

Data Processing Agreement (U.S. DPA)

This U.S. Data Processing Addendum ("**U.S. DPA**") is between **Checkmk, Inc.**, 675 Ponce de Leon Ave NE Suite 8500, Atlanta, GA 30308, USA ("**Provider**") and the customer ("**Customer**") engaging Provider's Services. This U.S. 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 U.S. DPA applies to Provider to the extent that Provider Processes Customer Personal Data in order to provide the Checkmk Cloud (SaaS) (as defined below in Section 1.1) and Checkmk OEM Support (as defined below in Section 1.2) for Checkmk Cloud (SaaS) and Checkmk Software (Self-Hosted). This U.S. 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 U.S. DPA, the U.S. DPA shall prevail.

1 DEFINITIONS

1.1 "**Checkmk Cloud (SaaS)**" means the Provider's software-as-a-service offering, including Checkmk OEM Support Services with the functionalities and features defined in the respective Checkmk Cloud Edition (SaaS), which the Customer has licensed in accordance with the Subscription Agreement, as described in more detail in the User Guide Cloud (SaaS) and updated from time to time.

1.2 "**Checkmk OEM Support**" and/or "**Support Services**" means the support services provided by the Provider under a Subscription Agreement for Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) in accordance with the "Service Description Checkmk OEM Support and SLAs". The most recent version of the **Service Description Checkmk OEM Support and SLAs** is available and can be accessed at <https://checkmk.com/legal/support>.

1.3 "**Checkmk Software (Self-Hosted)**" means the Provider's self-hosting offering, including Checkmk OEM Support Services, with the functionalities and features defined in the respective Checkmk Software Edition (Self-Hosted), which the Customer has licensed in accordance with the Subscription Agreement, as described in more detail in the User Guide Software (Self-Hosted) and updated from time to time.

1.4 "**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.

1.5 "**Data Processor**" means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the Data Controller.

1.6 "**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.

1.7 "**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.

1.8 **“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.

1.9 **“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.

1.10 **“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.

1.11 **“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.

1.12 **“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 U.S. 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 Checkmk OEM 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 Checkmk OEM 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 Checkmk OEM 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 Checkmk OEM Support Services. Provider may thereafter suspend 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 U.S. 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 U.S. 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://checkmk.com/legal/sub-processors> ("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). Customers can automatically be notified of changes to Subprocessors by subscribing to receive Trust Center notifications at <https://trust.checkmk.com/#subprocessors>.

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 U.S. DPA. Provider shall remain liable for the acts or omissions of its Subprocessors which cause Provider to violate any terms of this U.S. 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 U.S. 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 U.S. 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 U.S. 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 U.S. 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 U.S. DPA be invalid or unenforceable, then the remainder of this U.S. 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 U.S. DPA, no adverse inference shall be drawn against a Party by reason of that Party being a drafting party of this U.S. 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 U.S. DPA.