ARCHIVE PROTECTION SERVICE

TERMS OF USE

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The Archive Protection Service (hereinafter "**Service**") is a service provided by iTernity GmbH (hereinafter "**iTernity**") for users of the iCAS software. Use of this Service is subject to the following Terms of Use, which the customer accepts as binding by using the Service.

1. SUBJECT MATTER OF THE TERMS OF USE

1.1.   The Service is a service offered by iTernity, which transfers iCAS archive data (CSCs) to a long-term data storage medium operated and maintained by iTernity. This Service stores a copy of the customer's business data in an immutable manner in the cloud and maintains this data so that the customer system can be initialized anew in the case of a ransomware attack, if necessary.

1.2.   The Service includes iTernity's Archive Protection Software (hereinafter "**Software**"), which will be installed on the customer's iCAS server.

2. USAGE, COPYRIGHT

2.1.   The customer is only authorized to use the Service within the scope of these Terms of Use, the Service Specification, and the User Guide (Product Description), which are enclosed as Schedules. The Service Specification and the User Guide are integral components of these Terms of Use.

2.2.   The customer is granted a simple, non-exclusive and non-transferable usage right to the Software. The customer is not permitted to transfer the Software to third parties, with or without a consideration, or make the Software available to third parties otherwise. For the avoidance of doubt: excepted from the above provision are associates of the customer, whose relationship with the customer is such that the customer is in a position to give these associates instructions, provided, however, that these associates use the Software as intended.

2.3.   The Software is protected by copyright and may not be copied, adapted, reverse engineered, disassembled, changed, or modified otherwise without the consent of iTernity. Sections 69d, 69e German Copyright Act [*Urheberrechtsgesetz*] remain unaffected.

2.4.   iTernity provides the User Guide in electronic form. Printed documentation is not included with these services.

3. RESPONSIBILITIES AND DUTIES OF THE CUSTOMER

3.1.   The customer will use the Service exclusively as intended for the contractually agreed purposes within the scope of these Terms of Use.

3.2.   The customer undertakes to fulfill the agreed duties to cooperate in a timely manner, in particular, but not only, those listed in the Service Specification.

3.3.   The customer undertakes, in particular to name (i) a contact authorized to initiate a restore on behalf of the customer and (ii) to designate a delivery address to which a mobile and secure movable storage device can be sent in the case of a data restore from the iTernity Cloud, as well as to designate a contact at such delivery address who is authorized to accept the movable storage device. In the case of a restore, iTernity is authorized and obligated to exclusively deliver the movable storage device at the designated delivery address to the named contact using a logistics service provider.

3.4.   The customer is responsible for the content of the data to be stored in the cloud, in particular for the compliance with the respective regulations under data protection law.

    The data to be stored will be encrypted in compliance with the current state of technology during the data transfer to the cloud storage. iTernity cannot decrypt the encrypted data.

3.5.   As described in more detail in the User Guide, a pair of keys, consisting of public and private keys, is necessary to encrypt the files prior to uploading into the iTernity-Cloud and to decrypt these files for a restore.

    Both keys must be created by the customer and are not known to iTernity. It is strongly recommended to store these keys at a separate location (best would be several copies at different locations). Without the private key it is not possible to decrypt the data, which was encrypted by the iTernity Archive Protection Software.

4. TERM, DELETION

4.1.   The Service has the contractually agreed term. The existence of a valid iCAS support agreement is required for the entire term.

4.2.   Unless the term is extended, the customer's account with all contained archive data will be automatically deleted in the iTernity Cloud 30 days after the expiry of the contract term.

4.3.   A customer account cannot be deleted prior to the expiry of the agreed contract term, if the account contains data that was not yet stored for the minimum storage period of 180 days.

Prerequisite for the deletion of an account is the conclusion of a chargeable deletion agreement.

5. REMUNERATION

5.1.   The customer pays the contractually agreed remuneration for the use of the Service.

5.2.   Should the Cloud Storage Provider increase the fees payable by iTernity, iTernity or the respective iTernity sales partner, with whom the customer concluded the agreement for the Service, has the right to increase the remuneration payable by the customer accordingly once during the term of the Service. If the increase of the remuneration is unreasonable to the customer, the customer has the right to the extraordinary termination of the Service with effect on the date at which the increase is to take effect.

5.3.   Should the global cloud storage prices significantly increase or should iTernity incur additional, unforeseeable costs for the data transfer into the cloud, iTernity or the iTernity sales partner, with whom the customer concluded the agreement for the Service, has the right to the extraordinary termination of the Service with a notice period of six (6) months to month's end. The same applies, if iTernity's storage costs are increased by the customer's conduct, in particular by abnormal storage and deletion demands.

6. LIABILITY

6.1.   iTernity is not liable for the simple negligent violation of contractual obligations other than material contractual obligations. Material contractual obligations are defined as those obligations, whose fulfillment shape the agreement and enable its proper implementation at all.

6.2.   If iTernity is not at fault for intentional conduct, iTernity is only liable for typically occurring, foreseeable damages.

6.3.   iTernity is not liable if the movable storage device, required for the restore, is damaged or lost on the way to the customer. The logistics service provider performing the transport is exclusively responsible and liable for the movable storage device during transport.

6.4.   Liability under the German Product Liability Act [*Produkthaftungsgesetz*] remains unaffected; this also applies to liability for intentional or negligent injuries to life, body, or health. If iTernity gives a guarantee, iTernity is liable in accordance with the statutory provisions.

6.5. Damage claims arising from the above provisions will be time-barred within the statutory periods.

7. FINAL PROVISIONS

7.1. Amendments and supplements to these Terms of Use require the written form to be effective. This provision also applies to the amendment or cancellation of this clause.

7.2. The laws of the Federal Republic of Germany apply exclusively, excluding any application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (UN-CISG).

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7.4. Should individual provisions of these Terms of Use be ineffective, this does not affect the validity of the remaining provisions. In place of the ineffective provision, such effective provision is deemed to be agreed that legally and economically most closely reflects the objectives of these Terms of Use. The same applies should the parties have failed to address a certain matter in these Terms of Use.

For further information please refer to the Service Specification and User Guide at

https://support.iternity.com/downloadarea/