to bear and be responsible for the payment of all such charges, excluding taxes based upon the Provider’s net income. All amounts due hereunder shall be grossed-up for any withholding taxes imposed by any foreign government. If the Customer claims exemption from any tax, then it shall furnish the Provider with a valid tax exemption certificate issued by or acceptable to the applicable taxing jurisdiction or entity. The Customer will indemnify and hold the Provider harmless from, any such tax (excluding taxes on the Provider’s net income) as well as the collection or withholding thereof, including penalties and/or interest.
- 9.5 If the Customer fails to make any payments when due, the Provider reserves the right to add a late charge of 1.5% per month, or the maximum allowable under applicable law, whichever is lower, from the original due date until paid. The Customer will also reimburse the Provider for all amounts incurred by the Provider (including reasonable attorneys’ fees) in collecting amounts due hereunder.

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 in order to perform its obligations under the Subscription Agreement, as required by law, and/or as otherwise agreed by the parties. The parties hereby agree to and incorporate into the Subscription Agreement the data processing agreement as set out in **Appendix 2 – Data Processing Agreement (U.S.)**.
- 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)

CHECKMK CLOUD (SAAS) AND ALL SERVICES ARE PROVIDED BY THE PROVIDER "AS IS" AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PROVIDER DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, ORAL OR WRITTEN, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE PROVIDER, ITS EMPLOYEES OR AGENTS WILL CREATE ANY WARRANTIES.

Further, the Provider does not represent or warrant that (i) Checkmk Cloud (SaaS) will meet the Customer's business requirements; (ii) Checkmk Cloud (SaaS) will be error-free or uninterrupted or that the results obtained from its use will be accurate or reliable; or (iii) all deficiencies in Checkmk Cloud (SaaS) can be found or corrected.

15 Limitation of liability

EXCEPT FOR AMOUNTS DUE HEREUNDER, LIABILITY ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 11, USE BY THE CUSTOMER OF CHECKMK CLOUD (SAAS), IN WHOLE OR IN PART, OUTSIDE OF THE SCOPE OF THE SUBSCRIPTION AGREEMENT (IN PARTICULAR THE RIGHTS OF ACCESS AND USE GRANTED THEREIN), OR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE SUBSCRIPTION AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED FIFTY PERCENT (50%) OF THE NET SUBSCRIPTION FEES ACTUALLY PAID BY AND DUE FROM THE CUSTOMER UNDER THE SUBSCRIPTION AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH SUCH CLAIM OR CAUSE OF ACTION AROSE.

EXCEPT FOR AMOUNTS DUE HEREUNDER, LIABILITY ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 11, USE BY THE CUSTOMER OF CHECKMK CLOUD (SAAS), IN WHOLE OR IN PART, OUTSIDE OF THE SCOPE OF THE SUBSCRIPTION AGREEMENT (IN PARTICULAR THE RIGHTS OF ACCESS AND USE GRANTED THEREIN), OR A PARTY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT, IN NO EVENT WILL EITHER PARTY OR ITS EMPLOYEES OR AGENTS BE LIABLE TO THE OTHER PARTY OR ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION DAMAGES DUE TO LOSS

OF DATA, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR COMPUTER FAILURE ARISING FROM THE SUBSCRIPTION AGREEMENT OR THE USE OF CHECKMK CLOUD (SAAS), HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY REMEDY. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OR THE EXCLUSION OF AN IMPLIED WARRANTY, AND IN SUCH STATES OR JURISDICTIONS, THE ABOVE LIMITATION SHALL APPLY ONLY TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW. THE FOREGOING LIMITATIONS OR EXCLUSIONS SHALL NOT BE DEEMED TO WAIVE ANY RIGHTS OTHERWISE REQUIRED BY LAW.

Except for actions for non-payment or breach of either party's Intellectual Property Rights, no action (regardless of form) arising out of the Subscription Agreement may be commenced by either party more than one (1) year after the cause of action has accrued.

16 Indemnification

- 16.1 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 sole cost and 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 expense; and (iv) does not make any admission in respect of the liabilities without the consent of the Provider.
- 16.2 The Provider will have no obligation of defense or indemnification or otherwise with respect to any Action relating to (i) 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; (ii) an Action that does not relate with specificity to Checkmk Cloud (SaaS); (iii) 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 (iv) 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.
- 16.3 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 rights of a third party, including but not limited to 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 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**”). 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.

17 Export control

- 17.1 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.
- 17.2 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
 - 17.2.1 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;
 - 17.2.2 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;
 - 17.2.3 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
 - 17.2.4 that the Export Data will, in particular, not be passed on to persons or companies based in Belarus, in Crimea, in Cuba, in Iran, in North Korea, in Russia, in Sudan or in Syria.
- 17.3 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.
- 17.4 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.

18 Trial Version

- 18.1 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.
- 18.2 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.
- 18.3 The Customer must only use a Trial Version for internal evaluation and testing purposes. In particular, the Customer is not authorized
 - 18.3.1 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

18.3.2 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;

18.3.3 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 18.3.

18.4 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.

18.5 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**).

18.6 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.

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

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

19 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.

20 Final provisions

20.1 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.

20.2 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 (U.S.)**; (iv) **Appendix 3 – Acceptable Use Policy**; (v) the main body of the GTC; and (vi) any other referenced documents.

- 20.3 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.
- 20.4 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.
- 20.5 The Provider reserves the right, at its discretion, to update, change, modify, add, or remove portions of the Subscription Agreement by notifying the Customer or by making the revised Subscription Agreement available within Checkmk Cloud (SaaS) or on the Provider's website in a manner accessible to the Customer. Unless the Customer provides the Provider with a written notice within fourteen (14) days, objecting to the revised Subscription Agreement, such revised Agreement will become binding upon the Customer. In any event, the Customer's continued use of Checkmk Cloud (SaaS) constitutes the Customer's binding acceptance of the revised Subscription Agreement.
- 20.6 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.

20.7 Choice of law and venue

The Subscription Agreement will be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of laws principles and specifically excluding the provisions of the United Nations Convention on the International Sale of Goods or the UCITA. Any legal action or proceeding with respect to the Subscription Agreement will be brought in the United States District Court for the Southern District of New York or any state court located in such Southern District. By execution and delivery of the Subscription Agreement, each of the parties hereto accepts for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts. The prevailing party in any dispute arising out of or relating to the Subscription Agreement is entitled to recover its reasonable attorney and reasonable fees for experts, including court-appointed or party-appointed experts, from the other party.

Appendices to the GTC:

Appendix 1 – Support Services and SLA

Appendix 2 – Data Processing Agreement (U.S.)

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 ET
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 the United States of America.
- 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 (U.S.)

This Data Processing Addendum (U.S.) (“DPA”) is between Checkmk, Inc. (“Provider”) and the customer (“Customer”) engaging Provider’s Services. This DPA is hereby incorporated into and deemed part of that particular Subscription Agreement executed by the Parties. Customer and Provider are each a “Party” and are together the “Parties.” For clarity, the terms “Provider” and “Customer” shall include the Parties’ respective Affiliates.

This DPA applies to Provider to the extent that Provider Processes Customer Personal Data in order to provide the Checkmk Cloud (SaaS) and the Support Services. This DPA does not apply to Relationship Contact Data exchanged between the Parties. Capitalized terms not specifically defined herein shall have the meaning set out in the Subscription Agreement. In the event of a conflict between the terms of the Subscription Agreement as they relate to the processing of Customer Personal Data and this DPA, the DPA shall prevail.

1 DEFINITIONS

- 1.1 **“Data Controller”** means a 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.
- 1.2 **“Data Processor”** means a natural or legal person, public authority, agency or other body which Processes personal data on behalf of the Data Controller.
- 1.3 **“Data Privacy Laws”** means state and federal laws of the United States that regulate the protection, privacy, and/or security of “personal data,” “personal information,” “personally identifiable information,” any other like terms, and that are applicable to Provider’s Processing of Customer Personal Data under the Subscription Agreement. References to “law” herein shall be deemed to include Data Privacy Laws, without limitation.
- 1.4 **“Customer Personal Data”** means data made available to Provider by Customer under the Subscription Agreement that, either alone or in combination with other data, is capable of identifying an individual with a permanent residence in the United States. Customer Personal Data does not include Relationship Contact Data.
- 1.5 **“Process”, “Processes” or “Processing”** means any operation or set of operations that are performed on data, whether or not by automated means, including, collection, recording, organization, structuring, storage, analysis, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction.
- 1.6 **“Security Incident”** means any situation in which Provider confirms that Customer Personal Data under Provider’s direct control has been accessed, acquired, disclosed, altered, lost, destroyed, or used by unauthorized persons in an unauthorized manner having a material impact on Customer or data subjects’ rights.
- 1.7 **“Sell”** means selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, Customer Personal Data to a third party for monetary or other valuable consideration.
- 1.8 **“Share”** means sharing, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, Customer Personal Data to a third party for cross-context behavioral advertising, for monetary or other valuable consideration.
- 1.9 **“Subprocessor”** means any third-party service provider of Provider and to which Provider provides or makes available Customer Personal Data for Processing to be carried out on behalf of Customer.

Subprocessors do not include third parties with whom Customer or its personnel directs Provider to interact with or share Customer Personal Data, including third parties connected through Provider services or products. Provider shall have no responsibility for third parties with whom Customer chooses to interact or provide Customer Personal Data or directs Provider to interact or provide Customer Personal Data.

2 SCOPE & CUSTOMER OBLIGATIONS

- 2.1 Customer will be considered the Data Controller with respect to Customer Personal Data and appoints Provider as a Data Processor of Customer Personal Data. Customer acknowledges and agrees that, notwithstanding any other provision of the Subscription Agreement or this DPA, Provider may use Customer Personal Data for its internal business purposes, such as (i) to enhance, analyze, develop or troubleshoot Provider's products and services; (ii) to comply with applicable laws (including law enforcement requests or compulsory disclosures); (iii) to help ensure the internal security of Provider's products and services and prevent fraud or mitigate risk; and/or (iv) for any other purposes contemplated or permitted by the Subscription Agreement or by applicable law (each of the foregoing, along with the provision of the Checkmk Cloud (SaaS) and the Support Services, a **"Permitted Service Purpose"**, and collectively the **"Permitted Service Purposes"**). Customer instructs Provider to Process Customer Personal Data for the Permitted Service Purposes (such instruction, Customer's **"Documented Instructions"**).
- 2.2 Customer represents, warrants and covenants that: (i) the Documented Instructions comply with all law; (ii) Customer will comply with its obligations, including obligations as a Data Controller, under applicable law; (iii) Customer has provided all notices, and obtained all consents and rights necessary under law for Provider to Process Customer Personal Data and provide the Checkmk Cloud (SaaS) and the Support Services as contemplated in the Subscription Agreement and herein; Without limiting any payment obligations under the Subscription Agreement, Customer will immediately notify Provider and cease use of the Services in the event and to the extent any required authorization or legal basis for Processing is revoked or terminated. Provider may thereafter suspend Processing and/or provision of the Checkmk Cloud (SaaS) and the Support Services and will have no liability for such actions.
- 2.3 For clarity, Customer acknowledges and agrees that Provider does not act as a Data Processor with respect to business contact information (the **"Relationship Contact Data"**) of Customer's employees and representatives with whom Provider interacts for purposes of managing or communicating about Provider services generally. With respect to Relationship Contact Data, the Parties each act as independent Data Controllers each responsible for their own compliance with their respective obligations under law. To the extent relevant, no joint controller relationship is established between the Parties

3 PROVIDER OBLIGATIONS

- 3.1 Provider shall not Process Customer Personal Data for any purpose other than the Permitted Service Purposes.
- 3.2 Provider shall not Process Customer Personal Data collected pursuant to the Subscription Agreement outside the direct business relationship between Provider and Customer unless expressly permitted by law.
- 3.3 As required by Data Privacy Laws, Provider shall not combine Customer Personal Data with personal data that it receives from another source or collects from interactions on its own behalf with individuals, unless permitted by law.
- 3.4 As required by Data Privacy Laws, Provider shall notify Customer if it determines, in its sole discretion, that it is unable to meet its obligations under Data Privacy Laws in such a manner as renders it incapable of providing the Checkmk Cloud (SaaS) and the Support Services. Provider may thereafter suspend or its Processing and/or provision of Services, or upon notice terminate the Agreement, without liability.

- 3.5 As required by Data Privacy Laws, at Customer's reasonable request and with at least thirty (30) days advance written notice, Provider shall make available to Customer such records and information as is necessary to demonstrate that its use of Customer Personal Data is compliant with this DPA and applicable Data Privacy Laws by providing or making available, as and if available, to Customer, not more than once annually, copies of Provider's most recent ISO 27001 certification, SOC2 Type 2 audit report, or penetration test summaries.
- 3.6 As required by Data Privacy Laws, Customer shall have the right to take reasonable and appropriate steps to stop and remediate use of Customer Personal Data by Provider that violates this DPA or Data Privacy Laws, solely by notifying Provider of the proposed stoppage or remediation. Provider shall consider such requests in good faith and inform Customer of its proposed response, which may include no action in its discretion. Provider may rely upon but will have no liability for following any such proposals of Customer.
- 3.7 As required by Data Privacy Laws, Provider shall provide reasonable cooperation to Customer to respond to data subject rights requests under Data Privacy Laws and/or Provider shall provide tools as part of its services that permits Customer to manage such requests itself. In the event that Provider receives a data subject rights request which it identifies as relating to Customer, Provider shall promptly inform Customer of the same, including via email. Provider may respond to such data subject rights request as required of it by law, to acknowledge receipt, and/or to direct the request to Customer.
- 3.8 Provider shall comply with all applicable requirements under Data Privacy Laws, including, where relevant, to provide the same level of privacy protection to Customer Personal Data as Customer is required to provide such data under Data Privacy Laws, by adhering to the standards set forth above and any additional standards agreed upon between the Parties in writing.
- 3.9 To the extent required by applicable Data Privacy Laws, Provider shall implement reasonable information security procedures and practices appropriate to the nature of the Customer Personal Data to protect the same from unauthorized or illegal access, destruction, use, modification, or disclosure, or any Security Incident. Notwithstanding the foregoing, Customer acknowledges that it has been afforded an opportunity to conduct its own diligence review of Provider's information security procedures and concluded that the same are adequate.
- 3.10 As required by Data Privacy Laws, with respect to its Processing of Customer Personal Data, Provider shall not Sell or Share the Customer Personal Data.
- 3.11 Provider shall ensure all employees, contractors, or other internal staff Processing Customer Personal Data are subject to a duty of confidentiality with respect to the relevant data.

4 SUBPROCESSING

- 4.1 Customer agrees that Provider may share Customer Personal Data with the Subprocessors listed in <https://trust.checkmk.com/#subprocessors> ("Subprocessor List") for the Permitted Service Purposes.
- 4.2 Customer agrees that Provider can share Customer Personal Data with Subprocessors in addition to those in the Subprocessor List. Provider shall provide Customer an opportunity to object to such additional Subprocessors by providing prior notice of such proposed additional Subprocessors to the Customer. Such notice may be made available by Provider updating its Subprocessors List, or by other reasonable means (such as email notice).
- 4.3 Provider shall enter into written contracts with its Subprocessors. Such contracts are designed to ensure Provider's continued ability to meet its obligations under this DPA. Provider shall remain liable for the acts or omissions of its Subprocessors which cause Provider to violate any terms of this DPA, subject to agreed limitations of liability under the Subscription Agreement.

5 RETENTION

- 5.1 At the choice of Customer, Provider shall delete or return Customer Personal Data to Customer as requested at the end of the Subscription Agreement, unless Provider is permitted by law to further retain such data.

6 LIMITATION OF LIABILITY

- 6.1 PROVIDER WILL NOT BE LIABLE IN CONNECTION WITH THIS DPA OR UNDER ANY LEGAL THEORY (WHETHER IN CONTRACT, TORT OR OTHERWISE) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR FOR ANY LOSS OR CORRUPTION OF DATA, REVENUES OR PROFITS, EVEN IF PROVIDER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY OTHER TERM OR AGREEMENT BETWEEN THE PARTIES, PROVIDER'S TOTAL AGGREGATE LIABILITY UNDER THIS DPA OR ITS SUBJECT MATTER WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO PROVIDER DURING THE SIX (6) MONTH PERIOD PRIOR TO THE FIRST EVENT GIVING RISE TO SUCH LIABILITY.
- 6.2 Costs and expenses for which Customer is responsible under this DPA shall not be subject to any limitation of liability clause otherwise agreed between the parties, including within the Subscription Agreement.

7 INDEMNITY

- 7.1 Customer will indemnify, defend, and hold harmless Provider and its affiliates from any claims, actions, suits, demands, losses, liabilities, damages, costs and expenses (including attorney's fees) arising from or in connection with: (i) breaches of this DPA by Customer or its agents; (ii) acts or omissions of Customer or its agents or its or their employees, affiliates, customers, or contractors relating to the Services; (iii) the Processing of Customer Personal Data by Customer or its agents; (iv) the Customer's Processing instructions to Provider and Provider's acts or omissions in accordance therewith; and (v) Customer's breach of any laws or regulations (including but not limited to Data Privacy Laws). Provider may upon written notice assume the control of any defense under this provision. Customer will fully cooperate thereafter, at its sole expense, with Provider upon request with respect to such defense.

8 MISCELLANEOUS PROVISIONS

- 8.1 **Severability.** Should any provision of this DPA be invalid or unenforceable, then the remainder of this DPA shall remain valid and in force. The invalid or unenforceable provision shall be construed in a manner as if the invalid or unenforceable part had never been contained therein.
- 8.2 **Construal.** In interpreting the provisions of this DPA, no adverse inference shall be drawn against a Party by reason of that Party being a drafting party of this DPA. Headings herein are for convenience only.

The Parties acknowledge and agree that, for good and valuable consideration the sufficiency of which the Parties affirm, the Parties understand and agree to the above terms of the DPA.

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.