

Check Point SmartUse Service Agreement

This Service Agreement (“Agreement”) is an agreement between you (both the individual accepting this Agreement and any legal entity on whose behalf such individual is acting), (hereinafter referred to as “Customer”), and Check Point Software Technologies Ltd. (“Check Point”), located at 5 Ha’solelim Street, Tel Aviv, Israel.

WHEREAS, Check Point offers its customers, through its authorized Resellers and/or Distributors (hereinafter referred to as “Partner(s)”), a managed service to provide an optimization report for the Check Point installed product deployment (the “Service”), subject to a fee as described below; and

WHEREAS, Customer wishes to purchase the Service through its designated Partner, and have the deployment of its Check Point’s installed products examined by Check Point subject to the terms set forth below; and

WHEREAS, payment for the Service shall be through the designated Partner;

NOW, THEREFORE, in consideration of the foregoing recitals and mutual promises and covenants hereinafter contained, the parties agree as follows:

Customer Responsibilities

In order for Check Point to evaluate Customers’ data, Customer shall provide Check Point with the following information:

- a. CP info from Customers’ management server (SmartCenter or CMA or MDS) as well as modules (gateways) if requested by Check Point.
- b. Log files from Customers’ log server, which will enable Check Point to analyze Customers’ traffic. The logs required will be for a certain time period as determined by Check Point, based on Customer’s log generation load and Check Point’s specific requirements.
- c. Files and/or the output of programs or scripts as requested by Check Point. The scripts will run on the modules and/or management server and gather additional information relating to the machine and Check Point products installed.

Scope of Services

The Service shall consist of Check Point engineers analyzing all data provided by Customer, and examining the deployment of Customers' Check Point installed products in order to optimize the security, stability and performance of their deployed Check Point products. The Check Point engineers will work off site at Check Point facilities. Following Check Point's evaluation, a report will be submitted to Customer (the "Report") by Check Point and/or the Partner, with suggestions and recommendations. Following Customer's receipt and review of the report, a phone consultation with a Check Point engineer and/or the Partner can be scheduled to review the recommendations as appear in the report. Customer will be responsible for implementing any recommendations included in the Report.

License to Use

Subject to the terms of this Agreement, Check Point shall have a non-exclusive license to examine, use and evaluate the data provided by Customer under this Agreement for the sole purpose of providing the Service to Customer. Check Point understands that the data provided by Customer is confidential in nature and shall keep it and the Report itself as such.

Any and all confidentiality obligations of Reseller in relation to the data, report, findings, etc under this Agreement shall be dealt with separately between the Customer and the Reseller directly.

Fees

In consideration of the Service, Customer shall pay to the designated Partner the applicable fees.

Performance of the Services

Check Point shall provide the Services pursuant to its then-current policies and procedures, which may be changed by Check Point at any time, and Customer acknowledges and agrees that no representations, promises or warranties have been made in connection with the Services other than any of the same that are expressed in this Agreement.

Term

Unless earlier terminated, the term of this Agreement shall be from the date in which Customer submits a Purchase Order for the Service (and in doing so, accepts the terms of this Agreement)("Effective Date") and until completion of the Services paid for by Customer under this Agreement.

Termination for Cause

Either party has the right to terminate this Agreement if the other party breaches or is in default of any obligation hereunder, including the failure to make any payment when due, which default is incapable of cure or which, being capable of cure, has not been cured within fifteen (15) days after receipt of written notice from the non-defaulting party or within such additional cure period as the non-defaulting party may authorize in writing.

Responsibilities upon Termination

Nothing in this Agreement will affect Customer's responsibility for the payment of any fees owed to Reseller for any completed Project or portion thereof.

Ownership

Customer acknowledges and agrees that Check Point will retain all rights in any patentable material, copyrighted material, trade secrets, or other intellectual property that it develops in the course of performing the Service, subject to the underlying rights of Customer in any intellectual property that Customer owns prior to the Effective Date of this Agreement. Provided that Customer is not in breach of any material term of this Agreement, Check Point will grant Customer a nonexclusive license, without right of sublicense, to use the results of the Report provided to Customer solely for Customer's own internal business purposes.

Warranties and Disclaimers

Check Point represents that all services and deliverables rendered pursuant to this Agreement will be provided in a professional manner and in accordance with industry standards. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, CHECK POINT MAKES NO WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Limitation of Liability

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, CHECK POINT WILL IN NO EVENT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL, CONTRACTUAL OR EQUITABLE THEORY FOR: (I) ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER OR NOT ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES; OR (ii) DAMAGES FOR LOST PROFITS OR LOST DATA; OR (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY OR THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITATION OF LIABILITY OR LIMITED REMEDY, CHECK POINT'S ENTIRE AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, UNDER ANY LEGAL THEORY (WHETHER IN CONTRACT, TORT, INDEMNITY OR OTHERWISE) SHALL BE LIMITED TO THE AMOUNTS RECEIVED BY CHECK POINT UNDER THIS AGREEMENT FOR A CLAIM PURSUANT TO A PARTICULAR

PROJECT UNDER THIS AGREEMENT THAT CAUSED THE LIABILITY. BY SUBMITTING A PURCHASE ORDER FOR THE SMARTUSE SERVICE AGREEMENT, CUSTOMER HAS READ THIS AGREEMENT AND AGREES TO ALL OF THE TERMS CONTAINED HEREIN.