

Terms and Conditions for Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS)

Version 2.0 (2026-03-17)

A. General Terms and Conditions for Customers of Checkmk GmbH und Checkmk, Inc. ("GTC")	2
1 Scope of Application	2
2 Contractual Partner	2
3 Contract Documents and Order of Precedence	3
4 Definitions	4
5 Checkmk Software (Self-Hosted) and Add-Ons	6
6 Checkmk Cloud (SaaS) and Add-Ons	7
7 Use	8
8 Use of AI	8
9 Suspension	11
10 Checkmk OEM Support	11
11 Modifications and Discontinuation of Service Components	12
12 Customer`s Duty to Cooperate	13
13 Term and Termination	14
14 Payment and Invoicing	15
15 Proprietary Rights	16
16 Confidentiality	16
17 Data Protection and Data Utilization by the Provider	17
18 Engagement of Sub-processors	19
19 Data Act	19
20 Remedies for Defects	19
21 Remedies for Defective Checkmk OEM Support Services	21
22 Limitation of Liability	21
23 Indemnification	22
24 Export Control	23
25 Trial Version, POC Version and Free Version	24
26 Force Majeure	26
27 Governing Law	26
28 Jurisdiction	27
29 Final Provisions	27
B. Special Terms and Conditions for Customers of Checkmk, Inc. (U.S. STC)	29
1. Suspension	29
2. Modifications and Discontinuation of Service Components	29
3. Term and Termination	30
4. Payment and Invoicing	30
5. Data Act	30
6. LIMITED WARRANTIES; DISCLAIMER OF WARRANTIES	30
7. INDEMNITIES	32
8. LIMITATIONS OF LIABILITY	34
9. Force Majeure	34
10. Final Provisions	35

A. General Terms and Conditions for Customers of Checkmk GmbH und Checkmk, Inc. ("GTC")

1 Scope of Application

1.1 These General Terms and Conditions for Customers of Checkmk GmbH and Checkmk, Inc., including their appendices ("**GTC**"), as supplemented by the End User License Agreement ("**EULA**"), as well as the Special Terms and Conditions for Customers of Checkmk, Inc., including their appendices ("**U.S. STC**") (where applicable), together with all documents incorporated therein by reference or hyperlink, govern the framework conditions (collectively the "**Terms and Conditions**") for

1.1.1 the temporary provision of **Checkmk Software (Self-Hosted)** (as defined in Section 4.7 and Section 5 of the GTC);

1.1.2 the temporary provision of **Checkmk Cloud (SaaS)** (as defined in Section 4.2 and Section 6 of the GTC), and

1.1.3 in each case including the provision of **Checkmk OEM Support** (as defined in **Section 4.6**).

Sections 1.1.1 - 1.1.3 of the GTC shall hereinafter be referred to collectively as "**Services**".

1.2 The Services are provided by the Contractual Partner referred to in Section 2 of the GTC ("**Provider**") to its Customers ("**Customer**") on the basis of a Subscription Agreement. The Subscription Agreement is concluded either by means of an order form signed by both parties or by means of the designated digital ordering process ("**Order**").

1.3 The Provider offers its Services exclusively to natural or legal persons under private or public law or partnerships with legal capacity who are acting in the exercise of their trade, business or profession. The Customer's status must be proven at the time of entry into the contract, e.g. by providing their VAT identification number or other suitable proof. All information provided by the Customer in this context must be complete and truthful.

1.4 For the use of Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) without a Subscription Agreement in the context of a Trial-Version ("**Trial-Version**") or proof of concept ("**POC-Version**"), Section 2 and the deviations set out therein apply in addition to the provisions of these Terms and Conditions. The same applies to the free use of the Checkmk Software (Self-Hosted) without a Subscription Agreement after the expiry of the trial period of a Trial-Version or POC-Version ("**Free-Version**"). Free use of Checkmk Cloud (SaaS) is not possible after the trial period of a Trial-Version or POC-Version has expired.

1.5 In the event Checkmk Software (Self-Hosted) is provided or Checkmk Cloud (SaaS) is made available by an authorized **Partner**, the contractual terms agreed with said partner shall apply exclusively. For the purposes of this Section, "**Partner**" means companies authorized to resell Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS), respectively. The use of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) is additionally governed by the **EULA** (as defined in Section 3.1.3 of the GTCC).

2 Contractual Partner

2.1 For the provision of Services, the Customer's Contractual Partner is either **Checkmk GmbH**, Kellerstraße 27, 81667 Munich, Germany ("**Checkmk GmbH**") or **Checkmk, Inc.**, 675 Ponce de Leon Ave NE Suite 8500, Atlanta, GA 30308, USA ("**Checkmk, Inc.**"). The specific Contractual Partner of the Customer results from the indication in the relevant order form, subject to Section 2.2 of the GTC.

2.2 Notwithstanding Section 2.1 of the GTC, the Customer's Contractual Partner for the provision of Trial-Versions is determined by the region in which the Customer has its registered office:

2.2.1 If the registered office is in Europe, the Middle East, Africa, or the APAC region, the Contractual Partner is Checkmk GmbH.

2.2.2 If the registered office is outside the regions listed in Section 2.2.1 of the GTC, such as in North or South America, the Contractual Partner is Checkmk Inc.

3 Contract Documents and Order of Precedence

3.1 **"Subscription Agreement"** means the contract between the Provider and the Customer regarding the temporary licensing of Checkmk Software (Self-Hosted) or the provision of Checkmk Cloud (SaaS), as well as support services, for a defined term. It consists of the following documents, each of which forms an integral part of every Order:

3.1.1 the **Order**, as defined in Section 1.2;

3.1.2 the **Data Processing Agreement for Customers with Checkmk GmbH (DPA)** or the **Data Processing Agreement for Customers with Checkmk, Inc. (U.S. DPA)**, if personal data is processed on behalf of the Customer. DPA and U.S. DPA have the meanings set forth in Section 17.3 of the GTC. The latest version of the DPA is available and accessible at <https://checkmk.com/legal/dpa> and the latest version of the U.S. DPA is available and accessible at <https://checkmk.com/legal/dpa-us>;

3.1.3 the **General Terms and Conditions for Customers of the Checkmk GmbH and Checkmk, Inc. (GTC)** as supplemented by the **End User License Agreement (EULA)**; The **GTC** are set out in Part A of these Terms and Conditions for Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS). The most recent version of the **EULA** is available and can be accessed at <https://checkmk.com/eula>;

3.1.4 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>;

3.1.5 the **Special Terms and Conditions for Customers of Checkmk GmbH on Data Exchange under the Data Act (the STC Data Act)**, where applicable. STC Data Act has the meaning set forth in Section 19 of the GTC. The most recent version of the STC Data Act is available and can be accessed at <https://checkmk.com/legal/data-act>;

3.1.6 the **Special Terms and Conditions for Customers of Checkmk, Inc. (U.S. STC)**, where applicable; **U.S. STC** is governed by Part B of these Terms and Conditions for Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) and supplements or modifies the GTC to the extent regulated therein;

3.1.7 all other **documents referenced** in the aforementioned documents or the Order, **or incorporated by reference or hyperlink**.

3.2 In the event of any contradictions between the individual contract documents of the Subscription Agreement, the following order of priority applies, unless expressly agreed otherwise:

3.2.1 **Order**;

3.2.2 **DPA** (where applicable) or **U.S. DPA** (where applicable);

3.2.3 **STC Data Act** (where applicable);

3.2.4 **Service Description Checkmk OEM Support and SLAs**;

3.2.5 **U.S. STC** (soweit anwendbar);

- 3.2.6 **GTC** as supplemented by the **EULA**. In the event of any conflict or inconsistency between the GTC and the EULA, the provisions of the EULA shall prevail insofar as the use of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) is concerned, whereas in all other cases, the provisions of the GTC shall take precedence;
- 3.2.7 all other **documents referenced or incorporated by reference or hyperlink**.

4 Definitions

The terms defined in this Section 4 of the GTC shall apply to these Terms and Conditions. They include both the singular and the plural, unless the context requires otherwise.

4.1 **"AI"** means AI systems and/or AI-based models. An AI system is a system falling under the definition of "AI system" within the meaning of the **AI Act** and operates to a certain degree autonomously (e.g., makes decisions, learns, or evolves on its own) and generates AI-Output, including generative AI systems and general-purpose AI systems within the meaning of the **AI Act**. A generative AI system is an AI system designed to generate text, images, audio, video, or other similar content. A universal AI system is an AI system that can be used and adapted to a wide range of applications for which the AI system was not specifically developed. An AI-based model, as defined in the **AI Act**, refers to an AI-Model that has been trained on the basis of extensive data, designed for various AI-Outputs, and adaptable 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 Act**.

4.2 **"AI Act"** means 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.

4.3 **"AI-Output"** means the results generated by AI, e.g., texts, images, videos, codes, tests, predictions, recommendations, or decisions.

4.4 **"AI Regulations"** means the AI Act and other legal acts concerning artificial intelligence, regardless of their jurisdiction.

4.5 **"Affiliate"** means any entity controlling, controlled by or under common control with a party. Control within the meaning of this definition means ownership of more than fifty per cent (50%) of the voting shares in an entity or the power to direct the management and strategy of an entity.

4.6 **"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.

4.7 **"Checkmk Cloud Edition (SaaS)"** comprises the current and future editions of Checkmk Cloud (SaaS), which may differ in terms of product functionality or functional restrictions, performance and performance limits, and/or different Checkmk Cloud (SaaS) offerings. These editions are listed, where available, in the Provider's most recent price and product overview (available and accessible at <https://checkmk.com/pricing>) and in the User Guide Cloud (SaaS).

4.8 **"Checkmk Data Backend"** means the Provider's central data repository and storage architecture (currently identified within the Checkmk Software (Self-Hosted) and the Checkmk Cloud (SaaS) as the "Metric Backend") used to house and process telemetry and observability data, regardless of the underlying database technology utilized.

4.9 **"Checkmk Edition"** means the Checkmk Software Edition (Self-Hosted) and/or Checkmk Cloud Edition (SaaS).

4.10 **"Checkmk Instance"** means a running installation of the Checkmk Software (Self-Hosted) on a physical or virtual system (also referred to as a 'Site').

4.11 **"Checkmk OEM Support"** 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"**.

4.12 **"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.

4.13 **"Checkmk Software Edition (Self-Hosted)"** includes the current Checkmk Community, Checkmk Pro and Checkmk Ultimate editions as well as future editions of Checkmk Software (Self-Hosted), which may differ in terms of product functionality or functional restrictions, performance and performance limits and/or different Checkmk Software (Self-Hosted) offerings. These editions are listed, where available, in the Provider's most recent price and product overview (available and accessible at <https://checkmk.com/pricing>) and in the User Guide Software (Self-Hosted).

4.14 **"Data Act"** means Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules for fair access to and use of data, and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (the "Data Act").

4.15 **"End User"** means any person authorized by the Customer to access and use Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS), directly or indirectly, a) for the Customer's internal business purposes or b) to the extent expressly agreed in the Subscription Agreement, also within the scope of a Group License for the purposes of Affiliated Companies or within the scope of Managed Services Use for the purposes of third parties. This includes employees of the Customer, contractors, agents, or other third parties acting on behalf of the Customer in accordance with the Subscription Agreement and the **EULA**.

4.16 **"GDPR"** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

4.17 **"Licensed Services"** means the number of Services defined in the Subscription Agreement that may be monitored using Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS). A **"Service"** consists of at least one monitored data point, e.g., the CPU load of a specific device. A monitored device may therefore generate many monitored Services in the Checkmk Software (Self-Hosted) or in Checkmk Cloud (SaaS).

4.18 **"Licensed Synthetic Tests"** means the number of Synthetic Tests and Keywords defined in the Subscription Agreement for Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS), where available, for which the Checkmk Synthetic Monitoring add-on may be used. A **"Synthetic Test"** is an automated procedure for monitoring the availability, performance, and functionality of an application from an end user perspective, consisting of a sequence of **"Keywords,"** where each keyword can define a specific functional interaction – such as a click or text entry.

4.19 **"Licensed Custom Metrics"** means the number of Custom Metrics defined in the Subscription Agreement for Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS), where available, for which the Telemetry add-on may be used. **"Custom Metrics"** means any data series stored in the **Checkmk Data Backend**.

4.20 **"Service Generated Data"** means telemetry data, metadata, and analytical data generated by the Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) and its respective environments. This includes data regarding the utilization, performance, and

configuration of the software (e.g., utilized check plug-ins), including AI-Output (if applicable).

4.21 **"SLAs"** for Checkmk Cloud (SaaS) means the service levels specified in 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>.

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

4.23 **"User Guide"** means the User Guide Software (Self-Hosted) and the User Guide Cloud (SaaS). User Guide refers to the product information published by the Provider, which describes the features of Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) and includes configuration, integration, and administration guidelines, which are updated from time to time. For each version of Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS), only the documentation relating to that version is valid.

4.24 **"User Guide Cloud (SaaS)"** means the most recent version of the documentation for Checkmk Cloud (SaaS) and is available and accessible at <https://docs.checkmk.com/saas>.

4.25 **User Guide Software (Self-Hosted)"** means the most recent version of the documentation for Checkmk Software (Self-Hosted) and is available and accessible at <https://docs.checkmk.com>.

5 Checkmk Software (Self-Hosted) and Add-Ons

5.1 **Checkmk Software (Self-Hosted)** is described in more detail in the User Guide Software (Self-Hosted). Various Checkmk Software Editions (Self-Hosted) are offered, which differ in terms of their range of functions and the scope of the license.

5.2 **Provision.** Checkmk Software (Self-Hosted) is provided, exclusively electronically, for download and must be installed by the Customer itself.

5.3 **Access to new versions.** The Customer will receive access to new versions of the Checkmk Software (Self-Hosted), which may include functional enhancements or bug and security fixes. From the initial release date of a full version (e.g., version 2.5.0), bug and security fixes will be provided for a period of at least twenty-four (24) months. The product lifecycles are listed in the User Guide Software (Self-Hosted).

5.4 **Checkmk Software (Self-Hosted) Add-Ons.** The Provider may offer specific fee-based add-ons for Checkmk Software (Self-Hosted), whereby not all Add-ons are available for all Checkmk Editions Software (Self-Hosted) at the Provider's sole discretion. If listed in the Subscription Agreement, the following provisions apply regarding to the respective Add-on(s):

5.4.1 **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.

5.4.2 **virt1.** The virt1 is a separate software that enables the GUI-guided installation of a Checkmk Software Edition (Self-Hosted) in a virtual environment. The add-on is licensed for the number of Licensed Services defined in the Subscription Agreement.

5.4.3 **ntop integration.** The ntop integration enables the use of Checkmk Software (Self-Hosted) in conjunction with the commercial version of the ntopng software, which must be licensed by Customers separately from third-party providers.

5.4.4 **Telemetry.** Telemetry enables Customers to integrate Custom Metrics via standardized protocols, including but not limited to OpenTelemetry and Prometheus. The add-on is licensed in accordance with the **EULA** for the number of Licensed Custom Metrics series stated in the Subscription Agreement.

5.4.5 **Calculation.** The calculation of the number of monitored Services, Synthetic Tests (Synthetic Monitoring) and Custom Metrics (Telemetry) for Checkmk Software (Self-Hosted) is governed in the **EULA** and the User Guide Software (Self-Hosted).

5.5 The Checkmk Software (Self-Hosted) contains over 2,000 check plug-ins that can be used to monitor data points from different devices and applications. The manufacturers of these devices and applications regularly modify their software and interfaces. Such changes to the monitored systems may affect the functionality of the monitoring. The Checkmk Software (Self-Hosted) will be adapted to such changes in accordance with the Checkmk product roadmap, which the Provider determines at its sole discretion. The Provider is not obliged to implement specific adaptations at a specific time or at all.

6 Checkmk Cloud (SaaS) and Add-Ons

6.1 **Checkmk Cloud (SaaS)** is described in more detail in the User Guide Cloud (SaaS) Various Checkmk Cloud Editions (SaaS) may be offered, which may differ in terms of product functionality or functional restrictions, performance and performance limits, and/or different service offerings.

6.2 **Provision.** The Provider will make Checkmk Cloud (SaaS) available in a data center for access and use by the Customer. Checkmk Cloud (SaaS) is considered to be ready for access and use as soon as the Provider has provided the Customer with functional access data. The relevant service provision point for Checkmk Cloud (SaaS) is the router exit of the data center used by the Provider. The Provider is not liable for failures or unavailability of hardware and software components, telecommunications networks or other networks beyond this service provision 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 part of the Subscription Agreement and are the sole responsibility of the Customer. Further technical details are set out in the User Guide Cloud (SaaS).

6.3 **Access to new versions.** The Customer may gain access to new versions of Checkmk Cloud (SaaS) that may contain functional enhancements or bug and security fixes. The Provider will automatically integrate such new versions into Checkmk Cloud (SaaS) at its sole discretion and will further notify the Customer of such new versions of Checkmk Cloud (SaaS) at its sole discretion.

6.4 **Checkmk Cloud (SaaS) Add-Ons.** The Provider may offer specific fee-based Add-Ons for Checkmk Cloud (SaaS), whereby not all Add-Ons are available for all Checkmk Editions Cloud (SaaS) at the Provider's sole discretion. If listed in the Subscription Agreement, the following provisions apply regarding to the respective Add-on(s) listed in the Subscription Agreement:

6.4.1 **Telemetry.** Telemetry enables Customers to integrate **Custom Metrics** via standardized protocols, including but not limited to OpenTelemetry and Prometheus. The Telemetry Add-On is licensed in accordance with the **EULA** for the number of Custom Metrics series stated in the Subscription Agreement.

- a) **Limits and Enforcement.** To preserve the availability of Checkmk Cloud (SaaS) for the entire customer base, Customer shall a) not exceed the number of licensed Custom Metrics series stated in the Subscription Agreement, b) adhere to a data transmission frequency for Custom Metrics to the Checkmk Data Backend of no more than once every 15 seconds, and c) not excessively use **Queries**, which means not exceeding five (5) times the average Query usage of customers with a similar Subscription size of the Customer. "**Query**"/"**Queries**" are defined as one or several Custom Metrics that a Customer wants to transfer in one request from the Checkmk Data Backend into its Checkmk Cloud (SaaS) sites for further processing, e.g., for dashboards or API calls.
- b) If the Customer exceeds the number of licensed Custom Metrics series stated in the Subscription Agreement and/or violates the data transmission frequency of no more

than once every 15 seconds and/or excessively uses Queries, the Provider reserves the right, at its sole discretion, to immediately suspend all incoming data to the **Checkmk Data Backend** and to block all Queries.

- c) **Data Storage.** The Provider will store the Custom Metrics for the period stated in the current version of the User Guide Cloud (SaaS).

6.4.2 **Calculation.** The calculation of the number of monitored Services, Synthetic Tests (Synthetic Monitoring) and Custom Metrics (Telemetry) for Checkmk Cloud (SaaS) is governed in the EULA and, if available, in the Checkmk User Guide Cloud (SaaS).

6.5 **Technical Limitations.** Subject to the Subscription Agreement and the Checkmk Cloud Edition (SaaS) agreed therein, as well as general technical limitations, the use of Checkmk Cloud (SaaS) is limited to a defined number of End Users and a defined number of Licensed Services and Licensed Custom Metrics that the Customer may monitor with Checkmk Cloud (SaaS). Depending on the further technical development of Checkmk Cloud (SaaS) and, its availability, the Customer may use the self-service functionality within the 'Checkmk Customer Portal' (available at <https://portal.checkmk.com>) or contact the Provider to request an upgrade to another Checkmk Cloud Edition (SaaS) in order to increase the number of End Users and/or Licensed Services.

7 Use

7.1 Subject to the Customer's compliance with its obligations under the Subscription Agreement, in particular its payment obligations under Section 14 of the GTC, the Provider grants the Customer a limited-term right to use Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS), in accordance with the **EULA** and, and to utilize the support services specified in the Subscription Agreement. Checkmk Software (Self-Hosted) consists of a Checkmk Software Edition (Self-Hosted) and, if applicable, add-ons. Checkmk Cloud (SaaS) consists of a Checkmk Cloud Edition (SaaS) and, if applicable, add-ons.

7.2 **Group License and Managed Services Use.** Subject to the availability and provided that such right is expressly granted in the applicable Subscription Agreement, the Provider grants the Customer the right to use Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) a) for the benefit of its Affiliates ("**Group License**"), and/or b) for the business purposes of third parties ("**Managed Services Use**").

7.3 **No Resale.** Unless expressly agreed as part of a Managed Services Use, the Customer is prohibited from using Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) to provide services to third parties (e.g., as a Managed Service Provider) or from otherwise commercially exploiting the Services. In the event of a breach, the Provider reserves the right to prohibit such use.

7.4 **Third-Party Technology.** Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) may contain third-party technology (including third-party open-source software) made available to the Customer as part of Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) ("**Separately Licensed Third-Party Technology**"), which is subject to separate license terms ("**Separate Terms**"). The Customer's rights to use any Separately Licensed Third-Party Technology under the Separate Terms are not restricted by the Subscription Agreement. The Provider will ensure that all Separately Licensed Third-Party Technologies are used in compliance with the respective Separate Terms. The Customer is obliged to comply with such Separate Terms. Upon request, the Provider will make all relevant Separate Terms available to the Customer.

8 Use of AI

The Customer acknowledges and agrees that the Provider may provide functions that are based on or enable the use of AI. Where such functions are provided, their scope and characteristics shall be determined by the then-current service description in the User Guide Software (Self-Hosted) or User Guide Cloud (SaaS), respectively. The Provider is entitled to restrict the use of these functions through technical limitations (in particular rate limits or

token quotas), which may vary depending on the Checkmk Software Edition (Self-Hosted) or Checkmk Cloud Edition (SaaS).

8.1 Provision of Interfaces within Checkmk Software (Self-Hosted).

a) The Provider provides Application Programming Interfaces (“APIs”) or connectors within the Checkmk Software (Self-Hosted), which are described in more detail in the User Guide Software (Self-Hosted), where available (“Interfaces”). These enable the Customer to integrate their own AI-Models or third-party services on their own responsibility. Since the Provider does not integrate any AI-based functions within the Checkmk Software (Self-Hosted) itself, the selection, technical integration, and operation of such AI-Systems fall exclusively within the Customer's area of responsibility and risk. Interoperability of the APIs or connectors with specific AI-Models or services is not owed. Section 11 of the GTC shall apply supplementally to the introduction, replacement, or modification of the Interfaces.

b) **This Section 8.1 b) of the GTC does not apply for Customers of Checkmk, Inc.. For such Customers, Section 7 of the U.S. STC “INDEMNITIES” shall apply exclusively.** The Customer shall indemnify and hold the Provider harmless from and against any third-party claims arising out of or in connection with the integration of such AI-Models or services, unless the Customer is not responsible for the breach.

8.2 **Provision of AI-Systems within Checkmk Cloud (SaaS).** The Provider may provide AI-Systems within Checkmk Cloud (SaaS) as defined in Art. 3 No. 1 of the AI Act (e.g., chatbots, assistants, or automated analysis functions) based on third-party AI-Models (“AI-Systems”). This includes a) interactive AI-Systems (e.g., chatbots, assistants) for generating AI-Output through Customer “Prompts,” as well as b) AI-powered functions that automatically access monitoring data, logs, or metadata of the Checkmk Cloud (SaaS) customer environment without manual input. All data transmitted by the Customer (e.g., Prompts, monitoring data, logs) used to generate AI-Output shall collectively be referred to as “Input.”

To the extent necessary for the provision of the AI-Systems, the Provider is entitled or – in the case of commissioned data processing – instructed by the Customer to transmit Input to the respective third-party provider of the underlying AI-Model, solely for the purpose of providing the AI-Output and the corresponding function under this Agreement. Data protection requirements (in particular roles, commissioned processing, sub-processors, third-country transfers) are primarily governed by the respectively agreed Data Processing Agreement within the meaning of Section 17.3 of the GTC.

A detailed description of the currently integrated AI in Checkmk Cloud (SaaS) can be found in the User Guide Cloud (SaaS). AI-Output generated as part of Checkmk Cloud (SaaS) shall be marked as such. Section 11 of the GTC shall apply supplementally to the introduction, replacement, or modification of AI-Systems.

8.3 Special Terms for AI-Systems within Checkmk Cloud (SaaS)

8.3.1 To the extent and as soon as the AI Act applies to the provision of the AI-Systems, the Provider shall act as the provider of the AI-System integrated into Checkmk Cloud (SaaS) for the purposes of the AI Act. All AI-Models underlying the AI-System are obtained by the Provider from third parties and are integrated via APIs exclusively for the purpose of providing the services in Checkmk Cloud (SaaS). The AI-Systems are not intended for the autonomous control of critical infrastructures or for high-risk applications within the meaning of the AI Act; such use is prohibited.

8.3.2 Customer Responsibility for Use

The Customer is aware that AI-Output may be prone to error. The Customer bears sole responsibility for the decision of whether and how to use AI-Output, particularly regarding its context of use, validation, as well as any actions and decisions derived therefrom. The

Provider's responsibility for the contractually required provision and operation of Checkmk Cloud (SaaS) remains unaffected by this.

8.3.3 Disclaimer of Warranty regarding AI-Output

This Section 8.3.5 of the GTC does not apply for Customers of Checkmk, Inc.. For such Customers, Section 6 of the U.S. STC "LIMITED WARRANTIES; DISCLAIMER OF WARRANTIES" shall apply exclusively.

As AI-Output is generated by complex algorithmic systems of third-party providers, the Provider assumes no warranty for the accuracy, completeness, reliability, or timeliness of the generated AI-Output.

8.3.4 Notes/ Human-in-the-loop/ Cooperation

To the extent that Checkmk Cloud (SaaS) contains AI-Systems and the Customer uses these AI-Systems as part of Checkmk Cloud (SaaS) to generate AI-Output or uses these AI-Systems in any other manner, the Customer,

- a) acknowledges that AI-Output is based on technologies that may produce incorrect or inaccurate results;
- b) shall ensure that any AI-Output generated via the AI-System within Checkmk Cloud (SaaS) is not processed automatically or used for operational decisions or other relevant purposes, but is instead carefully reviewed and verified by a natural person prior to use (in particular by correcting logic or syntax errors in the AI-Output);
- c) shall, upon the Provider's specific and reasoned request, provide reasonable assistance in meeting quality or regulatory requirements for the AI-Systems (including, but not limited to, providing relevant information and feedback on the capabilities and limitations of the AI-Systems), particularly to avoid erroneous, biased, or discriminatory AI Output; and
- d) shall ensure that AI-Systems as part of Checkmk Cloud (SaaS) are not used to generate discriminatory, biased, or unfair AI-Output, nor to infringe, misappropriate, or otherwise violate the intellectual property rights of third parties, and shall provide the Provider with corresponding documentation upon request and to a reasonable extent, insofar as such documentation exists and is reasonable to provide.

8.3.5 Rights to AI-Output

The Provider does not assume or claim ownership of the AI-Output, particularly with regard to intellectual property rights. To the extent that the Provider is entitled to rights in the generated AI-Output under applicable law, the Provider grants or transfers such rights to the Customer to the extent necessary for the contractually intended use of the AI-Output, particularly with regard to intellectual property rights. Third-party rights as well as pre-existing rights of the Provider shall remain unaffected.

8.3.6 AI-Model Training

The Provider ensures that Input is not used to train the third-party provider's AI-Models.

8.3.7 Discretion in AI-Model Selection

The selection, deployment, and replacement of the underlying AI-Model used for the AI-System shall be at the sole and equitable discretion of the Provider (§ 315 BGB). The Customer has no claim to the use of a specific AI-Model, a particular model version, or a specific third-party manufacturer, unless this has been contractually agreed. The Provider may update or change the AI-Model at any time.

8.4 Use of AI in the Provision of Checkmk OEM Support

The Provider is entitled to use AI-Systems for the provision, analysis, and optimization of Checkmk OEM Support services for Checkmk Cloud (SaaS) and Checkmk Software (Self-Hosted) ("**Support Purposes**"). The Provider shall ensure that customer data

transmitted to AI-Systems during the provision of support services is not used to train the general AI-Models of third-party providers. To this end, the Customer grants the Provider the necessary, non-exclusive rights of use to the corresponding customer data, limited to the Support Purposes.

9 Suspension

This Section 9 of the GTC does not apply for Customers of Checkmk, Inc.. For such Customers, Section 1 of the U.S. STC "Suspension" shall apply exclusively.

9.1 The Provider has the right to investigate and enforce violations of the Subscription Agreement by the Customer as described below..

9.2 The Provider is authorized to investigate any suspected violation of the obligations and provisions set forth in the Subscription Agreement and these Terms and Conditions.

9.3 The Provider is authorized to suspend all Services set out in the respective Subscription Agreement and any related services and resources, such as the Support Services, by the Customer and/or an Affiliate of the Customer – temporarily or permanently – with immediate effect if there are concrete indications of a) a violation of the Subscription Agreement or the EULA (in particular the Acceptable Use Policy); or b) a violation of applicable law; or c) there is a material default in payment by the Customer and/or one of its Affiliates, after the Provider has unsuccessfully set a reasonable grace period for payment for the Customer, or d) if the Provider has any other legitimate interests in suspending access to and use of Checkmk Cloud (SaaS).

9.4 When deciding to suspend the Customer's access to and the use of Services set out in the respective Subscription Agreement, the Provider will take the legitimate interests of the Customer into account to an appropriate extent and will give the Customer a reasonable prior warning in text form that the respective Service set out in the respective Subscription Agreement will be suspended. In individual cases, the Provider may also suspend Service set out in the respective Subscription Agreement without prior warning in order to protect the legitimate interests pursued by the Provider with the suspension, unless prior warning is required by law or for other legal reasons.

9.5 The suspension of Services set out in the respective Subscription Agreement does not constitute a termination of the Subscription Agreement. The Provider may only maintain the suspension without termination for a reasonable period of time, up to a maximum of three (3) months.

9.6 The Provider's claim to payment of the remuneration for Services set out in the respective Subscription Agreement will remain unaffected during the suspension. The Customer will be entitled to reinstatement of access once it has proven that it has ceased the respective use in breach of the Subscription Agreement and prevented any future use in breach of the Subscription Agreement.

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

10 Checkmk OEM Support

The Provider will provide the Customer with Checkmk OEM Support services for Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) in accordance with the **Service Description Checkmk OEM Support und SLAs**.

11 Modifications and Discontinuation of Service Components

This Section 11 of the GTC does not apply for Customers of [Checkmk, Inc.](#). For such Customers, Section 2 of the U.S. STC "Modifications and Discontinuation of Service Components" shall apply exclusively.

11.1 Subject to this Section 11 of the GTC, the Provider may modify the Services set out under this Terms and Conditions, including by providing new versions, updates, or upgrades, in order to adapt them to current technical developments or to align them with changes in legislation or case law, with changes in subcontractors' services, or with economic conditions arising after conclusion of the Subscription Agreement. Such modifications may also include changes to technical characteristics and functionalities, provided they remain within the scope defined in Section 11 of the GTC.

11.2 If, from the Customer's perspective, a modification of Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) does not merely constitute an improvement, but reduces the scope of Services specified in the Subscription Agreement or changes it in a manner that is unreasonable for the Customer, the Provider will announce the respective modification of Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) within a reasonable period of time through appropriate electronic channels in a manner recognizable to the Customer (e.g., notification by email, publication in the documentation, on the Provider's website, or within Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS)). Such announcement will be made within a reasonable period, but for Checkmk Cloud (SaaS) no later than six (6) weeks in advance and for Checkmk Software (Self-Hosted) no later than six (6) weeks prior to making the modification available as part of a new patch release or a new full release. This does not apply to short-notice adjustments or changes to Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) to the extent necessary to remedy security issues or to implement regulatory or statutory changes.

The following changes do not constitute a reduction of the service scope specified in the Subscription Agreement or an unreasonable change within the meaning of this provision: a) the release of new features or functionalities; b) routine updates, patches, or bug fixes that do not have any material adverse effect on the Customer's access to or use of Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS); c) changes to the user interface that do not materially reduce functionality; and d) the introduction, modification, replacement, or update of AI-based functionalities and the underlying AI-Models. The Provider is entitled, at its sole discretion, to integrate various AI-based functionalities into Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) or to replace existing AI-Models with AI-Models of other third-party providers in order to improve the Service or adapt it to technological progress. The Customer acknowledges that the selection and replacement of the AI-Model used in each case, as well as the AI-Model provider, are at the Provider's discretion and that the Customer has no entitlement to the use of any specific AI-Model or provider.

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

11.4 The Provider may discontinue functionalities of Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) at any time at its sole discretion. The Provider will announce such discontinuation or deactivation of a functionality of Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) at least three (3) months prior to deactivation, unless (i) an earlier deactivation is required due to statutory provisions or obligations arising from an agreement with a third party; or (ii) the continued provision of the relevant functionality poses a security risk for the Provider, the Customer, or other customers, or represents a significant economic or technical burden for the Provider.

11.5 The Provider may implement restrictive changes to Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) if (i) the Provider determines that a functionality, feature, or component is subject to unusually low usage by its customers, including the Customer; (ii) such unusually low usage is disproportionate to the costs and efforts incurred by providing

the respective functionality, feature, or component to the Customer; and (iii) such functionality, feature, or component does not constitute a material part of the product for fulfilling the fundamental contractual obligations. If these conditions are met, the Provider may amend the respective Subscription Agreement and the User Guide accordingly. Such changes may relate to any functionalities or features and/or the limitations of Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS).

11.6 The Provider will in all cases take the Customer's interests into account when discontinuing or modifying any feature or functionality of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS).

12 Customer's Duty to Cooperate

12.1 For contractual communication and for the provision of login data or licensing credentials, the Customer will designate a so-called 'Super User'. During the Subscription Period, the Customer will keep the contact details of the Super User up to date and will inform the Provider without undue delay of any changes. The Customer will designate support contacts up to the maximum number resulting from the scope of support services as set out in the **Service Description Checkmk OEM Support and SLAs**.

12.2 Access credentials or license keys that enable access to Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) must not under any circumstances be disclosed to third parties. This does not apply to disclosure to Affiliates under a contractually granted Group License, to service providers engaged by the Customer for their internal business purposes, or to third parties under a contractually granted Managed-Services-Use. The Customer bears sole responsibility for the use and disclosure of access credentials.

The Customer must implement and maintain processes and procedures to prevent unauthorized access to and unauthorized use of Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS). The Customer must notify the Provider without undue delay after becoming aware of any such unauthorized access and/or unauthorized use, as well as any compromise of license keys, and must remedy the root cause and any possible effects on Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) to the extent possible (e.g., by offboarding/deactivating the respective End User, changing the relevant access credentials, etc.).

12.3 Appropriate assistance by the Customer is an essential 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. Promptly upon request of the Provider, the Customer must provide all requested support diagnostic and log files. The Customer must respond to additional questions from the Provider without delay.

12.4 The Customer is obliged, upon request from the Provider, to provide all information about the Customer, its Affiliates, and End Users that the Provider requires in order to fulfill its statutory obligations.

12.5 License Verification for Checkmk Software (Self-Hosted). Upon commencement of the Subscription Agreement, Customer must perform without undue delay the license verification of its installation of the Checkmk Software (Self-Hosted) as described below and in detail in the User Guide Software (Self-Hosted) ("**License Verification Checkmk Software (Self-Hosted)**"). The Checkmk Software (Self-Hosted) remains in trial mode as long as the license verification is not completed by the Customer. This is an active obligation of the Customer. The license verification may be necessary for each Checkmk Instance.

The Provider may, at its sole discretion, implement an automatic online license verification mechanism in the Checkmk Software (Self-Hosted). In this case, the Customer is obliged to activate such online license verification in the Checkmk Software (Self-Hosted) which will also trigger the periodic submission of the license usage reports with the content specified in Section 12.7.

For information security reasons, the Customer may request an offline license verification. The offline license verification must not only be triggered upon commencement of the Subscription Agreement as described above, but also additionally at least once a year no later than six weeks before the end of the annual Subscription Period and include submission of the license usage reports. The Provider also reserves the right to request the license usage reports from the Customer at any time during the annual Subscription Period, which the Customer must submit to the Provider within 10 business days.

12.6 License Activation for Checkmk Cloud (SaaS). Upon commencement of the Subscription Agreement, Customer must perform without undue delay the license activation as described in detail in the User Guide Cloud (SaaS) ("**License Activation Checkmk Cloud (SaaS)**"). Checkmk Cloud (SaaS) remains in trial mode as long as the license activation is not completed by the Customer. License activation is an active obligation of the Customer.

12.7 Usage Audits and Reporting

The Customer must provide the Provider information a) on the number of monitored Services, and, b) if applicable, on the number of Synthetic Tests including Keywords and Custom Metrics as well as about the usage of the virt1 add-on and the ntop integration, and c) all similar information as described in detail in the User Guide Software (Self-Hosted) and User Guide Cloud (SaaS) at any time upon request of the Provider. If underlicensing is determined, the Subscription Agreement will be adjusted in accordance with Section 14.3

Once the Customer has performed either a License Activation Checkmk Cloud (SaaS) (described in Section 12.5 above) or a online License Verification Checkmk Software (Self-Hosted)(described in Section 12.6 above), Checkmk Software (Self-Hosted) and/or Checkmk Cloud (SaaS) will periodically submit license usage reports with the content specified in this Section 12.7.

13 Term and Termination

13.1 Unless otherwise agreed in the Subscription Agreement, the Subscription Agreement will commence on the start date specified in the Subscription Agreement (the "**Effective Date**"). The initial Subscription Period will be twelve (12) months, unless otherwise set out in the Subscription Agreement (the "**Subscription Period**"). The Provider will not provide any Services to the Customer prior to the Effective Date. Enhancements, upgrades, and add-ons added during a current Subscription Period will run concurrently with the underlying Subscription, unless expressly agreed otherwise.

13.2 The Subscription Agreement will automatically renew for an additional Subscription Period equal to the most recent Subscription Period and with the most recent Subscription size (including upgrades and add-ons), unless it is duly terminated. The notice period for termination is three (3) months prior to the end of a Subscription Period of at least twelve (12) months, and ten (10) days for a one-month Subscription Period.

13.3 Any changes to the Subscription Agreement, or any partial termination of the Subscription Agreement including Add-Ons, will only be effective as of the next Subscription Period, subject to compliance with the applicable notice periods set out in Section 13.2 of the GTC. Any expressly granted contractual termination rights, as well as the right to terminate for cause in accordance with Section 13.4 of the GTC, remain unaffected by this Section 13.3 of the GTC.

13.4 Termination for Cause

13.4.1 The Provider may terminate the Subscription Agreement upon written notice to the Customer a) with immediate effect upon the occurrence of a) the Customer's material breach of any obligations of confidentiality or data privacy, or b) of a material breach of a license granted hereunder, or c) any other significant violation of the Provider's intellectual property rights, which in each case makes the continuation of the contractual relationship unacceptable for the Provider; or b) if the Customer and/or an Affiliate of the Customer is in default of its payment obligations and such default continues after the Provider has twice set

a reasonable grace period for payment, both of which have expired unsuccessfully and d) with respect to all other material breaches of the Subscription Agreement by the Customer, in the event that the Customer fails to correct the breach within thirty (30) days after receipt of written notice specifying the breach.

13.4.2 The Customer may terminate the Subscription Agreement upon written notice to the Provider a) with immediate effect upon the occurrence of the Provider's material breach of any obligations of confidentiality or data privacy hereunder, which in each case makes the continuation of the contractual relationship unacceptable for the Customer; and b) with respect to all other material breaches of the Subscription Agreement by the Provider, in the event that the Provider fails to correct the breach within thirty (30) days after receipt of written notice specifying the breach.

13.5 In no event will the termination of the Subscription Agreement relieve the Customer of its obligations to pay the Provider any fees and expenses accrued hereunder before such termination.

13.6 Except as otherwise set forth in the Subscription Agreement, termination of the Subscription Agreement by either party will be a non-exclusive remedy for breach and will be without prejudice to any other right or remedy of such party.

13.7 All notices of termination must be given in text format (e.g., by post, email, or fax).

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

13.9 **This Section 13 shall be amended for Customers of [Checkmk, Inc.](#). For such Customers, Section 3 of the U.S. STC "Term and Termination" shall apply in addition to this Section 13.**

14 Payment and Invoicing

14.1 The Customer is obliged to pay the Provider the price stated in the Subscription Agreement in the currency specified therein (the "**Subscription Fees**"). Unless otherwise agreed, the Provider will invoice the Subscription Fees to the Customer in advance at the beginning of each Subscription Period. All invoices are due immediately upon receipt and must be paid within fourteen (14) days, unless a different payment term has been agreed.

14.2 The Customer must select the Subscription size of the respective Checkmk Software Edition (Self-Hosted) or Checkmk Cloud Edition (SaaS) that is expected to cover the number of Licensed Services, Licensed Custom Metrics and Licensed Synthetic Tests monitored under the Subscription Agreement during the Subscription Period.

14.3 **This Section 14.3 of the GTC does not apply for Customers of [Checkmk, Inc.](#). For such Customers, Section 4.1 of the U.S. STC "Payment and Invoicing" shall apply exclusively.**

If the Customer wishes to increase the licensed subscription size during a current Subscription Period, the Customer shall inform the Provider accordingly. The Subscription Agreement will, in such cases, be upgraded to the appropriate subscription size retroactively with effect as of the beginning of the current Subscription Period and the Customer will be billed for the difference in the Subscription Price. The same shall apply if the Customer exceeds the licensed subscription size.

14.4 The Provider reserves the right to adjust the Subscription Fees at the beginning of each new Subscription Period. The Provider will inform the Customer of any price adjustment at least three (3) months in advance. If the Customer does not agree to the price adjustment, it may terminate the Subscription Agreement for cause with effect from the end of the current Subscription Period. If the Customer does not terminate the Subscription Agreement, the adjusted Subscription Fees will apply from the beginning of the respective renewal

period. The foregoing shall apply accordingly in case of an adjustment of the calculation methodologies described in Section 5.4.5 and Section 6.4.2 of the GTC.

14.5 This Section 14.5 of the GTC does not apply for Customers of Checkmk, Inc.. For such Customers, Section 4.2 of the U.S. STC "Payment and Invoicing" shall apply exclusively.

All prices are net, plus applicable value added tax, Goods and Services Tax (GST), or similar taxes at the applicable statutory rate.

15 Proprietary Rights

15.1 Unless expressly set out in the Subscription Agreement, neither party acquires any rights, title or interests in any intellectual property or proprietary rights, including copyrights, moral rights, patent rights (including patent applications and disclosures), know-how, priority rights, trademark rights and trade secret rights, that are recognized in any country or jurisdiction in the world, including any modifications or improvements thereto (collectively and generally referred to as "**Intellectual Property Rights**"), that are owned by the other party. Any rights not expressly granted in the Subscription Agreement are reserved to the parties or their respective licensors. For the avoidance of doubt, and unless expressly set out in the Subscription Agreement, the Provider (or, as applicable, its subcontractors and third-party technology licensors as set out in Section 7.4 of the GTC) owns the Intellectual Property Rights in the Checkmk Software (Self-Hosted), Checkmk Cloud (SaaS) and all modifications, extensions, enhancements, derivative works, upgrades, new versions and other changes thereto (even if requested or instructed by the Customer in any way).

15.2 To the extent that the Provider makes software, patches or other copyright-protected works available as part of its support services, the provisions of the underlying Subscription Agreement will apply to the use of such works. The Provider will otherwise retain all rights of use and exploitation.

15.3 **Feedback License.** The Customer grants the Provider a worldwide, royalty-free, transferable, sublicensable, irrevocable, and perpetual license to freely use and exploit any and all recommendations, improvements, requests, corrections, suggestions or other feedback (collectively, "**Feedback**") provided by or on behalf of the Customer relating to the functionality or use of Checkmk Cloud (SaaS) and/or Checkmk Software (Self-Hosted). The Customer will ensure that it and each of its Affiliates (as applicable) is entitled to grant this Feedback License to the Provider. The Feedback License includes the right to use and integrate such Feedback into Checkmk Cloud (SaaS) and/or Checkmk Software (Self-Hosted) and otherwise freely exploit it without restrictions. The Customer will ensure that providing the Feedback does not infringe any third-party rights or breach any confidentiality obligations.

16 Confidentiality

16.1 Each party will treat as confidential all information it receives from the other party in connection with the Subscription Agreement, its initiation, formation and/or performance, except where such information is expressly designated as non-confidential or is, by its nature, non-confidential, such as:

- a) information that the receiving party can demonstrate was lawfully known to it, without any duty of confidentiality, prior to first disclosure by the disclosing party;
- b) information that, at the time of disclosure, was already publicly known or readily accessible, or that later becomes publicly known or readily accessible without any breach by the receiving party of applicable confidentiality obligations;
- c) information that a party receives in good faith from a third party who has lawfully obtained such information and is not bound by a duty of confidentiality with respect to it; or

- d) information that the receiving party has independently obtained without using the disclosing party's confidential information.

In particular, the following are deemed confidential: the components of the Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) that are not also licensed under an open-source license, the access credentials and license keys, as well as the prices and contractual terms individually agreed with the Customer. The confidentiality obligation also extends to information that a party discloses to an Affiliate of the other party.

16.2 If information under Section 16.1 of the GTC does not meet the statutory requirements of a "trade secret", such information will nonetheless be subject to the confidentiality obligations of this Section 16 of the GTC.

16.3 Each party undertakes to treat the other party's confidential information confidential 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 disclosing party. The receiving party shall ensure that any third party is bound by a written confidentiality agreement at least as strict as the provisions set forth under this Section 16 of the GTC prior to disclosure (textform shall suffice). Disclosure without separate consent is permitted to a) persons subject to a statutory duty of confidentiality, e.g. lawyers, notaries; b) Affiliates of the receiving party; and c) subcontractors or advisors engaged by the receiving party for or in connection with the performance of this Agreement, provided that they have been bound by a written (textform shall suffice) confidentiality agreement consistent with the provisions of this Section 16 of the GTC prior to disclosure. Disclosure to subcontractors or advisors shall be limited to such information necessary for the performance of the respective services under this Agreement ("Need-to-Know"). The receiving party shall be liable for any breach of confidentiality by its Affiliates, subcontractors or advisors as for its own acts or omissions.

16.4 Each party agrees to protect the other party's confidential information against unauthorized access by third parties through appropriate safeguards, using at least the same level of care that it uses to protect its own confidential information.

16.5 The parties will also require their employees to comply with confidentiality obligations that are at least as strict as the provisions of this Section 16 of the GTC. Each party may only share the other party's confidential information with its employees, or otherwise make it available to them, if they need to know such confidential information for the purposes of contractual performance. Users of the Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) must be reasonably informed of the content of the **EULA**.

16.6 The confidentiality obligations of this Section 16 of the GTC will remain in force for the Subscription Period and for an additional period of five (5) years thereafter.

17 Data Protection and Data Utilization by the Provider

17.1 The Provider will process personal data of the Customer and Customers' employees only to the extent necessary for the contractual performance.

17.2 Data Processing Agreement

Data Processing Agreement. Where the Provider, in the course of providing its Services to the Customer, processes personal data on behalf of the Customer, the **Data Processing Agreement ("DPA")** pursuant to Article 28 GDPR (applicable to customers of Checkmk GmbH) or the **U.S. Data Processing Agreement ("U.S. DPA")** (applicable to customers of Checkmk, Inc.) forms an integral part of these Terms and Conditions and of the underlying Subscription Agreement.

The most recent version of the DPA is available and can be accessed at <https://checkmk.com/legal/dpa> and the most recent version of the U.S. DPA is available and can be accessed at <https://checkmk.com/legal/dpa-us>. The DPA or U.S. DPA, whichever applies, is a binding part of these Terms and Conditions and of the underlying Subscription

Agreement. Where the Provider engages subprocessors for the processing of personal data, the provisions of the DPA or, as applicable, the U.S. DPA will apply.

17.3 Functional Point of Contact. In the context of providing Checkmk OEM Support, no personal data of the Customer is required beyond that of the Super User and the Customer's designated support contacts (see also Section 12.1). The contact details provided by the Customer in this context are used solely as a functional point of contact for the technical provision, coordination, and performance of OEM Support by the Provider.

17.4 Log Files. The Provider and the Customer agree that log files (e.g., IP addresses, timestamps, access data) transmitted to the Provider in the context of the use of Checkmk Software (Self-Hosted) do not constitute personal data for the Provider. Log files are personal only for the party that has the ability to identify the natural person behind the log files. The Provider does not possess any supplementary knowledge or the legal or factual means to attribute the identifiers contained in the log files to a natural person. Accordingly, the purely technical processing of log files does not constitute processing of personal data on behalf of the Customer within the meaning of Article 28 GDPR.

17.5 Beyond the functional points of contact specified in Section 17.3 of the GTC, no personal data may be transmitted to the Provider (in particular not within support tickets, customer-specific plug-ins, log files, support files, or during live support), unless this is technically strictly necessary for OEM Support. To the extent that personal data is transmitted by the Customer to the Provider, the Customer warrants that a) it has complied with all data protection laws applicable to it in connection with the collection or provision of such personal data; b) it possesses all consents, authorizations, rights, and permissions required to transfer the personal data to the Provider for the purpose of providing Checkmk Software (Self-Hosted), Checkmk Cloud (SaaS), and Checkmk OEM support services, or to permit the Provider to collect, receive, or access such personal data for these purposes; c) to the extent required under applicable law, it has informed the data subjects of the possibility that the Provider processes their personal data on behalf of the Customer and in accordance with the Customer's instructions; and d) it has, to the extent technically possible, anonymized or pseudonymized the personal data prior to transmission.

17.6 Product Usage Analytics

17.6.1 For the purpose of analyzing the performance, developing, and improving Checkmk Software (Self-Hosted), Checkmk Cloud (SaaS) and any related offerings of the Provider, the Provider may collect, aggregate, reproduce, run, create derivative works of, process, use, and analyze **Service Generated Data ("Product Usage Analytics")**. This applies to data: a) transmitted automatically via the internet for Checkmk Software (Self-Hosted), provided the Customer has actively opted-in via the respective function in the Checkmk Software (Self-Hosted) (revocable at any time); b) transmitted automatically via the internet for Checkmk Cloud (SaaS), provided the Customer has not actively opted-out via the respective function in Checkmk Cloud (SaaS) at any time or c) submitted manually (e.g., agent/crash dumps) in the context of any additional service or otherwise, unless the Customer instructs the Provider otherwise when submitting such Service Generated Data.

17.6.2 Regarding the use of Checkmk Cloud (SaaS) only, 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 Provider's own Provider's own machine learning algorithms, as well as for identifying patterns and correlations to develop and optimize AI-based features and functionalities (e.g., to improve Checkmk Cloud (SaaS) predictive monitoring capabilities and enhance the Customer's experience and interaction with Checkmk Cloud (SaaS)).

17.7 The Customer acknowledges the Provider's Privacy Notice. The most recent version of the Privacy Notice is available and can be accessed at <https://checkmk.com/privacy-policy>.

18 Engagement of Sub-processors

18.1 The Provider is entitled to engage sub-processors, in whole or in part, to provide the contractually owed services under the respective Subscription Agreement. Prior consent from the Customer is not required.

18.2 The Provider remains responsible to the Customer for the proper performance of the contractually owed services under the respective Subscription Agreement, even if the Provider utilizes sub-processors for the fulfillment of the respective Subscription Agreement.

18.3 To the extent the Provider engages sub-processors for the processing of personal data, the provisions of the DPA apply respectively for Customers from the Checkmk GmbH and the U.S. DPA apply respectively for Customers from the Checkmk, Inc..

18.4 The Provider maintains a list of all sub-processors engaged in connection with the performance of the services provided under the Terms and Conditions. The most current version of the subcontractor list is available and accessible at <https://checkmk.com/de/legal/sub-processors>. The list also includes a registration option for an information service through which the Customer will be actively notified of any changes to the subcontractors engaged. Customers may be automatically notified of changes regarding sub-processors by signing up to receive Trust Center notifications at <https://trust.checkmk.com/#subprocessors>.

19 Data Act

This Section 19 of the GTC does not apply for Customers of Checkmk, Inc. and shall be deleted without replacement.

For Customers contracting with Checkmk GmbH, the Special Terms and Conditions for Contractual Partners of Checkmk GmbH for Data Exchange under the Data Act (the "**STC Data Act**") apply in addition to these terms for the use of Checkmk Cloud (SaaS). The most recent version of the STC Data Act is available and can be accessed at <https://checkmk.com/legal/data-act>. The STC Data Act forms an integral part of these Terms and Conditions and the respective Subscription Agreement, where applicable.

20 Remedies for Defects

This Section 20 of the GTC does not apply for Customers of Checkmk, Inc.. For such Customers, Section 6 of the U.S. STC "LIMITED WARRANTIES; DISCLAIMER OF WARRANTIES**" shall apply exclusively.**

20.1 The Provider warrants that, at the time it makes them available for use, Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) conform to the specifications agreed in the Subscription Agreement and are suitable for the contractually intended use.

20.2 The Provider does not provide any warranty for pre-release versions (e.g., beta, preview, or test versions), daily builds, or for features, functionalities, or Services (including language versions) that are designated as "free," "unsupported," "not supported," "experimental," or "unstable." Such versions, features, or functionalities are provided solely for testing or evaluation purposes and are not intended for use in production systems. The Provider will be liable for damages arising from the use of such versions, features, or functionalities only in cases of intentional misconduct, gross negligence, or fraudulent concealment of a defect.

20.3 Any warranty of specific properties or durability beyond the agreed specifications exists only if expressly designated in text format as a "warranty".

20.4 The Customer must notify the Provider of any defects without undue delay and in text format. Such notice must contain a sufficiently detailed description of the symptoms, the operating environment, and the specific circumstances and timing of their occurrence. The Customer is obliged to provide the Provider with all information required to remedy a defect.

If the Customer fails to provide notice of defects without undue delay, the Customer will be obliged to compensate the Provider for any resulting damage (Section 536c of the German Civil Code remains unaffected).

20.5 If a defect notice is unfounded, the Provider will be entitled to reimbursement of the expenses it has incurred in connection with such notice at the agreed or, in the absence of such agreement, the then-current market rates, provided that the Customer has at least negligently failed to recognize that no defect exists.

20.6 Claims for the correction of defects are excluded if the defect is not reproducible or cannot be demonstrated on the basis of documented outputs.

20.7 In the event of material defects, the Provider will restore contractually compliant use by correcting errors or, in the case of Checkmk Cloud (SaaS), by updating the Services, as soon as and to the extent this is possible and reasonable for it.

Providing the Customer with a reasonable workaround that avoids the defect will also be deemed to constitute restoration of contractually compliant use, provided that the contractual use is only impaired to an insignificant extent.

If a defect only insignificantly impairs the suitability of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) for contractually compliant use, the Provider will be entitled to remedy the defect as part of its regular release and update planning.

20.8 The Customer will support the Provider in remedying defects to a reasonable extent. In particular, the Customer will (i) enable the Provider to access the software via screen sharing for the purpose of analyzing and correcting defects, with the Customer establishing the necessary connections in accordance with the security requirements of both parties; and (ii) install new versions, updates, or patches to the extent this is required to correct the defect, is reasonable for the Customer in light of its system environment, and the contractually agreed scope of functionality is essentially preserved.

20.9 The Customer will have no warranty claims

- a) in the case of only insignificant deviations from the agreed specifications;
- b) in the case of only insignificant impairments of usability;
- c) where the defect is due to non-conforming use, improper operation, or faulty installation by the Customer or third parties;
- d) where the Customer has failed to implement updates, patches, or configuration specifications provided to the Customer and the defect is based thereon;
- e) where the defect is attributable to changes, adaptations, or extensions of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) by the Customer or by third parties on behalf of the Customer, unless the Customer proves that the defect was not caused by such changes;
- f) where the defect is due to a system environment that is not the responsibility of the Provider, in particular IT infrastructure provided by the Customer; or
- g) where the defect is due to a breach of the Customer's cooperation or information obligations.

20.10 The Customer may terminate the Subscription Agreement for cause due to the Provider's failure to provide the Services in conformity with the contract only if the Provider has been given sufficient opportunity to correct the defect and such correction has failed. The correction of defects will be deemed to have failed only if it is impossible, if it is refused by the Provider or unreasonably delayed, if there are justified doubts as to the prospects of success, or if unreasonableness exists for other reasons. In assessing the reasonableness of the period to correct the defects, the specific circumstances must be taken into account, in particular the cause, severity, and effects of the defect. In all other respects, Section 13 of the GTC applies to the termination and expiry of the Subscription Agreement.

20.11 The Customer's right to correct defects itself or through third parties and to claim reimbursement of the necessary expenses, including in cases where the Provider is in default with the correction of defects or an immediate correction of defects is required to

preserve or restore the condition of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS), is expressly excluded.

20.12 Notwithstanding Section 22.7 of the GTC, the limitation period for all warranty claims is one (1) year. This does not apply to claims based on intentional misconduct or gross negligence, injury to life, body, or health, fraudulent concealment of a defect, or where mandatory statutory provisions provide for longer limitation periods.

20.13 **Defects in Title.** The foregoing provisions apply accordingly to defects in title, except as otherwise set forth below:

The Provider warrants that the Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS), when used by the Customer in accordance with the Subscription Agreement, do not infringe any third-party rights. If the Customer is unable to use the provided Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) as contractually intended due to a conflicting right of a third party, the Provider may, at its option, either a) modify the Services so that the third-party right is no longer infringed, or b) procure for the Customer the rights necessary to use the Services.

The Customer will have no claims based on defects in title to the extent the alleged infringement results from

- a) non-contractual use of the Checkmk Software (Self-Hosted) or the Checkmk Cloud (SaaS),
- b) changes or adaptations by the Customer or by third parties engaged by it,
- c) a combination of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) with third-party services or products that were not provided or intended for this purpose by the Provider,
- d) use outside the contractually agreed operating environment or agreed country of use, or
- e) use of a non-current version, provided the Provider has made a non-infringing version available to the Customer and use of this version would have been reasonable.

The Customer's statutory duties to give notice of defects remain unaffected.

21 Remedies for Defective Checkmk OEM Support Services

This Section 21 of the GTC does not apply for Customers of [Checkmk, Inc.](#). For such Customers, the provision of Section 6 of the U.S. STC "LIMITED WARRANTIES; DISCLAIMER OF WARRANTIES" shall apply exclusively.

If the Provider fails to perform the Checkmk OEM Support Services in accordance with the Subscription Agreement, it will be entitled to re-perform the relevant Checkmk OEM Support Services at no additional charge, to the extent re-performance is possible and reasonable for the Customer. The Customer will grant the Provider a reasonable cure period for such re-performance. If the cure period expires without successful re-performance, or if the Provider refuses to re-perform, the Customer will have the right to terminate the Subscription Agreement for cause. Any claims for damages or reimbursement of expenses are subject to the limitations set forth in Section 22 of the GTC.

22 Limitation of Liability

This Section 22 of the GTC does not apply for Customers of [Checkmk, Inc.](#). For such Customers, Section 8 of the U.S. STC "LIMITATIONS OF LIABILITY" shall apply exclusively.

22.1 The Provider will be liable for damage caused by slight negligence only if such damage results from a breach of material obligations that jeopardizes the achievement of the purpose of the contract, or from a breach of obligations whose fulfillment is essential for the proper performance of the contract ("**Kardinalpflichten**").

22.2 In the cases covered by Section 22.1 of the GTC, the Provider's liability is limited to the usually foreseeable damage for this type of contract.

22.3 In the cases covered by Section 22.1 of the GTC, the Provider's liability is in any event limited in amount as follows:

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

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

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

22.4 In the cases covered by Section 22.1 of the GTC, the Provider will not be liable for lost profits, nor for impairments that are attributable to maintenance activities carried out by the Customer.

22.5 Liability regardless of fault under Section 536a Paragraph 1 Alt. 1 of the German Civil Code ("BGB") for defects already existing at the time of entry into the contract is excluded. In all other respects, in the event of defects, the provisions of this Section 22 of the GTC on liability for damage will apply to the Customer's claims for damages.

22.6 The Provider shall only be liable for the loss of data and programs, as well as for business interruptions, to the extent that the damage would not have been avoidable even with reasonable precautions taken by the Customer. Such reasonable precautions by the Customer, in accordance with the state of the art, include in particular:

22.6.1 for Checkmk Software (Self-Hosted) the creation of backup copies of all programs and data at least once a day, the testing of updates in a test environment prior to deployment in the production system, and the establishment of a Disaster-Recovery-Plan;

22.6.2 for Checkmk Cloud (SaaS) the regular backup of Customer specific configurations and data (to the extent exportable), as well as the establishment of contingency plans in the event of a temporary unavailability of the service.

This limitation shall not apply if the damage was caused by the Provider through gross negligence or willful misconduct. All liability for loss of data is subject to the other restrictions in this Section 22 of the GTC.

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

22.8 The foregoing limitations of liability apply to all claims for damages and reimbursement of expenses, regardless of the legal basis, including claims in tort, unless a warranty has been assumed, the damage results from intentional or grossly negligent conduct or from fraudulent concealment of defects, or the damage consists of personal injury.

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

23 Indemnification

This Section 23 of the GTC does not apply for Customers of [Checkmk, Inc.](#). For such Customers, Section 7 of the U.S. STC "INDEMNITIES" shall apply exclusively.

23.1 The Provider will defend the Customer from and against any and all claims, demands and actions (hereinafter each a **"Claim"**) incurred by or asserted against the Customer by a third party to the extent that such Claim results from the infringement of the contractually permitted use of Checkmk Software (Self-Hosted) or 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 Claim) finally awarded against the Customer by a competent court or those costs and damages agreed to in a monetary settlement of such an Claim (to which the Provider has expressly consented), provided that the Customer a) promptly, but not later than within ten (10) days from the knowledge of the Claim, notifies the Provider of such Claim after it becomes aware of it; b) gives the Provider the right to control and direct the preparation of a defense at the Provider's expense to the extent permitted by applicable law; c) provides reasonable cooperation to the Provider for the defense of such Claim at the Provider's sole cost and expense; and d) does not make any admission in respect of the liabilities without the consent of the Provider. The limitation period for the indemnification claim governed by this Section corresponds to the limitation period applicable to the Customer's warranty claims for defects in title.

23.2 The Provider will have no obligation of defense or indemnification or otherwise with respect to any Claim relating to a) any cases as described in Section 20.2 of the GTC; b) 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; c) an Claim that does not relate with specificity to Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS); d) the use or combination of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) or any part thereof with materials not developed by the Provider where Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) or use thereof would not constitute infringement but for said combination; or e) with regard to patent claims, an Claim where Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) consists of a function, system or method that utilizes functionality that is in general use in the industry.

23.3 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 (each, a **"Non-Conforming or Misuse Claim"**) that a) alleges that a use of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) by the Customer, which is not in accordance with the Subscription Agreement, infringes or misappropriates any right of a third party, in particular Intellectual Property Rights of a third party; b) results or arises from the Customer providing access credentials or any other access data regarding Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) to unauthorized third parties contrary to the terms of the Subscription Agreement; c) results or arises from any data, information or other input entered into Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) by the Customer, as well as any use that violates the acceptable use of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) as set out in **Section 10 of the EULA "Acceptable Use Policy"**; or d) that results or arises from Customer's violation of applicable law, in each case provided that such Non-Conforming or Misuse Claim is caused by the Customer's fault or negligence. The Provider will a) notify the Customer in writing (text format being sufficient) without undue delay after becoming aware of any Non-Conforming or Misuse Claim; b) grant the Customer sole control over the defense, litigation, negotiation, and settlement of the Non-Conforming or Misuse Claim (provided that the Customer may settle or defend such claim only if it unconditionally releases the Provider from any liability in connection therewith); and c) provide the Customer, at the Customer's expense, with all reasonable assistance requested by the Customer.

24 Export Control

24.1 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

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applicable, making available Checkmk Cloud (SaaS), data and information ("**Export Data**") that the Provider provides.

24.2 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

24.2.1 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;

24.2.2 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;

24.2.3 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

24.3 that the Export Data will, in particular, not be passed on to persons or companies whose residential or registered office is located in countries or territories subject to economic sanctions (embargoes), such as - currently - Belarus, Iran, Cuba, North Korea, Russia, the Russian-occupied territories of Ukraine (Crimea, Sevastopol, Kherson, Donetsk, Luhansk, Zaporizhzhia), Sudan, and Syria.

24.4 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.

24.5 The Customer must indemnify and hold the Provider harmless from and against all actions and claims resulting from a violation of this Section 24 of the GTC, 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 24 of the GTC, unless the Customer is not responsible.

25 Trial Version, POC Version and Free Version

25.1 The Provider may offer a prospective customer the opportunity to test Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS), or parts thereof limited to a restricted number of Licensed Services, on a trial basis and, unless agreed otherwise, free of charge, either by downloading Checkmk Software (Self-Hosted) directly from the Provider's website or from a third-party operated cloud marketplace, or by using Checkmk Cloud (SaaS) via a self-registration process on the Provider's website or other registration channels made available by the Provider. In the case of Checkmk Software (Self-Hosted), the contract is entered into upon download or, if obtained via a cloud marketplace, upon the Order or activation of the Checkmk Software (Self-Hosted), in each case incorporating these Terms and Conditions; in the case of Checkmk Cloud (SaaS), the contract is entered into upon successful completion of the registration/sign-up process. The Provider's Contractual Partner is the user of the software. If the software is used on behalf of a legal entity, public body, or authority, that entity, body, or authority is deemed to be the user. The person performing the actions described in Section 25.1 of the GTC in that case acts on behalf of such legal entity, public body, or authority. The statutory provisions applicable to free-of-charge use apply.

25.2 **Trial Period.** The Provider will inform the prospective customer of the duration and scope of any Trial Version or POC Version directly on its website and/or in the applicable Order. Any Trial Version or POC Version will automatically end upon expiry of the period specified on the website and/or in the Order.

25.3 The prospective customer may use a Trial Version or POC Version only for its internal evaluation and testing purposes. In particular, the prospective customer is not permitted to:

25.3.1 use a Trial Version or POC Version in a production environment (that is, in any environment in which the Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) is used to conduct operational or business activities, in particular in connection with the processing of real data of the prospective customer or third parties that has a direct impact on the business activities of the prospective customer or third parties); and

25.3.2 without the Provider's express consent (at least in text format), replace or modify authorized users or grant access to a Trial Version or POC Version to any third party that is not a relevant third-party provider engaged by the prospective customer, including by sharing access credentials; or

25.3.3 to use a Trial Version or POC Version to provide services to third parties and/or make a Trial Version or POC Version available to them, or to offer to provide or make services available using a Trial Version or POC Version.

25.4 The Provider will determine, in its sole discretion, whether the use of a Trial Version or POC Version meets the requirements of Sections 25.4 and 25.5 of the GTC

25.5 The Provider may offer the prospective customer the continuation and/or upgrade of a Trial Version or POC Version in return for payment of the applicable Subscription Fees. In such case, Section 14 applies accordingly.

25.6 The Provider makes any Trial Version or POC Version available strictly on an "as is" basis. In this context, the Provider does not assume any warranty for the functionality or other specifications of the respective Trial Version or POC Version and, in particular with respect to Checkmk Cloud (SaaS), does not warrant its availability (as described in the **Service Description Checkmk OEM Support and SLAs**).

25.7 The Provider may, at any time and in its sole discretion, without prior notice and without stating reasons, change, expand, restrict, or discontinue the content, structure, or scope of any Trial Version or POC Version..

25.8 The Provider is under no obligation to provide support services for any Trial Version or POC Version.

25.9 **This Section 25.9 of the GTC does not apply to Customers of Checkmk, Inc.. For such Customers, Section 8 of the U.S. STC "LIMITATIONS OF LIABILITY" shall apply exclusively.**

Except in cases of a) intentional misconduct or gross negligence, b) fraudulent concealment of a defect in a Trial Version or POC Version by the Provider, or c) injury to life, limb, or health, the Provider does not assume any warranty or liability.

25.10 No right of revocation applies with respect to any Trial Version or POC Version. The user may at any time delete any copies of the Checkmk Software (Self-Hosted) it has created and/or any access to Checkmk Cloud (SaaS), thereby terminating the contract for the use of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) as a Trial Version or POC Version.

25.11 **Product Usage Analytics for Trial Versions**

For the purpose of analyzing the performance, developing, and improving the Checkmk Software (Self-Hosted), Checkmk Cloud (SaaS) and any related offerings of the Provider, the Provider may collect, aggregate, reproduce, run, create derivative works of, process, use, and analyze Service Generated Data ("**Product Usage Analytics**") within the usage of a Trial Version. This applies to data: a) transmitted automatically via the internet for Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS), provided the Customer has not actively opted-out via the respective function in Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) at any time or b) submitted manually (e.g., agent/crash dumps) in the context of any additional service or otherwise, unless the Customer instructs the Provider otherwise when submitting such Service Generated Data.

Regarding the usage of a Trial Version of Checkmk Cloud (SaaS) only, 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 own 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)).

25.12 The prospective customer acknowledges that, when Checkmk Cloud (SaaS) is used as part of a Trial Version or POC Version, the Provider does not create backups of the prospective customer's data.

25.13 In the context of a Trial Version or POC Version of Checkmk Cloud (SaaS), and by way of exception to Section 6.4.1 a) of the GTC, the prospective customer may not exceed a number of 10,000 Custom Metrics and the data transmission frequency is no more than once every 30 seconds. The measures taken by the Provider set out in Section 6.4.1 b) of the GTC apply accordingly if these limits are exceeded.

25.14 **Free Version.** A Free Version includes the operation of a minimal installation with a maximum of one (1) Checkmk instance for monitoring a limited number of Services. Access to the interfaces of the Checkmk Software (Self-Hosted) with the aim of displaying monitored Services from multiple Checkmk instances in a single view is not permitted. The use of add-ons is also not included. However, the use of up to three (3) Synthetic Tests is permitted. For a Free Version, the provisions of this Section 25 of the GTC regarding a Trial Version and POC Version apply accordingly, except for Sections 25.11 and 25.13 of the GTC.

26 Force Majeure

This Section 26 of the GTC does not apply to Customers of [Checkmk, Inc.](#). For such Customers, Section 9 of the U.S. STC "Force Majeure" shall apply exclusively.

If the provision of the Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) is delayed or temporarily impossible due to circumstances that the Provider could not have foreseen even by exercising the highest degree of care that can reasonably be expected (for example, epidemics, pandemics, fires, explosions, power outages, earthquakes, floods, severe storms, strikes, embargoes, acts of civil or military authorities, war, terrorism (including cyber-terrorism), or a network outage not attributable to the Provider) (each, a "**Force Majeure Event**"), the applicable performance periods will be extended by a period equal to the duration of the Force Majeure Event. The Provider will inform the Customer in text format without undue delay of the impossibility of providing the Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS). If a Force Majeure Event continues without interruption for more than ninety (90) days, the Customer may terminate the Subscription Agreement in text format with immediate effect and without notice. In such case, the Customer will pay the Provider the agreed Subscription Fees for the Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) already provided, and the Provider reserves the right to assert any further statutory claims against the Customer..

27 Governing Law

27.1 **[For Customers of the Checkmk GmbH.](#)** The Terms and Conditions will be governed by, and construed in accordance with, the laws of the Federal Republic of Germany. The conflict-of-laws rules of private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG) do not apply.

27.2 **[For Customers of the Checkmk, Inc..](#)** The Terms and Conditions will be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to its conflict-of-laws rules. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as it may be enacted in any applicable jurisdiction, do not apply to the Terms and Conditions.

28 Jurisdiction

28.1 **For Customers of the Checkmk GmbH.** The courts of Munich in Germany will have jurisdiction over any and all disputes arising out of or in connection with these GTC. The Provider reserves the right to bring an action against the Customer at the Customer's general place of jurisdiction or at the place of performance. Mandatory statutory provisions, in particular those on exclusive jurisdiction, will remain unaffected.

28.2 **For Customers of the Checkmk, Inc..** The parties agree to submit to the personal and exclusive jurisdiction of the courts located within Delaware. If either party employs attorneys to enforce any rights arising out of or related to the Subscription Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs from the other party. For purposes of this Section only, "prevailing party" means the party that prevails on a majority of causes of action in such a dispute.

29 Final Provisions

29.1 **This Section 29.1 of the GTC does not apply for Customers of Checkmk, Inc.. For such Customers, Section 10.5 of the U.S. STC "Final Provisions" shall apply exclusively.** The Provider reserves the right to amend or update these Terms and Conditions at any time if required for legal, technical or operational reasons. Any changes to these Terms and Conditions will be communicated to the Customer at least six (6) weeks before the effective date of such changes. The Customer will be deemed to have agreed to the amended or updated Terms and Conditions unless it objects to the changes in text format within the notice period. In this case, the Customer has the right to terminate the Subscription Agreement for cause. In the notice regarding the amendment or update of these Terms and Conditions, the Provider will inform the Customer of its right to terminate for cause.

29.2 **Relationship of the Parties.** The parties to the Subscription Agreement are at all times independent contractors, and nothing in the Subscription Agreement will be construed as creating a partnership, employment, agency or other joint venture relationship. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

29.3 **Third Party Beneficiaries.** Unless otherwise expressly agreed in writing by the parties, no provisions of the Subscription Agreement are intended or will be construed to confer upon or give to any person or entity other than the Customer and the Provider any rights, remedies or other benefits under or by reason of the Subscription Agreement.

29.4 **No Waiver.** The failure by either party to enforce any provision of the Subscription Agreement will not constitute a waiver of future enforcement of that or any other provision.

29.5 **Survival.** The rights and obligations of the parties which by their nature are intended to survive the termination or expiration of the Subscription Agreement, including, but not limited to, provisions regarding confidentiality, intellectual property rights, limitation of liability, indemnification, and governing law as well as relevant terms of the EULA, shall remain in full force and effect after termination of the respective Subscription Agreement.

29.6 **Headings.** The headings used in these Terms and Conditions are for reference only and do not change the meaning of any provision of the Terms and Conditions for Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS), and will not be used in interpretation of any provision of the terms and conditions. When used herein, the term "includes" or "including" means "including but not limited to".

29.7 The Customer grants the Provider the right to use the Customer's company name and logo on the Provider's website, in customer lists, and in marketing materials to indicate that the Customer is a customer of the Provider and uses the Provider's products and services.

29.8 These Terms and Conditions and the Subscription Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements between them. Any conflicting, deviating, or additional provisions in the Customer's general terms and conditions will become part of the Subscription Agreement only if and to the extent the Provider has expressly agreed to them. This consent requirement applies in all cases, including where the Provider, with knowledge of the Customer's general terms and conditions, performs deliveries or services without reservation. A registration of the Provider in a customer supplier portal or other platform that is necessary for performance of the contractual relationship and that requires the Provider to accept the Customer's terms and conditions does not constitute express consent; any such terms and conditions do not become part of the contract.

29.9 Amendments or additions are effective only if the corresponding declaration by the Provider is made at least in text format (for example, by post, email, or fax); this also applies to any waiver of the text format requirement.

29.10 Any assignment, transfer, sale, gift, loan, rental, or lease of rights under the Subscription by the Customer is prohibited. A resale is only permitted on the basis of a separate agreement with the Provider.

29.11 The Customer may only set off counterclaims that are undisputed or nonappealable. This limitation does not apply where the respective claims are mutually dependent.

29.12 If any individual provisions of this contract are or become wholly or partially invalid, or if there are any gaps in the provisions, the validity of the remaining provisions is not affected. The parties agree to replace the invalid provision with a valid one that most closely reflects the economic purpose of the invalid provision. In the event of any gaps, the parties agree to include a provision that corresponds to what they would have agreed upon, in line with the meaning and purpose of the Order, had they considered the matter at the time of entering into the contract.

B. Special Terms and Conditions for Customers of Checkmk, Inc. (U.S. STC)

For Customers of the [Checkmk, Inc.](#) these Special Terms and Conditions for Customers of Checkmk, Inc. (U.S. STC) apply in addition to the GTC's set out in part A of the Terms and Conditions.

1. Suspension

Section 9 of the GTC "Suspension" does not apply to Customers of [Checkmk, Inc.](#) and is replaced by the following clause: "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 Software (Self-Hosted), Checkmk Cloud (SaaS) and/or the Checkmk OEM Support Services (partially or in full) if the Provider assumes a) a violation of the provisions of the Subscription Agreement or the EULA (in particular the Acceptable Use Policy); b) a violation of applicable law; c) a breach by the Customer of its material payment obligations, d) a security threat or vulnerability that poses a risk to Checkmk Software (Self-Hosted), Checkmk Cloud (SaaS), the Provider's systems or other customers of the Provider; or e) any activity or use of Checkmk Software (Self-Hosted), Checkmk Cloud (SaaS) that causes or is likely to cause degradation, disruption, or other negative impact the Checkmk Software (Self-Hosted), Checkmk Cloud (SaaS) or other customers of the Provider. If the Provider suspends access to and use of Checkmk Software (Self-Hosted), 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."

2. Modifications and Discontinuation of Service Components

Section 11 of the GTC "Modifications and Discontinuation of Service Components" does not apply to Customers of [Checkmk, Inc.](#) and is replaced by the following clause:

"Modifications and Deprecations of Service Components

- a) Subject to and in accordance with this Section 2 of the U.S. STC, the Provider may modify or discontinue any of the features or functionality of Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) for any reason at any time without liability to the Customer.
- b) 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 Software (Self-Hosted) and 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 Software (Self-Hosted) and Checkmk Cloud (SaaS). Such modifications may relate to any features or functionality and/or the limitations of Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS).
- c) In the event that the Provider intends to discontinue any material feature or functionality of Checkmk Software (Self-Hosted) and 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 Software (Self-Hosted) and Checkmk Cloud (SaaS) with a materially similar feature or functionality.

The provisions of this Section 2 of the U.S. STC do not limit the Provider's ability to modify or discontinue Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) if required to

comply with applicable law, address a material security risk, or apply to new or pre-general availability services or functionality."

3. Term and Termination

Section 13 of the GTC "Term and Termination" is supplemented as follows for Customers of Checkmk, Inc.: "Upon termination of the Subscription Agreement in accordance with this Section 3 of the U.S. STC and the entire Section 13 of the GTC, 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."

4. Payment and Invoicing

Section 14 of the GTC "Payment and Invoicing" is amended as follows for Customers of Checkmk, Inc.:

- 4.1. **Section 14.3 of the GTC "Payment and Invoicing" does not apply to Customers of Checkmk, Inc. and is replaced by the following clause:** "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 4.1 of the U.S. STC. 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."
- 4.2. **Section 14.5 of the GTC "Payment and Invoicing" does not apply to Customers of Checkmk, Inc. and is replaced by the following clause:** "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.

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."

5. Data Act

Section 19 of the GTC "Data Act" does not apply to Customers of Checkmk, Inc. and is deleted without replacement.

6. LIMITED WARRANTIES; DISCLAIMER OF WARRANTIES

Section 8.3.5 of the GTC "Disclaimer of Warranty regarding AI-Output", Section 20 of the GTC "Remedies for Defects" and Section 21 of the GTC "Remedies for Defective Checkmk

OEM Support Services" do not apply to Customers of Checkmk, Inc. and are replaced by the following clauses:

- 6.1. **Software Warranty.** The Provider warrants to the Customer that during the Subscription Period the Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS), as the case may be, will perform materially in conformance with the User Guide in all material respects. With respect to Checkmk Software (Self-Hosted), the foregoing warranty applies only to failures in operation of the Checkmk Software (Self-Hosted) that are verifiable and does not apply to any Open Source Components as defined in the EULA.
- 6.2. **Services Warranty.** The Provider warrants to the Customer that it will perform the Checkmk OEM Support Services or other support services (as applicable) in a professional and workmanlike manner; provided that the Customer must report any non-compliance with this warranty within 30 days of delivery of the applicable Checkmk OEM Support Services or other support services.
- 6.3. **Malware Warranty.** With respect to Checkmk Software (Self-Hosted), the Provider warrants that it shall use reasonable technical means designed to detect and screen computer viruses from Checkmk Software (Self-Hosted) or Checkmk OEM Support Services or other support services provided by Provider. The Malware Warranty does not apply to Open Source Components.
- 6.4. **Exclusive Remedies.** The Customer's exclusive remedy and the Provider's entire liability for any breach of the above warranties shall be as set forth below:
 - a) **Software Warranty.** The Provider shall use commercially reasonable efforts to correct or provide a workaround for reproducible software errors with respect to Checkmk Software (Self-Hosted), or performance errors with respect to Checkmk Cloud (SaaS), that cause a breach of this warranty. If the Provider is unable to make the Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) service operate as warranted within a reasonable time (which may be when the Provider issues its next regularly scheduled update), the Provider may terminate the Subscription Agreement and refund the Subscription Fees paid to the Provider for the remainder of the Subscription Period;
 - b) **Services Warranty.** The Provider shall re-perform any Checkmk OEM Support Services or other support services that fail to meet the service warranty. If the Provider is unable to perform the Checkmk OEM Support Services or other support services as warranted, the Provider shall refund the portion of the Subscription Fees paid to the Provider for the nonconforming Checkmk OEM Support Services or other support services;
 - c) **Malware Warranty.** In the event of a breach of the malware warranty, the Provider shall replace all copies of the affected Checkmk Software (Self-Hosted) in the possession of the Customer with copies that do not contain such virus or disabling code.
- 6.5. **Warranty Exclusions, Conditions and Limitations.** The Provider has no warranty obligations or responsibilities of any kind hereunder to the extent of: a) problems caused by (i) the Customer's failure to install the Checkmk Software (Self-Hosted) in a suitable environment as specified by the Provider to the Customer in writing or as set forth in the User Guide, or (ii) issues with the Internet, connectivity issues or other technical problems within the Customer's IT environment that affect the Customer's access to or use of Checkmk Cloud (SaaS), b) problems in a version of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) that have been remediated in a later version, c) problems caused by the Customer's failure to implement and operate Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) in accordance with, as applicable, the User Guide, these terms, the EULA, and/or any other written instructions supplied by the Provider, d) problems resulting from the Customer's failure to implement (or migrate to) updates, solutions, error corrections, and

improvements to Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS), as the case may be, supplied by the Provider, e) problems in the use or functioning of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) caused by hardware or software not provided by the Provider or approved by the Provider for use with Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS), as the case may be, f) problems which the Provider determines, in its reasonable discretion, are the result of any modifications or alterations of the Checkmk Software (Self-Hosted) by anyone other than the Provider, or g) any Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) service that is not covered by a Subscription Agreement.

- 6.6. **DISCLAIMER.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, CHECKMK SOFTWARE (SELF-HOSTED) OR CHECKMK CLOUD (SaaS), AS APPLICABLE, AND SUPPORT SERVICES ARE PROVIDED ON AN "AS IS" BASIS. THE PROVIDER DOES NOT WARRANT THAT CHECKMK SOFTWARE (SELF-HOSTED) OR CHECKMK CLOUD (SaaS), AS THE CASE MAY BE, WILL MEET THE CUSTOMER'S REQUIREMENTS OR WILL OPERATE IN COMBINATIONS WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY THE PROVIDER WHICH THE CUSTOMER MAY SELECT FOR USE, OR THAT ALL CHECKMK SOFTWARE (SELF-HOSTED) OR CHECKMK CLOUD (SaaS) ERRORS OR DEFICIENCIES WILL BE CORRECTED. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PROVIDER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE PROVIDER DOES NOT WARRANT THAT THE CHECKMK SOFTWARE (SELF-HOSTED) OR CHECKMK CLOUD (SaaS) PRODUCTS OR SERVICES ARE ERROR-FREE OR THAT THEIR USE WILL BE UNINTERRUPTED. THE PROVIDER'S DISCLAIMER ALSO APPLIES TO ANY OF ITS INDEPENDENT CONTRACTORS, SUPPLIERS, LICENSORS OR PROGRAM DEVELOPERS (COLLECTIVELY, "**SUPPLIERS**"). THE CHECKMK SOFTWARE (SELF-HOSTED) AND CHECKMK CLOUD (SaaS) SERVICE ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE AS CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS OR HIGH RISK APPLICATIONS REQUIRING FAIL-SAFE PERFORMANCE; AND THE PROVIDER AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR ANY SUCH HIGH RISK ENVIRONMENT OR ACTIVITY.

WITHOUT LIMITING THE FOREGOING, THE PROVIDER IS NOT RESPONSIBLE OR LIABLE FOR THE ACCURACY OR COMPLETENESS OF, AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO, THE OUTPUT OF ANY ARTIFICIAL INTELLIGENCE ("AI") FEATURE INCLUDED IN THE CHECKMK SOFTWARE (SELF-HOSTED) OR CHECKMK CLOUD (SaaS) SERVICE.

7. INDEMNITIES

[Section 23 of the GTC "Indemnification" does not apply to Customers of Checkmk, Inc. and is replaced by the following clauses:](#)

7.1. Provider Indemnity.

- 7.1.1. During the Subscription Period, the Provider will defend any third party action brought against the Customer to the extent that it is based upon a claim that Checkmk Software (Self-Hosted) and Checkmk Cloud (SaaS) (excluding any Open Source Components), as provided by the Provider to the Customer under the Subscription Agreement, and used within the scope of the Subscription Agreement, infringes such third person's rights in any copyright, trademark or United States patent, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded against the Customer by a court of competent jurisdiction or the amounts stated in a written settlement signed by the Provider, provided that the Customer: a) promptly notifies the Provider in writing of the claim, b) grants the

Provider sole control of the defense and settlement of the claim, and c) provides the Provider with all assistance, information and authority reasonably required for the defense and settlement of the claim.

- 7.1.2. **Injunctions.** If the Customer's use of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) is, or in the Provider's opinion is likely to be, enjoined due to infringement as specified in Section 7.1 above, or if a claim is brought against the Customer due to infringement as specified in Section 7.1 above, then the Provider may, at its sole option and expense: a) procure for the Customer the right to continue using Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) under the terms of the Subscription Agreement, b) replace or modify the Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) so that it is non-infringing, or (c) terminate the Customer's rights and the Provider's obligations hereunder with respect to the Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) and refund to the Customer all Subscription Fees previously paid by the Customer with respect to the SubscriptionPeriod in which the termination occurs.
- 7.1.3. **Exceptions to Infringement Indemnity.** Notwithstanding the terms of Section 7.1, the Provider will have no liability for any infringement claim of any kind resulting from or arising out of: a) modification or alteration of the Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) by the Customer or any third party (other than a third party under the Provider's control), b) the combination, operation or use of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) supplied hereunder with equipment, devices or software not supplied by the Provider, c) failure of the Customer to use an updated or modified version Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) made available by the Provider, to avoid infringement, d) the Provider's development of any changes or modifications to Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) created on the basis of the Customer's specifications; (e) the use of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) that is not covered by a Subscription Agreement (i.e., Software that is used pursuant to a Trial Version, POC Version or Free Version), or (f) use of the Software in a manner not expressly authorized by the Subscription Agreement.
- 7.1.4. THIS SECTION 7.1 of the U.S. STC STATES THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND THE PROVIDER'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.
- 7.2. **Customer Indemnity.**
- 7.2.1. The Customer shall defend, indemnify and hold harmless the Provider and its Affiliates and its/their officers, directors, employees and Suppliers (collectively, the "**Provider Indemnified Parties**") from and against all claims, demands, costs, expenses (including reasonable attorneys' fees), damages and liabilities of any kind arising out of or in connection with any claim a) alleging that a use of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) by the Customer that is not in accordance with the Subscription Agreement infringes or misappropriates the rights of any third party, in particular third-party intellectual property rights; b) otherwise resulting from the Customer's use of Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) other than in accordance with these Terms and Conditions or the Subscription Agreement or EULA (including without limitation any use in violation of the acceptable use restrictions set forth in these Terms, the Subscription Agreement or the EULA); c) resulting from the Customer disclosing access data or other access information for Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) to unauthorized third parties in violation of these Terms and Conditions, the provisions of the Subscription Agreement or the EULA; d) arising from data, information, or other inputs entered by the Customer into Checkmk Software (Self-Hosted) or Checkmk

Cloud (SaaS); e) arising from a violation of applicable law by the Customer; or f) arising from (i) the utilization of corresponding AI models or services with Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS), or (ii) the results or output of any AI feature included in the Checkmk Software (Self-Hosted) or Checkmk Cloud (SaaS) and used or relied upon by the Customer (each of clauses a) through f) a **"Claim for Non-Contractual or Abusive Use"**).

- 7.2.2. **Indemnification Procedures.** The Provider shall a) notify the Customer in writing (email or text form is sufficient) without undue delay upon becoming aware of the Claim for Non-Contractual or Abusive Use, b) grant the Customer sole control over the defense, litigation, negotiations, and settlement of the Claim for Non-Contractual or Abusive Use (provided that the Customer may only settle or defend such a claim if it unconditionally releases the Provider from any and all liability), and c) provide the Customer with all reasonable assistance in connection with the claim at the Customer's expense.

8. LIMITATIONS OF LIABILITY

Sections 22 of the GTC "Limitations of Liability", 25.9 of the GTC "Trial-Version, POC-Version and Free-Version" do not apply to Customers of Checkmk, Inc. and are replaced by the following clause:

- 8.1. SUBJECT TO THE EXCEPTIONS SET FORTH IN THE NEXT PARAGRAPH, IN NO EVENT WILL (A) EITHER PARTY (INCLUDING, IN THE CASE OF THE PROVIDER, ITS SUPPLIERS) BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING LOSS OF DATA OR USE, COST OF COVER, LOSS OF PROFITS OR REVENUES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND (B) THE PROVIDER AND/OR ITS SUPPLIERS BE LIABLE IN THE AGGREGATE FOR AN AMOUNT IN EXCESS OF THE FEES PAID BY THE CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SUBSCRIPTION OR SERVICE GIVING RISE TO THE LIABILITY IN THE TWELVE-MONTH PERIOD PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE.
- 8.2. THE FOREGOING LIMITATIONS IN THE PRECEDING PARAGRAPH WILL NOT APPLY TO (A) AMOUNTS DUE HEREUNDER, (B) THE CUSTOMER'S BREACH OF THE LICENSE GRANT AND/OR RESTRICTIONS SET FORTH HEREIN OR IN THE EULA (IF APPLICABLE) OR INFRINGEMENT OR MISAPPROPRIATION OF THE PROVIDER'S INTELLECTUAL PROPERTY RIGHTS, (C) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, AND/OR (D) CLAIMS RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- 8.3. THE LIMITATIONS OF LIABILITY SET FORTH HEREIN ARE INDEPENDENT OF EACH OTHER AND ANY LIMITED REMEDY AND WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE LIMITATIONS OF LIABILITY REFLECT A DELIBERATE AND BARGAINED-FOR ALLOCATION OF RISKS BETWEEN THE PROVIDER AND THE CUSTOMER AND CONSTITUTE THE BASIS OF THE PARTIES' BARGAIN, WITHOUT WHICH THE PROVIDER AND THE CUSTOMER WOULD NOT HAVE AGREED TO THESE TERMS.

9. Force Majeure

Section 26 of the GTC "Force Majeure" does not apply to Customers of Checkmk, Inc. and is replaced by the following clause: "Force Majeure. Except for the Customer's obligations to pay the Provider hereunder, neither party will be liable to the other party for any failure or delay in performance due to causes beyond its reasonable control, including fire, earthquake, war, riot, epidemic, act of God or governmental action."

10. Final Provisions

Section 28 of the GTC "Final Provisions" is supplemented as follows for Customers of Checkmk, Inc.:

- 10.1. **Injunctive Relief.** The breach of the EULA or of Section 16 of the GTC would cause irreparable harm to one or both parties, the extent of which would be difficult to ascertain. Accordingly, in addition to any other remedies to which such other party may be legally entitled, each party will have the right to obtain immediate injunctive relief in the event of a breach of such Sections by the other party without the requirement of posting a bond.
- 10.2. **Assignment.** The Customer may not transfer, assign or delegate any of its rights or duties under the Subscription Agreement without the prior written consent of the Provider, except that the Customer may transfer all, but not less than all, of its rights under the Subscription Agreement to a successor to the Customer's business, provided that a) the Customer gives notice to the Provider of such assignment at least 10 days prior to the effective date of the assignment, and b) the transferee may not be – and may not be an Affiliate of – any person that competes, then or thereafter, with the Provider in the market for IT monitoring, reporting, planning or analytics solutions. Any transfer, assignment or delegation in violation of the foregoing shall be void.
- 10.3. **Notices.** All notices, demands or consents required or permitted under the Subscription Agreement shall be in writing, including email, and will be deemed to have been fully given and received on the earlier of actual receipt or: (a) when sent by confirmed facsimile, (b) when sent by email (as recorded on the device from which the sender sent the email) unless the sender receives an automated 'undeliverable' or 'failure' notice (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one business day (two business days for international addresses) after deposit with an express commercial courier, with written verification of such receipt. All communications shall be sent to the party's official address, or at such address as the party may specify herein or may specify later in writing for such purposes.
- 10.4. **Government Rights.** The Software licensed under the Subscription Agreement is "commercial computer software" as that term is defined in the Federal Acquisition Regulations ("**FAR**") at 48 C.F.R. 2.101 . The Software was developed exclusively at private expense. If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of the Subscription Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulations ("**FAR**") . If acquired by or on behalf of any agency within the Department of Defense ("**DOD**"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of the Subscription Agreement as specified in 48 C.F.R. 227.7202 of the Defense Federal Acquisition Regulation Supplement ("**DFARS**"). The use of the Software and Documentation is further restricted in accordance with the terms of the Subscription Agreement, or any modification thereto.
- 10.5. **Section 29.1 of the GTC "Final Provisions" does not apply to Customers of Checkmk, Inc. and is replaced by the following clause:** "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 Software

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(Self-Hosted) and Checkmk Cloud (SaaS) constitutes the Customer's binding acceptance of the revised Subscription Agreement."