General Terms and Conditions for Checkmk Software

Last updated: April 2024

1 Scope of Application

1.1 These General Terms and Conditions including their Appendices (**"GTC"**) govern the provision of Checkmk software products for self-hosting (**"Checkmk-Software"**) and the provision of Support Services on the basis of a Subscription Agreement with Checkmk GmbH (**"Provider"**).

1.2 If Checkmk Software is used without a Subscription (Trial), the provisions of Appendix B shall apply exclusively.

1.3 Subscriptions are offered exclusively 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. The Customer's status must be proven upon formation of the contract, e.g. by providing the VAT identification number or other suitable proof. The information required for that purpose must be provided completely and truthfully.

1.4 When purchasing a Subscription from a Checkmk partner or a reseller, only the contractual terms and conditions agreed with the partner or reseller shall apply to the Subscription.

2 Definitions

2.1 **"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 50% of the voting securities in an entity or the power to direct the management and policies of an entity.

2.2 **"Checkmk Edition"** refers to the product lines Checkmk Raw, Checkmk Enterprise, Checkmk Cloud (self-hosted) and Checkmk MSP as well as any future product lines.

2.3 **"Checkmk Instance"** means an executable installation of the Checkmk Software on a physical or virtual system (also referred to as a 'site').

2.4 **"Checkmk User Guide"** refers to the product documentation available at https://docs.checkmk.com.

2.5 **"Contract Period"** means a period of twelve (12) months from the start date specified in the Subscription Agreement or any longer period agreed in the Subscription Agreement.

2.6 **"Customer"** means the natural or legal person, public body or authority identified as the customer in the Subscription Agreement.

2.7 **"EULA"** means the Checkmk End User License Agreement, Version 2.

2.8 **"Licensed Services"** means the number of Services defined in the Subscription Agreement that may be monitored with Checkmk Software. A **"Service"** consists of a monitored data

point, for example, the CPU load of a specific device. A monitored device may therefore generate many monitored Services in the Checkmk Software.

2.9 **"Licensed Synthetic Tests"** means the number of Synthetic Tests defined in the Subscription Agreement, for which the add-on Synthetic Monitoring may be used. A **"Synthetic Test"** is a test for monitoring the availability, performance or functionality of an application from the end user perspective.

2.10 **"Subscription"** is a fee-based combination of software license and Support Services with a defined term.

2.11 **"Subscription Agreement"** means the agreement between Provider and Customer for a Subscription.

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

2.13 **"Support Services"** means the services described in section 4.

3   Checkmk Subscription

3.1 With the purchase of a Checkmk Subscription, the Customer obtains a right to use the Checkmk Software stated in the Subscription Agreement during the term of the Subscription in accordance with the EULA and to use the Support Services stated in the Subscription Agreement. The Checkmk Software consists of a Checkmk Edition and add-ons, where applicable.

3.2 The Checkmk Software is described in the Checkmk User Guide. Various Checkmk Editions are available, which differ in terms of functionality and license scope:

- Checkmk Enterprise
- Checkmk Cloud (self-hosted)
- Checkmk MSP

The Checkmk Cloud (self-hosted) and Checkmk MSP editions include a right of use for Affiliates (Group License) and the right of use for business purposes of third parties (Managed Services Use). For Checkmk Enterprise, Group License and Managed Services Use are a chargeable option (license option 'Group and Managed Services Use'). If the license option 'Group and Managed Services Use' is not selected in the Subscription Agreement, the restrictions for a single entity license pursuant to section 2.3 of the EULA apply.

3.3 The respective Checkmk Edition is licensed for the number of Licensed Services specified in the Subscription Agreement.

3.4 The following provisions apply to the add-ons listed in the Subscription Agreement:

a) **Synthetic Monitoring.**   Synthetic Monitoring offers the possibility of monitoring applications from an end user perspective. The add-on is licensed in accordance with

the EULA for the number of Licensed Synthetic Tests stated in the Subscription Agreement.

b) **virt1.** The add-on virt1 is a separate software that enables the GUI-guided installation of a Checkmk Edition in a virtual environment and provides, among other things, functions for operation as a monitoring cluster. The add-on is licensed for the number of Licensed Services defined in the Subscription Agreement.

c) **ntop Integration.** The ntop integration enables the use of Checkmk Software in conjunction with the commercial version of the ntopng software, which must be licensed separately from third-party providers. A fixed price applies for the ntop integration, which is stated in the Subscription Agreement.

3.5 Checkmk Software is made available for download in electronic form only and must be installed by the Customer. Access to the licensed functionality of the software may require technical activation by entering licensing credentials, which will be provided to the Customer after conclusion of the Subscription Agreement. Activation may be required per instance.

3.6 The Customer will have access to new versions of Checkmk Software that may include functional enhancements or bug and security fixes. From the initial release date of a full version (e.g. version 2.3.0), bug and security fixes will be made available for a period of at least twenty-four (24) months. The product cycles are listed in the Checkmk User Guide.

3.7 The Checkmk Software contains over 2000 check plug-ins that can be used to monitor data points from different devices and applications. Vendors of such devices and applications regularly update their software and interfaces. Such changes in monitored systems may affect the functionality of the monitoring. The Checkmk Software will be adapted to such changes in accordance with the Checkmk product roadmap, which the Provider determines at its own discretion. The Provider is not obliged to make a specific adaptation at a specific time or at all.

3.8 The Customer may not assign, transfer, donate, lend, rent or lease the rights deriving from the Subscription. Resale is only permitted on the basis of a separate agreement with the Provider.

4 Checkmk Support

4.1 **Support Services.** The Provider will provide support in the handling of software errors or problems that occur during proper use of the Checkmk Software. The handling of software errors comprises narrowing down the cause of the error, error diagnostics, and services directed towards correcting the error. Problems 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 Software. To resolve the problem, it may be necessary for the Customer to update to a new version of the Checkmk Software. The Provider deploys carefully selected personnel with the requisite qualifications to perform the Support Services. No specific outcome or resolution time is owed. Existing rights of the Customer in case of defects shall remain unaffected. Support Services are provided

exclusively via telecommunication. Services that are not covered by the scope of Support Services are specified in the Service Description Checkmk Support (Appendix A). The Provider will evaluate incoming support requests and inform the Customer if a support request is not covered by the scope of Support Services.

4.2 **Support packages.** The applicable support package will be specified in the Subscription Agreement. The support packages differ in the applicable support hours and response times, in the number of support contacts, and in the eligibility to commission consulting services. Details are set out in the Service Description Checkmk Support (Appendix A).

4.3 **Supported versions.** The Provider provides Support Services only for software versions that are either in active or passive maintenance pursuant to the Checkmk User Guide. The Provider will decide at its own discretion whether to accept and process support requests for other versions (e.g. older versions, daily builds or beta versions).

4.4 **Service recipients**. If the Subscription includes a group license, Affiliates that use Checkmk Software themselves may also use the Support Services in addition to the Customer. This will not create any contractual relationship between the Provider and such Affiliates.

4.5 **Fair Use Policy.** The Provider does not impose a limit to the number of support tickets a Customer can open via the Checkmk support portal. However, the absence of a limit does not mean that every 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 all customers that Support Services are not overused. If the Provider notices an unusually high number of support tickets, the Provider will inform the Customer in question and endeavor to find an amicable solution. In order to preserve the availability of Support Services for all Customers, the Provider ultimately reserves the right to limit the number of support tickets for the Customer in question in case of excessive use.

5 Customer's Duty to Cooperate

5.1 For contractual communication and for the provision of login data or licensing credentials, the Customer shall designate a 'Super User'. During the term of the Subscription, the Customer shall keep the contact details of the Super User up to date and inform the Provider immediately of any changes. For support requests, the Customer shall designate Support Contacts up to the maximum number corresponding to the Customer's support package.

5.2 Access credentials or license keys that enable access to Checkmk Software or its functionality may not be disclosed to third parties under any circumstances. If such access credentials or license keys have been inadvertently compromised, the Provider must be notified immediately. If possible, the password for the access credentials must be changed.

5.3 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. The problem handling may be commissioned as consulting services, which are charged separately.

5.4 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.

6 Term and Termination

6.1 The Subscription will commence as of the start date specified in the Subscription Agreement and will continue for the duration of the Contract Period. Upgrades and add-ons during a current Contract Period shall have the same term as the underlying Subscription.

6.2 If the Subscription is not terminated by either party with at least three (3) months' notice to the end of the current Contract Period, it will automatically renew in the most recent Subscription size (including upgrades and add-ons) for another Contract Period. A reduction in the Subscription size or partial termination of add-ons is only possible with effect from the next Contract Period, subject to the 3-month notice period. Any contractual termination rights expressly granted and the right to terminate for cause shall remain unaffected.

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

6.4 Upon termination of the Subscription, the usage rights granted by the Subscription will terminate.

7 Payment and Invoicing

7.1 The Customer shall pay the Provider the Subscription price stated in the Subscription Agreement in the specified currency. The Provider will invoice the Subscription price in advance at the beginning of each Contract Period. Invoices will be due immediately upon receipt and payable within fourteen (14) days.

7.2 Subscriptions are offered in various sizes with a set number of Licensed Services. The Customer must select the Subscription size that is expected to cover the number of Services monitored under the Subscription during the Contract Period. The same shall apply to Synthetic Tests.

7.3 If the Customer wishes to increase the Subscription size during a current Contract Period or exceeds the licensed Subscription size, the Customer shall inform the Provider accordingly. The Subscription Agreement will, in such cases, be amended retroactively with effect as of the beginning of the current Contract Period and the Customer will be billed for the difference in the Subscription price.

7.4 The Provider reserves the right to adjust the Subscription price at the beginning of each new Contract Period. The Provider will notify the Customer of any price adjustment at least twelve (12) weeks in advance. In the event that the Customer is not in agreement with the price adjustment, the Customer may terminate the Subscription Agreement with effect as of the end of the current Contract Period. If the Customer fails to terminate the Subscription Agreement, the new price will apply as of the beginning of the respective renewal.

7.5 All prices are net prices and subject to value added tax at the legal rate currently in effect.

7.6 In the event that the Customer should be in arrears of payment, the Provider may technically restrict the use of the Checkmk Software for as long as the Customer remains in arrears.

7.7 The Customer shall provide the Provider with information on the number of monitored Services and Synthetic Tests at any time upon request and shall perform the license verification that the Checkmk Software provides for this purpose. If underlicensing is determined, the Subscription Agreement will be adjusted in accordance with section 7.3.

8 Rights of Use

Where the Provider delivers software or copyrightable works in connection with Support Services, the respective rights of use will be governed by the provisions of the EULA.

9 Confidentiality

9.1 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, for example,

a) 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;

b) 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;

c) 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

d) 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 the Checkmk Software that are not also licensed under an open source license, access credentials or license keys, 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.

9.2   If any information pursuant to section 9.1 does not meet the statutory requirements for a business secret, it will nonetheless be subject to the confidentiality obligations pursuant to this section 9.

9.3   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. The third party must agree in writing to adhere to the confidentiality obligations contained in this section 9 before the confidential information may be disclosed to it.

9.4   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.

9.5   The parties will also bind their employees to comply with these confidentiality obligations. 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. The users of the Checkmk Software must be informed as to the content of the EULA.

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

10   Data Protection and Data Rights

10.1   The Provider will process personal data of the Customer and the Customers' employees only to the extent necessary for contractual performance. The Provider does not require any personal data beyond the contact information of the Support Contacts for the provision of Support Services. The Customer will ensure that no personal data is transmitted to the Provider when providing information for processing support requests.

During and after the term of the Subscription Agreement and for the purpose of analyzing the performance of, developing and improving the Checkmk Software, and any other Checkmk offerings, the Provider may collect, aggregate, reproduce, run, create derivative works of, process, use and analyze Service Generated Data. "Service Generated Data" means telemetry data and information about the operation, delivery, usage, or performance of the Checkmk Software generated or derived automatically by the Checkmk Software and conveyed to the Provider by the Checkmk Software via the internet from time to time. Such Service Generated Data will not contain any personal data and the Customer may opt out from the transmission of Service Generated Data to the Provider at any time. If the Customer actively submits Service Generated Data to the Provider in the context of Support Services or otherwise, e.g. agent dumps or crash dumps, such Service Generated Data may also be used as described above, unless the Customer instructs the Provider otherwise when submitting such Service Generated Data.

11 Remedies for Defects of Checkmk Software

11.1 A defect in quality exists where the software, to the detriment of the Customer, significantly deviates from the product description in the Checkmk User Guide, or where the software is not suitable for its contractually intended purpose. Minor defects in quality will not be taken into account. The software is unencumbered by any defects in title if no third party is able to assert rights to the software products which interfere with or prevent the Customer from using the software in accordance with the EULA. The warranty for defects in title will only apply to the country of destination where the parties have agreed the software will be used. In the absence of an explicit agreement, the warranty will apply to the country where the Customer is headquartered.

11.2 The Customer is obligated to notify in writing any defects in the software immediately after their discovery. In case of defects in quality, such notification shall include a description of the time of occurrence of the defects and the detailed circumstances.

11.3 The Provider may, at its option, remedy a defect in the software by fixing the defect (repair) or by delivering software free from defects (replacement). For the purpose of defect analysis and correction, the Customer shall enable access to the software by means of screen sharing. The Customer shall establish the necessary connections in accordance with the Provider's instructions. For the remedying of defects it may be necessary for the Customer to install a new version of the software or an update or a patch. In such case, the Customer is obliged to accept new versions, updates or patches provided that the full range of features under the Agreement is retained.

11.4 The Provider will not be liable if the defect does not occur in a newer version of the software.

11.5 Termination by the Customer for failure to grant use of the software as contractually agreed shall only be permissible if the Provider has been given sufficient opportunity to remedy the defect and such remedy has failed. The remediation of defects shall only be deemed to have failed if it is impossible, if it is refused or unreasonably delayed by the Provider, if there are reasonable doubts as to the prospects of success or if it is unreasonable for other reasons. The particulars of the situation must be taken into account when assessing the adequacy of the grace period for remedying defects, in particular the cause, the severity and the effects of the defects.

11.6 The Customer may not enforce a fee reduction by deduction from the agreed Subscription price, unless the reduction claim is undisputed or non-appealable. Claims for unjust enrichment or damages shall remain unaffected.

11.7 If the defect does not affect or only slightly affects the functionality of the software, the Provider will be entitled to remedy the defect by delivering a new version or an update in accordance with its release schedule. In such case, the Customer will have no other remedies.

11.8 If the software infringes third-party IP rights, the Provider may, at its option, provide a cure in one of the following ways:

a) by obtaining, from the owner of the IP right, a license in favor of the Customer, which is adequate for the purposes of the existing Agreement;

b) by modifying the infringing software without affecting its functionality at all or only to an extent that is acceptable for the Customer;

c) by replacing the infringing software with non-infringing software without affecting its functionality at all or only to an extent that is acceptable for the Customer; or

d) by delivering a new version of the software whose use in conformity with the Agreement does not infringe any third-party IP rights.

11.9   If a third party claims that the Customer's use of the software infringes its intellectual property rights, the Customer will notify the Provider of this without delay and, to the extent possible, allow the Provider to defend the claim. The Customer will provide the Provider with all reasonable support in the defense of the claim. In particular, the Customer will provide the Provider with all necessary information regarding the use and modification, if any, of the software by it. Such information will be provided, to the extent possible, in writing together with any documents that are available.

11.10   If a defect alleged by the Customer is not attributable to the Provider or does not in fact exist, the Provider will be entitled to charge the Customer for the costs incurred for analysis and remedial work at the current rates, provided that the Customer was at least negligent in not recognizing that no defect existed.

11.11   The Provider will not be liable if the use of the software is impaired due to improper installation, operation or maintenance.

11.12   Where the Customer makes modifications to the software or a third party does so on its behalf, the Provider will not be liable for any defects unless the Customer can prove that the modifications do not unreasonably impact the Provider's ability to analyze and remedy the defects. The Customer's rights due to defects shall remain unaffected insofar as the Customer was entitled to make modifications to remedy defects on account of mandatory statutory provisions and the modifications were carried out in a professional manner and documented in a comprehensible manner.

11.13   The Provider assumes no warranty for pre-release versions (e.g. daily builds and beta versions) and for functions and functionalities of Checkmk Software (including language versions) that are marked as "not supported". Such versions, functions and functionalities are made available exclusively for testing and evaluation purposes. The Provider shall only be liable for such versions, functions and functionalities in case of intent or gross negligence.

11.14   Any statements regarding the features or fields of use of the software do not constitute guarantees or guaranteed features in a legal sense, unless they are expressly designated as such.

12   Remedies for Defective Support Services

If the Provider fails to provide the Support Services in conformity with the contract, the Provider will be entitled, at no charge, to re-perform the services to the extent that they can be re-performed, and the Customer can be reasonably expected to accept this. The Customer will grant the Provider a reasonable grace period for reperformance. If the Provider fails or refuses to re-perform during the grace period, the Customer may terminate the Subscription Agreement for cause. Any claims for damages or reimbursement of expenses will be limited pursuant to section 13.

13   Limitation of Liability

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

13.2   In the cases covered by section 13.1, the Provider's liability is limited to the damage which can be reasonably foreseen for such type of contract.

13.3   In the cases covered by section 13.1, the amount of the Provider's liability is in any event limited as follows:

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

b) For all occurrences of damage during one Contract Period, to a maximum of fifty percent (50%) of the net Subscription price paid to the Provider in the respective Contract Period.

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

13.4   The Provider excludes all liability for lost profits in the cases covered by section 13.1.

13.5   Strict liability for damages for defects that already existed at the time of the conclusion of the contract is excluded.

13.6   The Provider will only be liable for loss of data and programs and outages if (i) the damage could not have been avoided even by taking appropriate precautions to avoid loss of data (in particular, by creating, at least on a daily basis, backups of all programs and data) and by taking appropriate precautions in line with the state-of-the-art technology to avoid outages (in particular, by testing updates in a test environment before using them in a production system and by preparing disaster recovery plans) or (ii) the damage was caused by gross negligence or intentional wrongdoing on the Provider's part. All liability for loss of data is subject to the other restrictions in this section 13.

13.7   Except in cases where a guarantee has been provided, damage results from intentional wrongdoing or fraudulent concealment of errors or where personal injuries occur, the

above limitations on liability apply to all claims for damages and reimbursement of expenses, irrespective of their legal basis and including claims based on tort.

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

14   Export Control

14.1   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 downloading and, if applicable, transferring the software, data and information (**"Export Data"**) that the Provider provides.

14.2   Prior to downloading or transferring 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

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

b)   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;

c)   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

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

14.3   The contract 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 or performance.

14.4   The Customer will indemnify and hold the Provider harmless from and against all actions and claims resulting from a violation of sections 14.1 and 14.2. The Customer will compensate the Provider for any damage, loss or costs that the Provider incurs due to a violation of sections 14.1 and 14.2.

15   Final Provisions

15.1   These GTC and the Subscription Agreement comprise the entire agreement between the parties concerning the subject matter hereof and supersede any prior agreements between them. Any provisions in the Customer's general terms and conditions which conflict with, vary from or add to these GTC will only become part of the contract 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, shall not be considered as explicit consent. Such terms and conditions will not become part of the contract.

15.2   To the extent there is a conflict between different elements of the agreement, the following precedence will apply: (1) the Subscription Agreement; (2) these GTC; and (3) the other Appendices and referenced documents.

15.3   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, e-mail or fax). The same applies to any waiver of the text form requirement.

15.4   Should any provision be or become invalid in whole or in part, this shall 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.

15.5   The ongoing development of the Provider's offering may require to amend these GTC during the term of the Subscription Agreement. The Provider will give the Customer six (6) weeks' advance notice of any amendments in text form (e.g., by postal mail, email or fax). The Customer will be deemed to have consented to the amendments if he has not indicated his refusal in text form (e.g., by postal mail, email or fax) before their proposed entry into force. The Customer is, in this case, entitled to terminate the Subscription for cause. The Provider will specifically alert the Customer in its offer as to the effect of deemed consent.

15.6   The Provider may use the Customer's name and logo on the Provider's website, customer lists and marketing materials to represent that the Customer is a user of Checkmk Software.

15.7   The Customer may only set off counterclaims that are undisputed or non-appealable.

15.8   German law shall apply, with the exception of those provisions that would result in the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods (CISG) will not apply.

15.9   The courts of Munich, Germany, will have exclusive jurisdiction over any disputes arising out of or in connection with these GTC and the agreements concluded thereunder, including their validity. The Provider reserves the right to bring action at the place of performance or at the Customer's general place of jurisdiction. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.

Appendix A: Service Description Checkmk Support

1   Contents of the Support Packages

	Support Packages	
	Pro	**Advanced**
Number of support contacts	3	7
Interactive ticket system [1]	yes	yes
Support availability [2]	8 hours / 5 days	10 hours / 5 days
Support hours (contracts with Checkmk GmbH)	9am - 5pm (CET)	8am - 6pm (CET)
Support hours (contracts with Checkmk, Inc.)	9am - 5pm (ET)	8am - 6pm (ET)
Response time [3] Critical (L1)	-	4 hours
Significant (L2)	-	8 hours
Limited (L3)	-	next business day
Minimal (L4)	-	2 business days
Access to Consulting	no	yes

Notes

1)   Support requests can be made by the Support Contacts designated by the Customer via the Checkmk support portal.

2)   Support is available Monday through Friday except for national public holidays in Germany or national holidays in the U.S., respectively.

3)   Response time means that the Provider responds to the Customer's support request by telephone or in the Checkmk support portal 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.

2   Exclusions

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

a) 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);

b) Handling of problems with the connection of plug-ins or extensions that are not part of a published Checkmk Edition (e.g., Nagios plug-ins, self-written plug-ins or packages from the 'Checkmk Exchange');

c) Handling of problems that are due to the Customer not having installed the Checkmk Software in a suitable environment;

d) Handling of problems caused by the Customer's failure to install updates, solutions, bug fixes and improvements supplied by the Provider;

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

f) 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);

g) Development of Customer-specific integrations or scripts;

h) 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;

i) Optimization of the configuration or performance enhancements.

3   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.

Level 1: Critical business impact
- Full loss of service, cannot be resolved by restarting.
- No workaround is immediately available.
- Impact on business operations must be critical.
- Only available for existing production systems of Checkmk.

Level 2: Significant Business Impact
- The monitoring is usable, but major functionality is severely impaired and no acceptable workaround is available.
- Issue is critical to customer's business operations:
  - Critical component returning error / not responding, but Checkmk overall remains operational.
  - A degraded Checkmk performance with serious negative business impact.

- Service interruptions that can be temporarily resolved by re-starting the service or by using an acceptable workaround.
- Only available for existing production systems of Checkmk.

Level 3: Limited Business Impact

- Checkmk is usable, but non-critical functionality is impaired:
  - An issue important to long-term productivity that is not causing an immediate work stoppage.
  - A noncritical component returning error or not responding.
  - Degraded performance of Checkmk that leads to minor disruptions to business operations; an acceptable workaround exists.
  - Issues that only occur with a small part of the Customer's user group.
- All problems with plug-ins or local checks.
- Available for all environments (production, development, ...).

Level 4: Minimal Business Impact

- The problem has no significant impact on business operations or an acceptable workaround has been implemented:
  - General information requests, such as "how-to".
  - Issue with little or no impact on quality, performance, or functionality.
  - Issues in the Checkmk User Guide or non-functional issues in the user interface (such as translation errors or editorial errors).
  - The issue is essentially resolved but remains open for Customer confirmation.
- Available for all environments (production, development, ...).

Appendix B: Conditions for the use of Checkmk Software without Subscription

1   Subscription-free use of Checkmk Software

1.1   Each user of Checkmk Software that is offered for download as a free trial is granted the rights under the Checkmk Enterprise License in accordance with the Checkmk End User License Agreement, Version 2, for all technically usable functions of the Checkmk Software during the first thirty (30) days from the initial installation (**"Trial Period"**) without limitation of the number of monitored services and including the Group License and Managed Services Use (license state 'Trial'). The provisions of the Checkmk End User License Agreement, Version 2, shall apply accordingly for users without a Subscription.

1.2   After expiry of the Trial Period, free use is only permitted for the operation of a minimal installation with a maximum of one (1) Checkmk Instance for monitoring a limited number of services (license state 'Free'). Access to the interfaces of the Checkmk Software with the objective of displaying monitored services from several Checkmk Instances in one view is not permitted. The license does not include the use of add-ons. However, the use of up to three (3) Synthetic Tests is permitted.

1.3   The offering of Subscription-free use can be changed or discontinued at any time.

1.4   A contract is concluded at the time when the Checkmk Software is downloaded or, if procured through a cloud marketplace, when Checkmk is ordered or activated with reference to these GTC. The parties to the contract are the Provider and the user of the software. If the software is used on behalf of a legal entity, public body or authority, the latter shall be deemed to be the user. In such case, the person performing the download or order or activation acts on behalf of this legal entity, public body or authority.

1.5   There is no right of withdrawal. The user may at any time delete the software copies that it has created and thus to terminate the user contract.

1.6   In the event of a defect in quality regarding the software, the liability of the Provider, its vicarious agents and its legal representatives shall be limited to any direct damage incurred by the user due to fraudulent concealment of a defect and to any consequential damage based on intentional or grossly negligent conduct of the Provider, its vicarious agents and its legal representatives. Any further liability for defects in quality is excluded.

1.7   The Provider is not aware of any defects in title regarding the software. In the event of a defect in title regarding the software, the Provider, its vicarious agents and its legal representatives shall only be liable for damage incurred by the user due to the fraudulent concealment of such defect in title. Any further liability for defects in title is excluded.

1.8   In relation to the rights holders of open source components, the warranty provisions of the applicable open source license, to which express reference is made, shall apply.

1.9   The Provider, its vicarious agents and its legal representatives shall only be liable for other breaches of duty if caused by intent or gross negligence; any further liability shall be excluded. The statutory liability for defective products shall remain unaffected.

2   Export Control

2.1   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 downloading and, if applicable, transferring the software, data and information (**"Export Data"**) that the Provider provides.

2.2   Prior to downloading or transferring 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 user must, inter alia, verify and ensure through the adoption of suitable measures

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

   b.   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;

   c.   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

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

2.3   The contract 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 or performance.

2.4   The user will indemnify and hold the Provider harmless from and against all actions and claims resulting from a violation of sections 2.1 and 2.2. The user will compensate the Provider for any damage, loss or costs that the Provider incurs due to a violation of sections 2.1 and 2.2.

3   Final Provisions

3.1   Should any provision be or become invalid in whole or in part, this shall 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.

3.2   German law shall apply, with the exception of those provisions that would result in the application of the laws of a different jurisdiction. If the user without Subscription is a consumer and does not have his habitual residence in the Federal Republic of Germany, the

statutory consumer protection regulations of the state of his habitual residence shall remain unaffected if and insofar as these regulations may not be deviated from under the law of the state of his habitual residence. The United Nations Convention on Contracts for the International Sale of Goods (CISG) will not apply.

3.3   If the user is a merchant, a legal entity under public law or a special fund under public law, if the user has no general place of jurisdiction in Germany or if the user moves his domicile or habitual residence out of Germany after conclusion of the contract, or if the domicile or habitual residence of the user is unknown at the time of the commencement of legal action, the exclusive place of jurisdiction for all disputes arising out of or in connection with these conditions, including the validity of these conditions, shall be the Provider's registered office in Munich. The same shall apply if the user is an enterprise. The Provider reserves the right to bring action at the place of performance or at the general place of jurisdiction of the user. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.

3.4   The European Commission provides a platform for the online resolution of disputes between consumers and businesses (OS platform) at https://ec.europa.eu/consumers/odr. The email address of the Provider is info@checkmk.com. The Provider is neither obliged nor willing to participate in dispute resolution proceedings before consumer arbitration bodies.