**General Terms & Conditions for Support,
Development and Consulting Services**

1.   Scope of Application

1.1   These General Terms & Conditions govern the performance of support, development and consulting services by tribe29 GmbH (**"tribe29"**). These GTC will also apply in the absence of any express reference to these GTC.

1.2   Support and development services are available only to Customers with a currently valid subscription for Checkmk who have opted for Vendor Support. The Customer may, however, contract for consulting services without opting for Vendor Support.

2.   Content of Support Services

2.1   tribe29 will perform the support services listed below pursuant to the Subscription and Support Agreement (**"Agreement"**):

- Support services in connection with the functions of the software.
- Resolution of problems that arise during proper use of the software.

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

- Services performed on the premises of the Customer (**"On-Site Services"**).

- Development of new features and functionalities. This service is available pursuant to section 6.

2.3 The Vendor Support option enables the Customer to submit support requests to tribe29. Support services are billed either on the basis of time worked (Credits) or the Break/Fix Support option.

2.4 tribe29 provides support service only for stable versions of the software that are under active or passive maintenance pursuant to the website of tribe29. Active or passive maintenance will be provided for at least thirty (30) months from the initial release date of the full version (e.g., version 1.5.0). Stable versions are identified as 'stable' in the download area. tribe29 will decide at its own discretion whether to accept and process support requests for older versions or versions that are not identified as 'stable'.

2.5 Under the support agreement, tribe29 undertakes to make every reasonable effort to provide a solution to support requests. tribe29 will respond to and process support requests from the Customer via telephone or the ticketing system within the contractually agreed response time. tribe29 deploys carefully selected personnel with the requisite qualifications to perform its services. A specific outcome is not owed.

2.6 Problems may be resolved by an improved configuration, a patch, a workaround, detailed instructions for the resolution of the problem or a new version of Checkmk. In order to resolve the problem, it may be necessary for the Customer to migrate to a new version.

2.7 Support services are provided during the business hours of tribe29. With the exception of national legal holidays in Germany, its business hours are from 8:00 to 17:00 CET Monday through Friday.

2.8 Performance by tribe29 will be subject to the condition that no obstacles based on national or international provisions of foreign trade law or embargos and/or other sanctions stand in the way of performance.

3. Request for Support Services

3.1 The Customer may request support services by opening a ticket in the tribe29 ticketing system. The Customer is that natural or legal person, public body or authority identified as such in the Agreement and does not include any affiliates of the Customer. If, for example, a subsidiary enters into the Agreement, its parent company and sister companies are not authorized to request support services. Conversely, a subsidiary may not submit support requests if the parent company has entered into the Agreement. Support services may be requested only by users registered with tribe29 as support contacts.

3.2 In the case of subscriptions for the 'Checkmk Enterprise Managed Services Edition' (CME) or the purchase of the 'Group and Managed Services Use' license option, Affiliated Entities (as defined in the EULA) that use the software themselves may also request support services from tribe29 in addition to the Customer. This will not create any contractual relationship between tribe29 and such Affiliated Entities. In particular, the Customer will be solely liable for payment for any such support services that tribe29 performs for its Affiliated Entities.

3.3 Appropriate assistance by the Customer is a prerequisite for a successful processing of support requests. In particular, the Customer must provide a detailed and understandable description of the problem and information on the system to be maintained. The Customer must also make the documentation of the system to be maintained available to tribe29 upon request. The Customer must respond to additional questions from tribe29 without delay.

3.4 Support services will generally require remote access to the system of the Customer or the possibility of accessing the screen of a user and of operating the user's system (**"Screen Sharing"**). In the event that

remote access or Screen Sharing is not possible although required to resolve the problem, support can then be provided only as On-Site Service and will be billed separately.

4. Response Times

4.1 Binding response times are available for support services at additional cost. Response times will be considered to have been met if tribe29 starts to process a support request within the agreed response time after receiving a sufficiently detailed description of the specific error or problem.

4.2 Response times are measured exclusively in terms of normal business hours. Time lying outside normal business hours will not count towards the response time.

4.3 Response times are defined in the Agreement. tribe29 offers Customers "8-hour" or "24-hour/NBD (Next Business Day)" response times. Notwithstanding section 4.2, 24-hour/NBD response time will end at 17:00 CET on the following working day (Monday through Friday with the exception of national legal holidays).

4.4 In the case of support requests without a binding response time (best effort), tribe29 will normally commence processing within one week.

5. Break/Fix Support

5.1 The pricing option Break/Fix Support includes support for the elimination of software errors and for the resolution of problems due to improper configuration of the software by the Customer for a flat annual fee.

5.2 Break/Fix Support does not cover, for example,

    a. problems caused by third-party systems of the Customer, e.g., firewall or ESX configurations;

    b. problems in connection with the use of scripts by the Customer, e.g., to link to third-party systems;

    c. problems in connection with the installation of plug-ins or extensions that are not part of a published Checkmk Enterprise Edition, e.g., Nagios plug-ins, self-written plug-ins or packages from the 'Checkmk Exchange';

    d. requests for explanations, e.g., "How do I …?";

    e. support in connection with updates and upgrades;

    f. consulting, e.g., performance enhancement or enhancement of the configuration; and

    g. functional expansions of Checkmk.

5.3 Support services that are not covered by Break/Fix Support will be billed on the basis of time worked in accordance with section 8.

5.4 tribe29 will evaluate incoming support requests and inform the Customer if the requests are not covered by Break/Fix Support. In the event that tribe29 only discovers that the request is not covered by Break/Fix Support in the course of cause analysis, tribe29 will inform the Customer accordingly without delay. In such cases, the entire support request, including the analysis already carried out, will be billed separately on the basis of time worked.

5.5 Remote access or Screen Sharing must be enabled and viable in order for the support services to be billed as Break/Fix Support. The Customer must ensure sufficiently low latency as well as adequate screen resolution.

5.6 In the case of any breach of the provisions contained in section 3.3 on the part of the Customer, tribe29 may bill the Customer separately for any additional work required.

6. Development Services

6.1 The Customer may request development services (e.g., development of features or customer-specific plug-ins) by opening a ticket in the tribe29 ticketing system. The decision as to whether to accept development requests will be at the sole discretion of tribe29 and will depend upon the current development workload and strategic development priorities.

6.2 The parties will agree upon the content of and payment for development services in text form (e.g., through the ticketing system). In particular, the Customer must provide a complete and accurate description of its functional requirements. The Customer must respond to additional questions from tribe29 without delay. The results of development services will be incorporated into the next stable full version (e.g., 1.7.0). Adjustments to previous versions (backports) will be agreed and billed separately. The results of development services will be incorporated into future versions of Checkmk. The corresponding work will be included in the cost estimate.

6.3 All prices provided will be estimates unless fixed prices are expressly agreed. tribe29 may, at its sole discretion, determine the technical implementation of the functional requirements. Consequently, as far as the technical implementation of the services is concerned, tribe29 will not be bound by the Customer's requests. Changes in services must be mutually agreed and confirmed in text form (e.g., by postal mail, e-mail or fax). Where it is possible to conduct an analysis and prepare a cost estimate within 45 minutes, such estimates will be free of charge. The analysis will be chargeable if it takes longer than 45 minutes, regardless of whether or not the Customer awards tribe29 a contract. tribe29 will inform the Customer and obtain its consent prior to incurring any costs.

6.4 Dates and times of delivery and/or performance times will be binding upon tribe29 only if expressly identified as such by tribe29 and confirmed at least in text form (e.g., by postal mail, e-mail or fax).

6.5 Development services are subject to acceptance. tribe29 will make the results of services available for acceptance upon completion. Unless agreed otherwise, the Customer must, in the absence of any defects that would prevent acceptance, confirm its acceptance within four weeks. Development services will be deemed to have been accepted if the Customer has commenced production or has not submitted a list of defects containing at least one material defect that would prevent acceptance within the above time period.

6.6 tribe29 may make partial delivery insofar as the Customer can make meaningful use of the results delivered.

6.7 In the event that the development services cannot be carried out without significantly exceeding the estimated costs, tribe29 may terminate the development contract in its entirety or in part. The Customer will, in any such case, not be liable for payment for that part of the contract that is cancelled. tribe29 will notify the Customer accordingly without delay in the event that costs would significantly exceed the estimated costs. tribe29 will not be liable for any loss incurred by the Customer due to cancellation except in the case of gross negligence or willful misconduct on the part of tribe29.

7. Consulting Services

7.1 tribe29 performs consulting services (e.g., setup of a new monitoring system, upgrades or performance enhancements) on the basis of separate agreements that specify the content and scope of the services as well as the corresponding cost.

7.2 Compensation is based on the number of consultant days required plus flat rates for travel and accommodations. A consultant day includes up to eight hours for a single employee on a given calendar day.

7.3 The Customer may cancel an agreement for consulting services prior to commencement of work. If the Customer should cancel an agreement for consulting services less than three (3) weeks prior to the planned date of the commencement of work, the Customer will owe liquidated damages in the amount of 50% of the agreed compensation. If the Customer should cancel the agreement less than 2 weeks prior to the planned date of the commencement of work, the liquidated damages amount to 75% of the agreed compensation. If the Customer should cancel the agreement less than one week prior to the planned date of the commencement of work, the Customer will owe liquidated damages equal to the full amount of the agreed compensation. The Customer may present evidence to the effect that no loss or damage was incurred by tribe29 or that any such loss or damage was significantly less than the amount of liquidated damages.

7.4 The Customer acknowledges that fulfillment of its duties of cooperation constitutes a basic prerequisite for the performance of the services of tribe29 and as a result a contractual duty. The Customer must make available, free of charge, the premises, technical environments, system access, contact persons and documentation required by tribe29 for the purpose of performing its services. The Customer will, among other things, ensure that security systems (in particular firewalls) do not interfere with the installation of the software. The Customer must also make any necessary decisions regarding the implementation and scope of the project without delay and inform tribe29 accordingly. In addition, the Customer must examine changes suggested by tribe29 without delay.

7.5 The Customer will, on a timely basis, make available all technical and other documentation and information required for a successful outcome. In the event that the Customer breaches or fails to properly perform any duty or obligation and thus interferes with performance of the services of tribe29, agreed execution deadlines will be extended by a period equal to that of any delay incurred plus an appropriate time for resumption of work. tribe29 reserves the right to bill the Customer for any additional expense incurred, including but not limited to the cost of prolonged deployment of personnel or materials, at the rates agreed.

7.6 Sections 6.5 through 6.7 and 14 will apply accordingly in the event that the parties agree that the consulting services include the development of certain custom software.

8. Payment and Invoicing

8.1 The price for the Break/Fix Support option and for agreed response times will be based on the sizing of the license (number of services monitored). The number of services monitored will be determined in accordance with the GTC for Subscriptions.

8.2 Section 4.5 of the GTC for Subscriptions will apply accordingly in respect of changes in the sizing of the license. In the case of any change in the sizing of the license, the compensation for support services will also be adjusted accordingly.

8.3 Support services that are not covered by Break/Fix Support and development and consulting services that are no On-Site Services will be billed on the basis of time worked. Such time will be calculated on the basis of increments of 15 minutes each (**"Credits"**). Each Credit corresponds to a quarter of an hour of working time or any fraction thereof. Credits cannot be used to pay for On-Site Services, training, customer conferences, hardware or hardware maintenance.

8.4 The Customer may acquire packages of Credits in advance (**"Prepaid Credits"**) or pay for support services in arrears (**"On-Demand Credits"**). The price per Credit will be stipulated in the Agreement. Prepaid Credits are lower priced than On-Demand Credits. The purchase of Prepaid Credits does not entitle the Customer to require that tribe29 perform development services.

8.5 Prepaid Credits must be purchased at the beginning of the contract year and will remain valid for twelve (12) months. Credits that are not used within twelve (12) months will expire. Prepaid Credits do not expire if used for support requests and development contracts initiated within the 12-month period.

8.6 Customers will be billed for On-Demand Credits retroactively on a quarterly basis.

8.7 Customers will be billed for On-Site Services exclusively on the basis of the agreed daily rates plus flat rates for travel and accommodation costs. In the event that no daily rates have been agreed, the currently valid daily rates of tribe29 for consulting services will apply. The flat rate for travel costs will be determined based on the distance between the place of residence of the consultant and the place of deployment. In the case of overnight assignments, a separate fee based on the place of deployment will apply for accommodations. Travel expenses and the cost of accommodations will not be itemized. The Customer will be billed upon completion in the case of consulting services and after acceptance in the case of development work.

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

8.9 Invoices of tribe 29 will be due immediately upon receipt and payable within fourteen (14) days.

8.10 In the event that the Customer should be in arrears of payment, tribe29 may cease to perform its services and in particular may suspend processing of support requests.

8.11 tribe29 reserves the right to adjust the cost of support services and Credits as of the beginning of every renewal period. tribe29 will notify the Customer of any price adjustment at least twelve (12) weeks in advance. In the event that the Customer is not in agreement with the price adjustment, the Customer may terminate the support agreement with effect as of the end of the term. If the Customer fails to terminate the agreement, the new price will apply as of the beginning of the respective renewal.

9. Term and Termination

9.1 The term of the support agreement will coincide with that of the underlying subscription and will also automatically renew each year for another year unless terminated in due time. In the event that the subscription is terminated, the support agreement will also be terminated. The support agreement or a support option may be terminated separately effective as of the end of the term of the Agreement by giving at least three (3) months' notice. The right to terminate for cause remains unaffected.

9.2 The Customer may no longer contract development services after termination of the support agreement.

10. Rights of Use

Where tribe29 delivers software or copyrightable works in connection with support, development or consulting services, the respective rights of use will be governed by the provisions of the EULA in effect at the time of delivery. tribe29 will otherwise retain all rights of use and exploitation.

11. Deployment of Subcontractors

11.1 In the performance of its obligations, tribe29 may also utilize the services of subcontractors, for example, to provide support in areas involving unusual specialization. tribe29 will obtain the prior consent of the Customer in any such cases. The Customer may withdraw such consent for legitimate reasons (e.g., for justified security considerations).

11.2 Where a subcontractor is deployed with the consent of the Customer, tribe29 retains full responsibility for fulfillment of its contractual obligations towards the Customer.

12. Confidentiality and Data Protection

12.1 Each party will treat as confidential all information that it receives from the other party in connection with an Agreement, its conclusion and/or its execution unless such information is expressly marked as non-confidential or the information is by its nature non-confidential such as, for example,

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

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

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

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

Confidential information includes but is not limited to the elements of the Checkmk Software which are exclusively licensed under the Checkmk Enterprise License (**"Proprietary Software"**), the login data for the download area and the prices and contractual conditions individually agreed with the Customer. The duty of confidentiality covers information which one party discloses to an affiliate of the other party within the meaning of §§ 15 et seqq. of the Stock Corporation Act (*Aktiengesetz* – AktG).

12.2 If any information pursuant to section 12.1 does not meet the requirements for a business secret under the Business Secrets Act (*Geschäftsgeheimnisgesetz* – GeschGehG), it will nonetheless be subject to the confidentially obligations pursuant to this section 12.

12.3 Each party undertakes to treat confidentially the other party's confidential information and to only use it for the purposes of the Agreement. Proprietary Software may only be used pursuant to the provisions of the EULA. Except where the disclosure of confidential information is necessary for the purposes of the performance of the Agreement, it may only be disclosed to a third party with the prior written consent of the party to whom it belongs. The third party must agree in writing to adhere to the confidentiality obligations contained in this section 12 before the confidential information may be disclosed to it.

12.4 Each party undertakes to protect the other party's confidential information against unauthorized third-party access by taking appropriate protective measures, applying at least the same degree of care as it would apply to protect its own confidential information.

12.5 The parties will also bind their employees to comply with these confidentiality obligations. Each party is only permitted to share the other party's confidential information with its employees or make same available to them if they need to know such confidential information in order to be able to perform the Agreement. The users of the software must be informed as to the content of the EULA.

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

12.7 tribe29 will process personal data of the Customer and the Customers' employees only to the extent necessary for the performance of the Agreement.

12.8 If it is not possible to rule out the possibility that tribe29 has access to personal data when providing support services (in particular, where tribe29 is granted access to the Customer's systems), the Customer will conclude a separate data processing agreement with tribe29.

13.   Remedies for Defective Support or Consulting Services

13.1   If tribe29 fails to provide the support services in conformity with the contract, tribe29 will be entitled, at no charge, to re-perform the services to the extent that they can be re-performed, and the Customer can be reasonably expected to accept this. The Customer will grant tribe29 a reasonable grace period for re-performance. If tribe29 fails or refuses to re-perform during the grace period, the Customer may terminate the support agreement for cause. Any claims for damages or reimbursement of expenses will be limited pursuant to section 15.

13.2   Where tribe29 delivers new program versions, updates or patches to the Customer as part of its support service, warranty claims regarding improvements that do not constitute a removal of defects will be governed by the provisions of section 14.

14.   Remedies for Defective Development Services

14.1   If the Customer discovers any defects in quality, it will notify tribe29 in text form (e.g., by postal mail, e-mail or fax) without delay and include a precise description of the defects. Any warranty claims of the Customer will become time-barred twelve (12) months after acceptance unless tribe29 has fraudulently concealed the defect; the statutory limitation period for claims for damages by the Customer for defects will continue to apply. The statutory limitation period for partial deliveries begins when the respective portion of the total services is accepted. Any duty on the part of the Customer to notify defects under commercial law remains unaffected.

14.2   tribe29 may choose how it will remedy its performance. If tribe29 provides the Customer with a reasonable workaround for the defect, this will also qualify as a remedy. tribe29 may also require the Customer to install the patches that it delivers for the purposes of remedying any defects. In the case of defects that do not prevent acceptance, tribe29 may in the exercise of its due discretion decide when to remedy such defects.

14.3   Records and information that may be reasonably required by tribe29 so that it can analyze and correct defects will, at the request of tribe29, be made available by the Customer free of charge. In addition, the Customer will, as far as may be reasonably expected, assist tribe29 free of charge in connection with the analysis and correction of the defects.

14.4   In the event that tribe29 has finally and conclusively failed to remedy the defects, the Customer may require a reduction in the compensation or, in the case of defects in quality which prevent acceptance of the work, rescind the contract. The determination whether tribe29 has finally and conclusively failed to remedy a defect must take into account the complexity and the circumstances involved, whereby failure cannot be assumed after two unsuccessful attempts to remedy the defect. The Customer may not exercise self-help rights or have corrective work carried out by third parties. The Customer may claim damages only under the provisions contained in section 16.

14.5   tribe29 will not be liable for defects that are the result of performance specifications or concepts prescribed or approved by the Customer, where these contain errors or are incomplete, nor will it be liable for defects resulting from faulty work carried out by the Customer or by third parties that it deploys. Where deliverables have been modified, tribe29 will not be liable for any defects unless the Customer can prove that the defects at issue were not caused by the modifications.

14.6   If a defect alleged by the Customer is not attributable to tribe29 or does not in fact exist, tribe29 will be entitled to charge the Customer for the costs incurred for analysis and remedial work at the respective agreed rates, provided that the Customer was at least negligent in not recognizing that no defect existed.

15.   Liability for Support Services

15.1   Any damage in connection with the performance of support services will be governed by the provisions of section 7 of the GTC for Subscriptions as amended by the following provisions.

15.2   The limitation on liability set out in section 7.3 of the GTC for Subscriptions applies uniformly to all damage arising from or in connection with the Subscription and Support Agreement. Liability is limited to the following amounts:

   a.   For each individual occurrence of damage, to a maximum of twenty-five percent (25%) of the total of the net subscription price paid to tribe29 in the respective contract year plus the compensation paid to it for vendor support, agreed response times and break-fix support; and

   b.   For all occurrences of damage during one contract year, to a maximum of fifty percent (50%) of the total of the net subscription price paid to tribe29 in the respective contract year plus the compensation paid to it for vendor support, agreed response times and break-fix support.

16.   Liability for Development and Consulting Services

16.1   In connection with development and consulting services, tribe29 will only be liable for damage caused by slight negligence where the damage results from the breach of a material duty that jeopardizes the achievement of the purpose of the contract or from a breach of a duty whose fulfillment is of the very essence for the proper execution of the contract.

16.2   In the cases covered by section 16.1, tribe29's liability is limited to the damage which can be reasonably foreseen for such type of contract.

16.3   In the cases covered by section 16.1 the amount of tribe29's liability is in any event limited in respect of each development project or consulting agreement to a maximum of fifty percent (50%) of the compensation paid by the Customer to tribe29 for the respective development or consulting service.

16.4   tribe29 excludes all liability for lost profits in the cases covered by section 16.1.

16.5   tribe29 will only be liable for loss of data and programs and outages if (i) the damage could not have been avoided even by taking appropriate precautions to avoid loss of data (in particular, by creating, at least on a daily basis, backups of all programs and data) and by taking appropriate precautions in line with the state-of-the-art technology to avoid outages (in particular, by testing updates in a test environment before using them in a production system and by preparing disaster recovery plans) or (ii) the damage was caused by gross negligence or intentional wrongdoing on tribe29's part. All liability for loss of data is subject to the other restrictions in this section 16.

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

16.7   The above limitations on liability also apply where a claim for damages is brought against an employee or agent of tribe29.

17.   Amendments to these GTC

The ongoing development of tribe29's offering may require amending these GTC during the term of the Agreement. tribe29 will give the Customer six (6) weeks' advance notice of any amendments in text form (e.g., by postal mail, e-mail or fax). The Customer will be deemed to have consented to the amendments if it does not notify tribe29 in text form (e.g., by postal mail, e-mail or fax) of its rejection of the

amendments before their proposed entry into force. The Customer is, in this case, entitled to terminate the support agreement for cause. tribe29 will specifically alert the Customer in its offer as to the effect of deemed consent.

18. Final Provisions

18.1 The Agreement, including these GTC, comprises the entire agreement between the parties concerning the subject matter hereof and supersedes any prior agreements between them. Any provisions in the Customer's general terms and conditions which conflict with, vary from or add to these GTC will only become part of the Agreement if and to the extent that we have expressly consented to them. This requirement of consent will apply in any case, even if, for example, we provide goods and services without reservation despite being aware of the Customer's general terms and conditions.

18.2 Amendments or additions to the Agreement, including these GTC, will only be effective if tribe29 has made the relevant declaration of intent at least in text form (e.g., by postal mail, e-mail or fax). The same applies to any waiver of the text form requirement.

18.3 In the event that any provision should be or become invalid in part or in its entirety, this will not affect the validity of the remaining provisions. The parties agree to substitute for any such invalid provision a valid provision that most closely approximates the economic effect and intent of the invalid provision.

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

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

18.6 The courts of Munich, Germany, will have exclusive jurisdiction over any disputes arising out of or in connection with the Agreement, including the validity of the Agreement, to the extent permitted by law. tribe29 reserves the right to bring action against the Customer before the courts of the Customer's principal place of business.