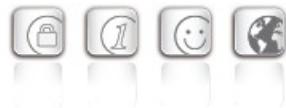# Software Lizenzbedingungen

NCP Secure Enterprise Server

Stand Januar 2017

Nachfolgend sind die Lizenzbedingungen für die Benutzung von NCP-Software durch Sie, den Endanwender (im Folgenden auch: "Lizenznehmer"), aufgeführt. Durch Ihre Bestätigung nach dem Lesen dieser Meldung erklären Sie sich mit diesen Lizenzbedingungen einverstanden. Daher lesen Sie bitte den nachfolgenden Text vollständig und genau durch. Wenn Sie mit diesen Lizenzbedingungen nicht einverstanden sind, dürfen Sie die Software nicht benutzen bzw. installieren.

1. Gegenstand dieser Lizenzbedingungen

1.1 Gegenstand dieser Lizenzbedingungen der NCP engineering GmbH (nachfolgend "NCP") ist die Nutzung der in Dateiform vorliegenden Software NCP Secure Enterprise Management System, NCP Secure Enterprise VPN Server (IPsec&SSL) oder NCP Secure Enterprise High Availability Services (NCP Secure Failsafe Server oder NCP Secure Load Balancing Server) oder NCP Volume License Server (nachfolgend auch "Software"), inkl. der zugehörigen Programmbeschreibung und anderen zugehörigen schriftlichen Materialien (nachfolgend auch "Dokumentation").

1.2 Die Software verwendet Open Source Software Komponenten, die in Anhang 1 aufgeführt sind. Für diese Open Source Software Komponenten gelten ausschließlich die in Anhang 1 genannten Open Source Software Lizenzbedingungen.

1.3 Je nach der beim Erwerb der Software getroffenen konkreten Vereinbarung erhält der Lizenznehmer entweder ein zeitlich unbefristetes Nutzungsrecht (Softwarekauf) oder ein zeitlich befristetes Nutzungsrecht (Softwaremiete) an der Software.

2. Lizenzumfang

2.1 Der Lizenznehmer erhält ein einfaches, nicht ausschließliches, nicht übertragbares, nicht unterlizenzierbares Recht, die Software auf einem einzelnen Computer zu installieren und zu nutzen (nachfolgend auch "Lizenz"). Sind auf dem Computer mehrere Betriebssysteme installiert (virtuelle Umgebungen), so ist pro installierter virtueller Umgebung eine Lizenz erforderlich. Jede hierüber hinausgehende Art der Nutzung bedarf der ausdrücklichen vorherigen schriftlichen Zustimmung durch NCP.

Je nach der beim Erwerb getroffenen Vereinbarung ist die Lizenz zeitlich unbefristet (Softwarekauf) oder zeitlich befristet auf die Dauer der vereinbarten Vertragslaufzeit (Softwaremiete).

2.2 Dem Lizenznehmer ist untersagt:

(i) die Software von einem Computer über ein Netz oder einen Datenübertragungskanal auf einen anderen Computer zu übertragen;

(ii) die Software zu verändern, zu übersetzen, zurückzuentwickeln, zu dekompilieren, zu disassemblieren oder sie sonst abzuändern oder eine der vorstehenden Handlungen zu versuchen oder einem Dritten zu gestatten, diese Handlungen vorzunehmen, es sei denn, der Lizenznehmer ist hierzu aufgrund zwingender urheberrechtlicher Vorschriften (§ 69 e UrhG) berechtigt,

(ii) von der Software abgeleitete Werke zu erstellen oder über das gesetzlich zwingend zulässige Maß hinaus Vervielfältigungsstücke von der Software zu erstellen oder die Dokumentation oder sonstiges auf die Software bezogenes Material zu vervielfältigen.

2.3 Die Einräumung des Nutzungsrechts des Lizenznehmers erfolgt auflösend bedingt in der Weise, dass es in folgenden Fällen automatisch endet:

(i) wenn der Lizenznehmer eine Bestimmung der Ziffern 2.1, 2.2 oder 3 dieser Lizenzbedingungen verletzt, oder

(ii) falls diese Lizenzbedingungen unwirksam sind oder der einer dauerhaften Nutzungsrechtseinräumung zugrunde liegende Kaufvertrag unwirksam ist oder infolge der Ausübung eines Rücktrittsrechts rückabgewickelt wird, oder

(iii) im Falle der befristeten Lizenzierung im Falle einer Kündigung oder nach dem Ablauf der Vertragslaufzeit.

2.4 Darüber hinaus behält sich NCP die gesonderte Vereinbarung eines automatischen Rückfalls des Nutzungsrechts im Falle eines Zahlungsverzugs des Lizenznehmers ausdrücklich vor.

2.5 NCP behält sich alle Rechte an der Software vor, die NCP dem Lizenznehmer in diesen Lizenzbedingungen nicht ausdrücklich einräumt. Dies gilt insbesondere (aber ohne Beschränkung darauf) für das Recht zur Veröffentlichung, zur Vervielfältigung (soweit nicht in diesen Lizenzbedingungen ausdrücklich abweichend bestimmt und soweit nicht der Lizenznehmer ein gesetzlich zwingendes Vervielfältigungsrecht hat) und zur Bearbeitung an der Software.

2.6 Bei Beendigung seines Nutzungsrechtes, aus welchem Grund auch immer, ist der Lizenznehmer verpflichtet, die Software zu deinstallieren sowie alle Kopien der Software einschließlich etwaiger abgeänderter Versionen der Software sowie die Dokumentation zu vernichten und dies NCP auf Verlangen schriftlich zu bestätigen.

2.7 NCP ist dazu berechtigt, die Einhaltung von Ziffern 2.1 und 2.2 dieser Lizenzbedingungen durch den Lizenznehmer einmal jährlich während der üblichen Geschäftszeiten und unter angemessener vorheriger Ankündigung im Wege eines Audits zu überprüfen, wobei die Prüfung den Geschäftsbetrieb des Lizenznehmers nicht unangemessen beeinträchtigen darf. Zu jeder Zeit hat NCP die Vertraulichkeitsverpflichtungen des Lizenznehmers gegenüber Dritten, die Integrität der Computersysteme des Lizenznehmers und anwendbare Datenschutzgesetze angemessen zu berücksichtigen. Für die Zwecke des Audits ist NCP berechtigt, Informationen vom Lizenznehmer in Bezug auf die Einhaltung der Ziffern 2.1 und 2.2 zu verlangen. Soweit die vom Lizenznehmer zur Verfügung gestellten Informationen nicht ausreichen oder NCP Anhaltspunkte dafür vorliegen, dass die zur Verfügung gestellten Informationen nicht vollständig oder unzutreffend sind, ist NCP berechtigt, selbst oder durch einen unabhängigen Prüfer, der angemessenen Vertraulichkeitsverpflichtungen unterliegt, die Computersysteme des Lizenznehmers, auf denen die Software installiert ist und betrieben wird, zu prüfen, soweit dies erforderlich ist, um die Einhaltung dieser Lizenzbedingungen zu verifizieren. Der Lizenznehmer ist verpflichtet, NCP bzw. dem beauftragten Prüfer Zutritt zu den und Zugriff auf die Computersysteme(n) zu gewähren, soweit dies für die Durchführung des Audits erforderlich und angemessen ist. Stellt sich bei einem solchen Audit heraus, dass der Lizenznehmer den Lizenzumfang um 5 % oder mehr überschritten oder auf andere

Art gegen Ziffern 2.1 oder 2.2 dieser Lizenzbedingungen verstoßen hat, so hat der Lizenznehmer die Kosten des Audits zu tragen. Weitere Ansprüche von NCP auf Schadensersatz oder Zahlung zusätzlicher Lizenzgebühren bleiben unberührt.

3. Vervielfältigung

Die Software und die Dokumentation sind urheberrechtlich geschützt.

Soweit die Software nicht mit einem Kopierschutz versehen ist, ist dem Lizenznehmer die Anfertigung einer einzigen Reservekopie nur zu Sicherungszwecken erlaubt. Der Lizenznehmer ist verpflichtet, auf der Reservekopie den Urheberrechtsvermerk von NCP anzubringen. Ein in der Software enthaltener Urheberrechtsvermerk sowie in die Software aufgenommene Registrierungsnummern dürfen nicht entfernt werden. Außer in dem gesetzlich zwingend zulässigen Umfang ist es ausdrücklich verboten, die Software oder die Dokumentation ganz oder teilweise in ursprünglicher oder abgeänderter Form oder in mit anderer Software verbundener oder in andere Software integrierter Form zu kopieren oder anderweitig zu vervielfältigen.

4. Übertragung des Nutzungsrechtes

Dem Lizenznehmer ist es ausdrücklich untersagt, den von NCP für die Installation der Software bereitgestellten Lizenzschlüssel an einen Dritten weiterzugeben oder ihn ihm auf sonstige Weise verfügbar zu machen.

Auch eine teilweise oder vorübergehende entgeltliche Überlassung der Software an einen Dritten, insbesondere Vermietung oder Verleasen der Software, sind dem Lizenznehmer ausdrücklich untersagt, es sei denn NCP hat der konkret betroffenen Überlassung ausdrücklich schriftlich zugestimmt.

5. Laufzeit dieser Lizenzbedingungen

5.1 Erwirbt der Lizenznehmer ein unbefristetes Nutzungsrecht (Softwarekauf), so gelten diese Lizenzbedingungen auf unbestimmte Zeit.

5.2 Erwirbt der Lizenznehmer ein befristetes Nutzungsrecht (Softwaremiete), so gilt hinsichtlich der Laufzeit dieser Lizenzbedingungen Folgendes:

a) Die Nutzungsrechte des Lizenznehmers nach Ziffer 2 und diese Lizenzbedingungen gelten für den in der Bestellung vereinbarten und vom Lizenznehmer bezahlten Zeitraum ("Vertragslaufzeit").

b) Das gesetzliche Recht beider Parteien zur außerordentlichen Kündigung aus wichtigem Grund bleibt unberührt.

c) Mit Ende der Vertragslaufzeit endet die Lizenz automatisch, sofern der Lizenznehmer sie nicht verlängert hat. Nach Beendigung der Lizenz ist der Lizenznehmer nicht länger berechtigt, die Software zu nutzen. Der Lizenznehmer ist allein für die rechtzeitige Verlängerung der Lizenz verantwortlich, soweit er diese benötigt.

6. Schadensersatz bei Vertragsverletzung

NCP macht Sie darauf aufmerksam, dass Sie als Lizenznehmer für alle Schäden aufgrund von Urheberrechtsverletzungen haften, die NCP daraus entstehen, dass Sie diese Lizenzbedingungen verletzen.

7. Haftung für Sach- und Rechtsmängel

7.1 Für Sach- und Rechtsmängel (nachfolgend "Mängel") an der Software haftet NCP gemäß den nachfolgenden Regelungen, soweit sich aus Ziffer 8 (Schutzrechte Dritter) nicht etwas anderes ergibt.

7.2 Der Lizenznehmer erkennt an, dass es nach dem gegenwärtigen technischen Entwicklungsstand nicht möglich ist, Datenverarbeitungsprogramme, die insbesondere mit anderen Programmen oder Anlagen verbunden werden, so zu entwickeln, dass sie vollkommen fehlerfrei arbeiten. Nach dem derzeitigen Stand der Technik können ein unterbrechungs- und fehlerfreier Betrieb und die vollständige Beseitigung aller etwaigen Fehler der Software nicht vollständig gewährleistet werden. Die vertraglich vereinbarte Beschaffenheit der Software (d.h. der Maßstab für Tauglichkeit, Einsatzfähigkeit und bestimmungsgemäße Nutzbarkeit) ist deshalb ausschließlich durch das mit der Software gelieferte, auf die Software bezogene NCP-Datenblatt beschrieben. Nur die Funktionsweise wesentlich einschränkende Abweichungen von dem maßgeblichen NCP-Datenblatt stellen einen Sachmangel dar. Individuelle Anforderungen des Lizenznehmers gelten nur dann als Teil der vertraglich vereinbarten Beschaffenheit der Software, wenn sie zuvor in einem gemeinschaftlich erarbeiteten Lastenheft ausdrücklich schriftlich definiert worden sind.

7.3 Die verschuldensunabhängige Haftung von NCP für anfängliche Mängel ist ausgeschlossen.

7.4 Im Falle der befristeten Lizenzierung (Softwaremiete) sind die gesetzlichen Rechte des Lizenznehmers in Bezug auf die Minderung in jedem Fall begrenzt auf die Rückerstattung gemäß den Bestimmungen zur ungerechtfertigten Bereicherung in Höhe des Anteils der für den Lizenzschlüssel der betreffenden Software entrichteten Gegenleistung, der dem Umfang und Zeitraum entspricht, in dem der Lizenznehmer die Software für die Dauer des Vorliegens des Mangels nicht oder nicht ordnungsgemäß nutzen konnte. Im Übrigen gelten die Regelungen in Ziffer 7.5.

7.5 Die Haftung seitens NCP für Mängel gemäß dieser Ziffer setzt voraus, dass der Lizenznehmer NCP einen aufgetretenen Mangel innerhalb der Verjährungsfrist unverzüglich schriftlich mitteilt. Im Falle einer solchen schriftlichen Mängelrüge ist NCP zur zweimaligen Nacherfüllung innerhalb jeweils angemessener Frist berechtigt. NCP wird dabei nach eigener Wahl den Mangel entweder beseitigen oder Ersatz liefern. Sofern dies für den Lizenznehmer zumutbar ist, ist NCP außerdem berechtigt, den Mangel auch durch Zurverfügungstellung einer Umgehungs- oder Behelfslösung zu beseitigen. Der Lizenznehmer hat NCP im Rahmen des Zumutbaren bei der Beseitigung von Mängeln zu unterstützen, insbesondere auf Wunsch von NCP die Software (wie sie bei Auftreten des Mangels benutzt wurde) zu übersenden und Maschinenzeit zur Verfügung zu stellen sowie Korrekturmaßnahmen oder Ersatzlieferungen einzuspielen, die NCP bereitstellt. Sollte die Nacherfüllung auch nach Ablauf der zweiten angemessenen Frist fehlgeschlagen sein, so ist der Lizenznehmer berechtigt, die an NCP für den/die zugehörigen Lizenzschlüssel der betroffen Software entrichtete oder zu entrichtende Gegenleistung angemessen zu mindern oder von der

Bestellung des betroffenen Lizenzschlüssels nach vorheriger schriftlicher Androhung zurückzutreten. Im Falle der befristeten Lizenzierung (Softwaremiete) tritt an die Stelle des Rücktrittsrechts das Recht, diese Lizenzbedingungen nach vorheriger schriftlicher Androhung zu kündigen, sofern der Mangel eine wesentliche Einschränkung der Gebrauchsfähigkeit darstellt. Eventuelle Schadensersatzansprüche des Lizenznehmers bleiben hiervon unberührt, wobei jegliche Schadensersatzpflicht seitens NCP abschließend in Ziffer 9 (Haftung) geregelt ist. Die Parteien sind sich einig, dass NCP erfolgreich nacherfüllt hat im Sinne dieser Ziffer 7.5, wenn NCP entweder (i) binnen zwei (2) Monaten nach Anzeige eines Mangels durch den Lizenznehmer eine neue Version der Software herausbringt und dem Lizenznehmer zur Verfügung stellt, in der der betreffende Mangel behoben ist, oder (ii) falls NCP keine solche neue Version herausbringt, wenn NCP den betreffenden Mangel binnen drei (3) Monaten nach Anzeige des Mangels durch den Lizenznehmer wie oben bestimmt beseitigt oder dem Lizenznehmer Ersatz liefert oder eine Umgehungs- oder Behelflösung zur Verfügung stellt.

7.6 Ansprüche wegen Sach- und Rechtsmängeln verjähren in zwölf (12) Monaten ab dem gesetzlich vorgesehenen Verjährungsbeginn. Ausgenommen hiervon sind die Fälle der Ziffer 9.2. In diesen Fällen gelten für die Verjährungsfrist die gesetzlichen Vorschriften.

7.7 Die Parteien sind sich einig, dass die Übernahme einer Garantie stets eine ausdrückliche schriftliche Vereinbarung erfordern soll, in der die Garantie ausdrücklich als "Garantie" zu bezeichnen ist.

7.8 Sollten die aufgetretenen Probleme nicht durch die von NCP überlassene Software, sondern durch Softwareprodukte Dritter oder durch die verwendete Hardware verursacht worden sein, so sind diesbezügliche Mängelansprüche von dem Lizenznehmer gegenüber NCP ausgeschlossen. Gleiches gilt, sofern der Lizenznehmer die Software vertragswidrig nutzt, oder sofern der Lizenznehmer oder ein von ihm beauftragter Dritter Änderungen oder Bearbeitungen an der Software vorgenommen hat oder es sich um lediglich unwesentliche Abweichungen von der vertraglich vereinbarten Beschaffenheit der Software handelt.

8. Schutzrechte Dritter

Sollte ein Dritter gegenüber dem Lizenznehmer geltend machen, dass die Nutzung der Software durch den Lizenznehmer in Übereinstimmung mit diesen Lizenzbedingungen Urheberrechte oder gewerbliche Schutzrechte des Dritten verletzt, so ist der Lizenznehmer zur sofortigen Mitteilung gegenüber NCP verpflichtet. NCP stellt den Lizenznehmer im Rahmen der in Ziffer 9 (Haftung) vereinbarten Haftungsbeschränkung von rechtskräftig gerichtlich festgestellten Ansprüchen Dritter wegen Rechtsmängeln der Software frei. Diese Freistellungsansprüche unterliegen der Verjährungsfrist für Rechtsmängel.

9. Haftung

9.1 Vorbehaltlich der Regelung in Ziffer 9.2 wird die gesetzliche und/oder vertragliche Haftung von NCP für Schadensersatz wie folgt beschränkt:

(i)   NCP haftet der Höhe nach begrenzt auf den bei Vertragsschluss typischerweise vorhersehbaren Schaden für die leicht fahrlässige Verletzung wesentlicher Pflichten aus dem Schuldverhältnis (d.h. solcher Pflichten, deren Erfüllung die ordnungsgemäße Durchführung des Vertrages überhaupt erst ermöglicht, deren Verletzung die Erreichung des Vertragszwecks gefährdet und auf deren Einhaltung der Lizenznehmer regelmäßig vertraut, sog. Kardinalspflichten);

(ii)   NCP haftet nicht für die leicht fahrlässige Verletzung nicht wesentlicher Pflichten aus dem Schuldverhältnis.

9.2 Die vorgenannte Haftungsbeschränkung gilt nicht in den Fällen einer zwingenden gesetzlichen Haftung (insbesondere nach dem Produkthaftungsgesetz) sowie bei Übernahme einer Garantie, bei vorsätzlich oder grob fahrlässig verursachten Schäden oder schuldhaft verursachten Körperschäden.

9.3 Der Lizenznehmer ist verpflichtet, sämtliche angemessenen Maßnahmen zur Schadensabwehr und Minderung zu treffen, was insbesondere eine Pflicht des Lizenznehmers zur regelmäßigen Datensicherung und zur nachgelagerten Durchführung von Security-Checks (insbesondere zur Abwehr bzw. Entdeckung von Viren und anderen Störprogrammen im IT-System des Kunden) umfasst.

9.4 NCP haftet nicht für indirekte und/oder Folgeschäden, gleich aus welchem Rechtsgrund, insbesondere nicht für entgangene Gewinne und Zinsverluste, es sei denn, es liegt ein Fall von Vorsatz oder grober Fahrlässigkeit vor.

9.5 Soweit NCPs Haftung ausgeschlossen oder beschränkt ist, gilt dies auch für die persönliche Haftung der Vertreter, Angestellten und Erfüllungsgehilfen von NCP.

10. Aktualisierung der Software (nur bei Softwaremiete)

Im Falle der befristeten Lizenzierung (Softwaremiete) gilt:

Während der Vertragslaufzeit wird NCP dem Lizenznehmer im Rahmen des Software Update Service von NCP Aktualisierungen oder neue Versionen der Software zur Beseitigung von Mängeln, Funktionsverbesserung, Fehlerbehebung oder zur Einführung von neuen Funktionen zur Verfügung stellen (zusammengenommen: „Software Updates"). Der Lizenznehmer ist verpflichtet, die ursprünglichen Lizenzschlüssel für die Anzahl der vom Lizenznehmer erworbenen Lizenzen aufzubewahren und für die Inbetriebnahme der Software Updates bereitzuhalten.

Es obliegt dem Lizenznehmer, die zur Verfügung gestellten Software Updates zu installieren. Dies gilt insbesondere für Software Updates, die Fehler oder Sicherheitsrisiken beheben. Außer in den in Ziffer 9.2 genannten Fällen haftet NCP nicht für Schäden, die vermieden worden wären, wenn der Lizenznehmer von NCP zur Verfügung gestellte Software Updates installiert hätte.

Zeitpunkt und Inhalt der von NCP zur Verfügung gestellten Software Updates stehen in NCP's alleinigem Ermessen. Es obliegt dem Lizenznehmer, seine Konfigurationen der Software vor Installation eines Software Updates zu sichern, da diese ggf. im Software Update nicht enthalten sein könnten. Der Lizenznehmer ist selbst dafür verantwortlich, seine Konfigurationen in dem Software Update zu implementieren.

Für Software Updates gelten diese Lizenzbedingungen entsprechend.

11. Lizenzgebühr

Die vom Lizenznehmer geschuldete Lizenzgebühr wird separat vereinbart.

Soweit nicht etwas Abweichendes vereinbart ist, erfolgt im Falle der Softwaremiete eine monatliche Abrechnung der Lizenzgebühr. Die Lizenzgebühr wird auf der Grundlage der über die Software zentral erfassten und in den durch die Software generierten Nutzungsberichten („Lizenz-Reports") dokumentierten tatsächlichen Nutzung der Software anhand der vereinbarten Lizenzmetrik monatlich berechnet. Der Lizenznehmer ist verpflichtet, dafür zu sorgen, dass die Lizenz-Reports monatlich erstellt und NCP per E-Mail übermittelt werden oder dass NCP monatlich der Zugriff auf die in der Software erfassten Daten zum tatsächlichen Nutzungsvolumen ermöglicht wird.

12. Export-/Importkontrollrechte

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13. Rechtswahl und andere allgemeine Bestimmungen

13.1 Diese Lizenzbedingungen unterliegen deutschem Recht unter Ausschluss des UN-Kaufrechts. Ausschließlicher Gerichtsstand für alle Streitigkeiten aus oder in Zusammenhang mit diesem Vertrag ist Nürnberg. NCP ist jedoch berechtigt, den Lizenznehmer an jedem anderen gesetzlichen Gerichtsstand zu verklagen.

13.2 Änderungen oder Ergänzungen dieser Lizenzbedingungen bedürfen zu ihrer Gültigkeit der Schriftform.

13.3 Abweichende allgemeine Geschäftsbedingungen, auch solche, die z.B. in einem Auftrag oder einer Lieferbestätigung des Lizenznehmers enthalten sind, gelten nicht, soweit die Parteien dies nicht schriftlich anderweitig vereinbaren.

13.4 Sollte eine Bestimmung dieser Lizenzbedingungen unwirksam oder undurchsetzbar sein oder werden oder sollten diese Lizenzbedingungen eine Lücke aufweisen, so berührt dies die Wirksamkeit und Durchsetzbarkeit der übrigen Bestimmungen dieser Lizenzbedingungen nicht.

NCP engineering GmbH –
NCP Secure Enterprise Server Software- Lizenzbedingungen
Anhang 1

Open Source Software Komponenten und anwendbare Open Source Software Lizenzbedingungen

Das Produkt NCP Secure Enterprise Client Software verwendet die Open Source Software Komponenten cURL, Libconfig, Libxml (2.6.30), tclap, Net-SNMP (nur für Linux), OpenLDAP (2.3.32), Udis86, OpenSSL und ZLIB, für die die in den Ziffern 1 bis 8 dieses Anhanges 1 genannten Open Source Lizenzbedingungen gelten.

1. MIT License (Libxml, tclap)

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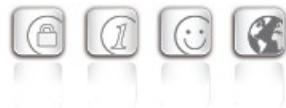
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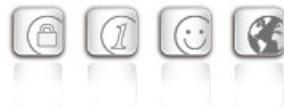
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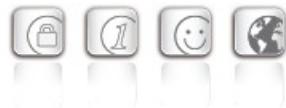
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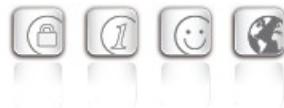
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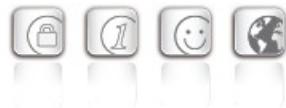
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