

# IceWarp Cloud

## Purchase Terms for Partners

Last Updated: 12th February 2020 (added Data Sub-Processing Agreement)

Please read these Purchase Terms carefully as they apply to you and your customers when you order IceWarp services described below.

THIS IS AN AGREEMENT BETWEEN YOU OR THE ENTITY THAT YOU REPRESENT (hereinafter “You” or “Your”) AND ICEWARP LTD. (hereinafter “We” or “ICEWARP”) GOVERNING YOUR PURCHASES OF ICEWARP CLOUD SOFTWARE AS A SERVICE (hereinafter “Service”) WITHIN THE ICEWARP PARTNER PORTAL (hereinafter “Partner Portal”).

### **Acceptance of the Terms**

By accessing or using the Partner Portal you agree to be bound by these Purchase Terms (“Terms”) and at the same time express your willingness to meet all the requirements arising out of this agreement at all times when you or your customers use the Services. To do so, you must review the most current version of the Terms, which may be amended from time to time. If you do not agree to the Terms, do not use, offer, sell or promote any of our Services and cease to use the Partner Portal.

### **About IceWarp Cloud**

IceWarp Cloud is a service provided by Us from our network of computer servers (“Data Center”) and available instantly to end customers through a web browser. The service will be available for the period determined by your recurring payment of the Service fees and according to these Purchase Terms. You also need to bind your customers to our Privacy Policy and Terms of Service which are available on our website.

### **Billing Period**

Service fees are charged monthly for the completed calendar month (post-paid) on a recurring monthly basis. For orders commencing (or concluding, upon Service cancellation) during the calendar month, the Service fees for the first month (or the last month, respectively) will be prorated to the amount of days when the Service was active. The number of users will be determined from the usage during the (whole or partial) calendar month.

### **Orders**

You make orders of the Service on behalf of your customer in the Partner Portal and transfer the right to use together with the Service access credentials to the end customer. An order is made for one Service instance (\*.onice.io) at a time and must include the end customer registration details. Each order comes with single administration access credentials to manage the whole instance. A single instance can host one customer (single-tenant) or multiple customers (multi-tenant; please contact us to learn more about applicable limitations).

### **Invoices**

You will receive an invoice for the Service fees on the 1st of month after each completed billing period. If a Service is canceled, the invoice will show the remainder of Service fees due for the calendar month in which the cancellation was made, calculated on a pro-rata basis. One or more orders can be payable by a summary invoice, depending on your preferences, as long as the invoice can be issued by the same Service Provider. You agree to pay the invoices in full including any other applicable taxes, currency conversion fees and other lawful fees.

### **Service Providers**

The invoices to you will be issued by Service Provider (ICEWARP, ICEWARP’s subsidiary or ICEWARP’s Authorized Service Provider) respective to the location of your customer’s data center selected during the order. If your customers are located across various data centers, you

will receive multiple invoices each from the Service Provider who operates the respective data center.

### **Service Plans**

Service plans differ by features available to users and by the Service fee per user. The plan and fee applicable to each user is determined by the customer's selection in the administration interface when creating or editing a user account. When upgrading a user from one plan to another, the fees for the billing period in which the plan was changed will be determined according to the more expensive plan. Similarly, a downgrade will take effect from the next billing period.

### **Minimum Fee**

There is a minimum fee per Service instance equal to the List Price of 10 users of the least expensive plan less your Partner Discount. This fee will be charged for each customer even in the case there were no users established in their Service instance. In case the applicable monthly fees exceed the minimum fee in the relevant month, you will be charged a fee based on actual number of users. Invoices will show actual usage of each Service instance but the charges will be in the amount of the minimum fee if applicable. To exceed the minimum fee, the customer may want to add more than 10 users under the least expensive plan, or convert some of their existing users to more expensive plans, which would provide them with more features for about the same monthly fee.

### **Service Fees**

The amount you will be charged for the Service is a) equal to the List Price less your Partner Discount multiplied by number of users of each Service plan on the Service instance; or b) the minimum fee, whichever is higher. The price calculation takes in account the following factors:

1. Selected data center. Each data center can have a different recommended List Price. We guarantee your Partner Discount for data centers operated by ICEWARP, but reserve the right to modify the margin in case of data centers operated by Authorized Service Providers.
2. Selected plan. Service plans differ by Service level and the List Price per user. Your customer controls what Service plan will be applicable to each individual user.
3. Reporting mode. During the order you can select how your customers will receive their usage reports.
  - Per-instance reporting is the default for SMB/enterprise customers.
  - Per-domain reporting is suitable for resellers who would like to host multiple customers on the same instance in a multi-tenant environment.
4. Number of users. The selected reporting mode will determine how the number of users will be calculated:
  - In per-instance reporting mode, number of users in a billing period is the maximum number of user accounts (mailboxes) established by the customer across the whole instance.
  - In per-domain reporting mode, number of users in a billing period is the maximum number of user accounts (mailboxes) established by the customer in each individual domain, combined.

### **Monthly Billing**

For monthly billing there is no option to limit the Service instance to only one plan and all orders will allow the combination of Service plans. There is also no limit to the number of users your customer can create under their Service instance and the Service fees will be charged according to the actual usage.

### **Annual Billing**

Customers have an option to prepay for the period of one year, in which case the Service instance will be limited to only one selected Service plan and maximum number of users for the entire duration of the one-year billing period. When upgrading the Service to a higher plan or

when adding users during the year, the upgrade fees will be calculated till the end of the billing period.

### **Payments**

Payments shall be made either by a wire transfer or by PayPal within 30 calendar days from the invoice issue date. Payment must be credited to Service Provider's account on or before the invoice due date. We will provide you with an additional notice in case your invoice is nearing the term. On the following day (after midnight in GMT time-zone) all Service instances listed on the summary invoice will be automatically quarantined. This doesn't affect other Service instances related to invoices which are not yet overdue.

### **Non-Payment**

The Service will be non-functional and inaccessible for customer and their users while the instance is quarantined for non-payment. After 7 days in quarantine, the Service will be terminated, and the Service instance will become non-recoverable. Your account will be prevented from making any new orders while there are past due obligations.

### **Service Recovery**

For the period of 7 days following the non-payment for the Service, the Service instance(s) will be kept in quarantine and can be recovered within 48 hours upon the receipt of any and all past due invoices, by making a request to ICEWARP.

### **Temporary Suspension**

To aid with collection of delayed payments from your customers, you have an option to temporarily suspend (pause) the Service instance which will render it non-functional and inaccessible for customer's users. Service fees will continue to apply in the same amounts as if the Service instance was active, for as long as you keep the Service instance suspended.

### **Cancellation**

We will charge the Service fees recurrently until you or your customer cancels the Service, or until it's terminated. The Service can be cancelled by one of the following means:

1. You cancel the Service from within the Partner Portal or by making a request to ICEWARP's support.
2. The customer cancels the Service from the Service administration interface.
3. ICEWARP cancels the Service for non-payment, following the 7-day quarantine period.
4. ICEWARP terminates the Service upon reasonable belief that you have violated these Purchase Terms, or that the customer has violated the Terms of Service.

Cancellation of the Service or Service suspension due to non-payment or non-compliance with the Terms, do not limit your obligation to pay the Service fees in full, including for up to 7 days period while the Service was in quarantine.

### **Data Deletion**

Upon cancellation, the Service instance is immediately deleted and cannot be recovered. The Service data will be archived for 30 days following the cancellation date and can be retrieved upon request to ICEWARP, after which the data will be permanently deleted including any backups.

### **Price Changes**

We will provide you at least a 3-month prior notice of any new pricing or modifications to Service plans. To existing customers, any such changes become applicable after the price protection period which lasts for 3 (three) months after the price changes coming into force. During the price protection period, the Service will continue under the current pricing and plans and the customer can decide to change the plans available to users, cancel the Service without further conditions, or accept the changes. Upon expiry of the price protection period, the Service will be priced at the current pricelist price and outdated Service plans will be updated at ICEWARP's discretion. ICEWARP reserves the right to remove features available in the Service plans at any time without

notice. When the Partner's Discount changes, it will become applicable starting with the next billing period.

### **Liability**

Suspension or cancellation of the Services for non-payment will result in a loss of access to and use of the Service and the content stored by the customer. You agree that ICEWARP will not be liable to you or to the customer for any harm related to, arising out of, or caused by the cancellation, termination or suspension of the Services for any reason.

### **Notices**

We may modify these Terms upon notice to you at any time through an announcement displayed in the Partner Portal or by sending email to the email address registered in the Partner Portal.

### **Data sub-processing agreement**

If you process any personal data of the users in relation to the provision of any Services on the basis of the separate agreement between You and ICEWARP, you are obliged to proceed according to the Annex 1 – Data sub-processing agreement.

### **Questions**

If you will have any questions regarding your legal agreements and their provisions, please don't hesitate to contact us at [partners.licenses@icewarp.com](mailto:partners.licenses@icewarp.com).

## **ANNEX 1 – DATA SUB-PROCESSING AGREEMENT**

### **I. Applicability**

1. Contents of this Annex No. 1 represent Data Sub-processing Agreement concluded between ICEWARP and You. This Data Sub-processing Agreement governs data processing performed by You (as a Sub-processor) for ICEWARP (as a Processor) based on the separate agreement concluded between You and ICEWARP. ICEWARP processes all Personal data of users for the customer (as a Controller) to enable customer's and user's use of ICEWARP's Services such as provision and management of web applications, including Email, Calendaring, Online Documents Editing, TeamChat, Voice and Video calls and personal secure online Storage.
2. The term "Applicable Data Protection Legislation" refers to (i) the European Regulation 2016/679 relating to the processing of Personal data (hereinafter "GDPR"), and (ii) any other laws relating to the processing of Personal data applicable during the term of this Annex No. 1.
3. All capitalized terms used in this Annex No. 1 but not otherwise defined herein have the meanings given to them in the GDPR.
4. Each party is obliged to comply with the relevant obligations of the Applicable Data Protection Legislation that apply to the performance of this Annex No. 1 in relation to their respective role as further described below.
5. Applicability of this Data Processing Agreement is excluded if both ICEWARP subsidiary and customer are located outside of the European Union or other member states of European Economic Area which adopted rules pursuant to GDPR unless the processing activities are related to (i) the offering of Services based on the agreement concluded between ICEWARP and customer, irrespective of whether a payment of the user as a data subject is required, to such users (data subjects) in the European Union, or (ii) monitoring of behavior of the users (data subjects) takes place within the European Union.

### **II. Authorization**

1. You are hereby authorized by ICEWARP to process the Personal data of users, i.e., employees and contractors of the customer provided by ICEWARP to You within the Services (hereinafter "Data Subjects"). You act as a Sub-processor and ICEWARP as a Processor and You are obliged to process Personal data only on ICEWARP's behalf. You are obliged to process Personal data only to the extent necessary for due performance of

your obligations ensuing from this Annex No. 1 and the separate agreement between You and ICEWARP.

### **III. Subject-matter of the sub-processing, categories of the Data Subjects and type of Personal data**

1. Subject-matter of the sub-processing are the Personal data of Data Subjects provided by ICEWARP to You within the Services, especially identification and contact information, messages, digital data regarding the nature of the provided hosting service, data about use of Services and data about the behavior of Data Subjects in relation to the provided Services, unless specified otherwise in the separate agreement between You and ICEWARP (hereinafter "Personal data").

### **IV. Nature and purpose of the sub-processing**

1. You are authorized to process the Personal data automatically with the use of statistical and analytical methods aided by computer technology. Occasional manual Personal data processing may occur.
2. The purpose of the Personal data processing is defined by the purpose of the Services provided on the basis of the separate agreement between You and ICEWARP, which mainly includes provision of support services to the customer and its users.

### **V. Duration of the sub-processing**

1. The Personal data processing takes place during the term of the separate agreement between You and ICEWARP. Your obligations concerning the protection of the Personal data will be observed during the whole term of the separate agreement unless, by the provisions of the separate agreement, these obligations persist beyond the end of its term.

### **VI. Your obligations**

1. You are obliged to:
  - a. process Personal data according to ICEWARP's strict and clear instructions in writing and for no other purposes than the ones expressly approved by ICEWARP in writing. To exclude any doubts, the processing of the Personal data in accordance with performance of the separate agreement between You and ICEWARP and this Annex No. 1 is deemed to be made in accordance with ICEWARP instructions;
  - b. to ensure that persons authorized to process personal data commit themselves to confidentiality or comply with the relevant statutory duty of confidentiality;
  - c. taking into account the nature of the processing, assist to ICEWARP, by means of appropriate technical and organizational measures and if necessary, in order to meet customer's obligation to respond to requests for the rights of the Data Subject and exercise their rights;
  - d. cooperate with ICEWARP in order to allow customer the assessment and document compliance with the processing of Personal data carried out as a result of this Annex No. 1, taking into account the nature of the processing and the available information;
  - e. assist ICEWARP in meeting customer's obligations with:
    - ensuring a level of security of processing;
    - reporting Personal data breaches to the Office for Personal Data Protection and, where necessary, to Data Subjects;
    - undertaking Data protection impact assessments; and
    - consulting the Office for Personal Data Protection prior to processing, while taking into account the nature of the processing and the available information from ICEWARP;
  - f. inform ICEWARP about Data Subjects' requests and/or complaints You may receive in relation to the processing of the Personal data;
  - g. follow ICEWARP's instructions in matters of transferring Personal data to third countries/international organization. If following of instructions is forbidden by Union

or Member State law to which You are a subject, You must inform ICEWARP of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

2. Performance of subsections VI.1.c to VI.1.e is reimbursable in accordance with separate agreement between You and ICEWARP. If the respective activity is not specified in this separate agreement, reimbursement shall be agreed between You and ICEWARP.

#### **VII. Prohibition of involvement of other sub-processors and confidentiality obligation**

1. You must not involve any other sub-processors into sub-processing, unless specified otherwise in the separate agreement between You and ICEWARP.
2. You are required to make sure that your personnel and its subcontractors comply with Applicable Data Protection Legislation, with the same obligations as those defined hereunder and with reinforced confidentiality obligations.

#### **VIII. Security of personal data**

1. You are obliged to implement and maintain technical and organizational measures to prevent unauthorized or accidental access to the Personal data, their change, destruction or loss, unauthorized transfers, or other unauthorized processing thereof, as well as any other abuse of the Personal data.
2. Unless specified otherwise in the separate agreement between You and ICEWARP, You are obliged to implement and maintain, in particular, following technical measures to ensure an appropriate level of security in accordance to risks, rising from the particular processing of Personal data, including:
  - a. pseudonymization and encryption of the Personal data;
  - b. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services – these measures and their correct operation are subject to regular checks;
  - c. the ability to restore the availability and access to the Personal data in a timely manner in the event of a physical or technical incident;
  - d. a process for regular testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing;
  - e. logs of performed erasures of Personal data;
  - f. multi-level firewall;
  - g. malware, ransomware and spyware antivirus protections;
  - h. unauthorized access monitoring;
  - i. encrypted data transfers;
  - j. access to the Personal data is restricted to authorized personnel only;
  - k. servers with Personal data are kept physically locked in the data centres; and
  - l. data back-ups are stored in separate geographic location, transferred and stored encrypted and only authorized personnel may access them.
3. In the event You reasonably believe that there has been any potential or actual unauthorized or unlawful access to, or potential or actual use or disclosure of the Personal data, You are required to notify ICEWARP without undue delay after becoming aware of such Personal data breach.

#### **IX. Final provisions**

1. Finally, upon termination or expiry of the separate agreement between You and ICEWARP, You cease any processing of the Personal data and return and/or delete the Personal data in accordance with the termination assistance services plan as defined in the agreement, unless applicable laws require storage of the Personal data. If no termination assistance services plan is defined, You delete or return all the Personal data to ICEWARP according to your choice within 15 days from the agreement termination or expiry, unless you receive another instruction from the ICEWARP.
2. In case You expend any costs in relation to providing ICEWARP, data protection authorities or Data Subject with assistance or cooperation in accordance with this article or the Applicable Data Protection Legislation or in relation to carrying out your decisions,

and such compensation of costs is agreed with ICEWARP in advance in writing, You are entitled to compensation of such costs from ICEWARP.

3. The parties hereby provide that if there is a damage (including both harm to assets and liabilities and non-pecuniary harm) incurred by ICEWARP because of the breach of Your obligations under the Applicable Data Protection Legislation, You provide ICEWARP with full compensation for such damage. The compensation for damage comprises, in particular, of (i) compensation for damage (including both monetary and non-pecuniary harm) incurred by Data Subjects as provided by the Applicable Data Protection Legislation and (ii) compensation for fines imposed upon ICEWARP by data protection authority or other authority.
4. ICEWARP is not obliged to compensate damages, resulting from substantively inaccurate, incomplete or otherwise incorrect instruction, received from You, despite the fact that IceWarp informed You about such defect of instruction in advance.