SoftLayer Cloud Services Agreement

SOFTLAYER®
an IBM Company

Using this agreement, Client may order Cloud Services from SoftLayer. "SoftLayer" means either: 1) SoftLayer Technologies, Inc., for Clients registering with a principal business address in the U.S. or U.S. territories; or 2) SoftLayer Dutch Holdings B.V., for Clients registering principal business address outside the U.S. or U.S. territories. This agreement and applicable Attachments and Transaction Documents (TDs) are the complete agreement (Agreement) regarding transactions under this Agreement. If translations of the Agreement are available and there is a conflict, the English version will govern translation.

Cloud Services

A Cloud Service is a SoftLayer or IBM branded offering hosted or managed by SoftLayer or IBM and made available via a network. Each Cloud Service is described in an Attachment or a TD, such as a Service Description. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance. Technical support and service level and service level commitments, if applicable, are specified in an Attachment or TD.

Client accepts an Attachment or TD by ordering, enrolling, using, or making payment for the Cloud Service. When SoftLayer accepts Client's order, SoftLayer provides Client the authorizations specified in the TD. The term, including any renewal term, for a Cloud Service is described in an Attachment or TD.

SoftLayer or IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Cloud Services and generally available user guides and documentation to support Client's use of the Cloud Service. Client will provide hardware, software and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates. An Attachment or TD may have additional Client responsibilities.

Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any user who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly. Unless expressly provided in an Attachment or TD, Client is not authorized to use a Cloud Service to provide hosting or timesharing services to any third party.

Data Protection

Each Cloud Service is designed to protect content that Client inputs into the Cloud Service. Except for account data, Client is the sole controller for any personal data included in the content, and appoints SoftLayer as a processor to process such personal data (as those terms are defined in EU Directive 95/46/EC). Except as specified in an Attachment or TD and if SoftLayer has access to content, SoftLayer will treat content as confidential by not disclosing content other than to SoftLayer or SoftLayer affiliate employees and contractors for use only to the extent needed to deliver the Cloud Service. SoftLayer will destroy it upon the expiration or cancellation of the Cloud Service, or earlier upon Client's request. SoftLayer may charge for certain activities performed at Client's request.

Client is responsible for obtaining all necessary permissions to use, provide, store and process content in the Cloud Service and grants SoftLayer permission to do the same. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by SoftLayer for an offering. Client will not input or provide such content unless SoftLayer has first agreed in writing to implement additional required security measures.

The Attachment or TD for each Cloud Service describes the security functions and features of the Cloud Service. By using the Cloud Service, Client acknowledges that it meets Client's requirements and processing instructions. SoftLayer will provide Client notice of any unauthorized third party access to Client's content of which SoftLayer becomes aware and will use reasonable efforts to remediate identified security vulnerabilities. If Client's content is lost or damaged, SoftLayer will assist Client as may be specified in the Attachment or TD, in restoring it to the Cloud Service from the last available backup copy in compatible format.

SoftLayer may use processors and subprocessors (including personnel and resources) in locations worldwide to deliver the Cloud Services. SoftLayer may transfer Client's personal data across country borders including outside the European Economic Area (EEA). A list of countries where content may be processed for an IBM Cloud Service is available at www.ibm.com/cloud/datacenters or as described in the Attachment or TD. A list of subprocessors is available upon request.

Upon request by either party, SoftLayer, Client or their affiliates will enter into additional agreements required by law for the protection of personal data included in content, such as the standard unmodified EU Model Clauses agreement pursuant to EC Decision 2010/87/EU with optional clauses removed. The parties agree (and will procure that their respective affiliates to agree), that such additional agreements will be subject to the terms of the Agreement.

SoftLayer, its affiliates, and their third party suppliers may process, store and use account data wherever they do business to enable product features, administer use, personalize experience, and otherwise support or improve the Cloud Service Account data is all information (which may be further described in an Attachment or TD) about Client or its users provided to or collected by SoftLayer or IBM (including through tracking and other technologies, such as cookies) which is processed in accordance with the SoftLayer Privacy Agreement available at www.softlayer.com/privacy-agreement or IBM Online Privacy Statement available at www.ibm.com/privacy/details/us/en/ as applicable.

Changes

SoftLayer may modify a Cloud Service, without degrading its functionality or security features. Any change that affects the commercial terms (e.g. charges) of the Cloud Service will not be effective until the next agreed renewal or extension.

SoftLayer may withdraw a Cloud Service as stated in an Attachment or TD. SoftLayer will either continue to provide the

Cloud Service for the remainder of Client's unexpired term, or work with Client to migrate to another Cloud Service.

Since this agreement may apply to many future orders, SoftLayer may modify this agreement by providing Client at least one month's written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing Cloud Services that do not expire, and renewals. For transactions with a defined renewable contract period, Client may request that SoftLayer defer the change effective date until the end of the current contract period. Client accepts changes by placing new orders or continuing use after the change effective date or allowing transactions to renew after receipt of the change notice. Except as provided above, all changes to the Agreement must be in a writing accepted by both parties. If there is a conflict, an Attachment or TD prevails over the terms of this agreement.

Warranties

SoftLayer warrants that it provides Cloud Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD. The warranty for a Cloud Service ends when the Cloud Service ends.

SoftLayer does not warrant uninterrupted or error-free operation of a Cloud Service or that SoftLayer will correct all defects or prevent third party disruptions or unauthorized third party access. These warranties are the exclusive warranties from SoftLayer and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. SoftLayer warranties will not apply if there has been misuse, modification, damage not caused by SoftLayer, failure to comply with instructions provided by SoftLayer, or if otherwise stated in an Attachment or TD. Non-SoftLayer or non-IBM products and services are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client.

Charges, Taxes, and Payment

Client agrees to pay all applicable charges specified by SoftLayer, charges for use in excess of authorizations, and any late payment fees. Prepaid Services must be used within the applicable period. SoftLayer does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid. Payment for amounts due will be as specified in an Attachment or TD.

Charges are exclusive of any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under the Agreement. Any such duty, tax, levy, or fee must be paid by Client. Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) notify SoftLayer prior to payment and furnish a tax certificate evidencing such payment to SoftLayer; iii) pay SoftLayer any additional amount to ensure SoftLayer receives the full amount of the charges invoiced; and iv) fully cooperate with SoftLayer in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents. If SoftLayer is legally required to pay or collect taxes for which Client is responsible, Client must pay SoftLayer the appropriate amount in addition to the amount of the charges, or provide a valid tax exemption certificate.

Liability and Indemnity

SoftLayer's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid by Client in the previous 12 months for the service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to SoftLayer, its affiliated entities, contractors, and suppliers. SoftLayer will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that a Cloud Service acquired under the Agreement infringes a patent or copyright, SoftLayer will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by SoftLayer, provided that Client promptly (i) notifies SoftLayer in writing of the claim, (ii) supplies information requested by SoftLayer, and (iii) allows SoftLayer to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

SoftLayer has no responsibility for claims based on non-SoftLayer products and services, items not provided by SoftLayer, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Termination

SoftLayer may suspend, revoke or limit Client's use of a Cloud Service if SoftLayer determines there is a material breach of Client's obligations, a security breach, or violation of law. If the cause of the suspension can reasonably be remedied, SoftLayer will provide notice of the actions Client must take to reinstate the Cloud Service. If Client fails to take such actions within a reasonable time, SoftLayer may terminate the Cloud Service.

Either party may terminate this agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees. Termination of this agreement does not terminate TDs, and provisions of this agreement and Attachments as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms.

Governing Laws and Geographic Scope

Each party is responsible for complying with: i) laws and regulations applicable to its business and content; and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Client is responsible for its use of SoftLayer and non-SoftLayer products and services.

Both parties agree to the application of the laws of the: i) State of New York, United States for U.S. and U.S. territory Clients; and ii) Netherlands for all other Clients; without regard to conflict of law principles. The rights and obligations of each party are valid only in the country of Client's business address. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

General

SoftLayer is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any

responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation.

SoftLayer maintains a robust set of business conduct and related guidelines covering: conflicts of interest, market abuse; anti-bribery & corruption; and fraud. SoftLayer and its personnel comply with such policies and require contractors to have similar policies.

SoftLayer resellers and IBM business partners are independent from SoftLayer and unilaterally determine their prices and terms. SoftLayer is not responsible for their actions, omissions, statements, or offerings.

Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other, except no consent is required if SoftLayer assigns to IBM or an IBM company. Assignment of SoftLayer rights to receive payments and by SoftLayer in conjunction with the sale of the portion of SoftLayer's business that includes a service is not restricted.

The Agreement applies to SoftLayer and Client and their respective Enterprise companies who avail themselves of the Agreement. The parties shall coordinate the activities of Enterprise companies under the Agreement. Enterprise companies include (i) companies within the same country that Client or SoftLayer control (by owning greater than 50% of the voting shares), and (ii) any other entity that controls, is controlled by or is under common control with Client or SoftLayer and has signed a participation Attachment.

All notices under the Agreement must be in writing and sent as described in a TD. The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions or representations between the parties.

No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.

Appendix A: Country-Specific Terms

Country specific Attachments regarding data protection are available at http://www.softlayer.com/csa. Such data protection terms may if specified apply to Clients that select a data center within such country.

In the country of Client's business address, the following terms replace or modify the referenced terms:

AMERICAS

Cloud Services

Replace the first sentence of second paragraph with:

In Latin America (all countries): Client accepts the terms in an Attachment or TD by signing it.

Charges, Taxes, Payment, and Verification

Add at the end of the second paragraph:

In Canada and United States: Where taxes are based upon the location(s) receiving the benefit of the Cloud Service, Client has an ongoing obligation to notify SoftLayer of such location(s) if different than Client's business address listed in the applicable Attachment or TD.

General

Add as a last sentence in the section:

In Canada in Province of Quebec: Both parties agree to write this document in English. Les parties ont convenu de rédiger le présent document en langue anglaise.

ASIA PACIFIC

Cloud Services

In the first sentence of the second paragraph, before the word "ordering," add:

In Hong Kong and Macau: signing (by hand or electronically),

Charges, Taxes, and Payment

In the first sentence of the second paragraph, remove the word "and" before "(iv)", and at the end of the sentence, add:

In India – and (v) file accurate Taxes Deducted at Source (TDS) returns on a timely basis. If any tax, duty, levy or fee ("Taxes") are not charged on the basis of the exemption documentation provided by the Client and the taxation authority subsequently rules that such Taxes should have been charged, then the Client will be liable to pay such Taxes, including any interests, levies and/or penalties applicable thereon.

General

Replace the second sentence of the sixth paragraph with:

In India: Neither party will bring a legal action arising out of or related to the Agreement more than three years after the cause of action arose.

EMEA

Warranties

In the last paragraph, before the last sentence, insert the following:

In Czech Republic, Estonia, and Lithuania: , or liabilities for defects. The parties hereby exclude any liability of SoftLayer for defects beyond the agreed warranties.

Charges, Taxes, and Payment

In the first sentence, replace "specified by IBM" with the following:

In Belgium and Luxembourg: specified in or calculated in accordance with the Agreement

In the third paragraph, after the phrase: "IBM may change one-time charges without notice" add:

In Czech Republic: , though Client may terminate the Agreement if Client disagrees with the change.

Add the following to the end of the first sentence of the first paragraph:

In France: equal to the most recent European Central Bank rate plus 10 points, in addition to debt collection costs of forty (40) euros or, if these costs exceed forty euros, complementary indemnification subject to justification of the amount claimed)

In Italy: due based on SoftLayer's notice to Client.

In Ukraine: ,on the overdue amount from the next day after the due date up to the date of actual payment, prorated for each day of delay, at the interest rate of double the discount rate determined by the National Bank of Ukraine (NBU) during the delay period (paragraph 6 of article 232 of Commercial Code of Ukraine does not apply).

Liability and Indemnity

In the first sentence of the first paragraph insert the following before the words "the amounts paid":

In Belgium, France, Germany, Italy, Malta, Portugal, and Spain: the greater of €500,000 (five hundred thousand euro) or

In UK and Ireland: 125% of

In the first sentence of the first paragraph, replace the phrase "direct damages incurred by Client" with:

In Spain: and proven damages incurred by Client as a direct consequence of the SoftLayer default

Insert after the first sentence of the first paragraph:

In Slovakia: The total foreseeable damage shall not exceed the amount above.

Insert before the last sentence of the first paragraph:

In Russia: SoftLayer will not be liable for the forgone benefit.

In the last sentence of the first paragraph, replace "special, incidental, exemplary" with:

In France and Spain: damages to reputation

In the last sentence of the first paragraph, delete:

In Ireland and UK: economic

In the last sentence of the first paragraph, replace "indirect, or economic consequential damages" with:

In France: or indirect damages

Replace the last sentence of the first paragraph with:

In Portugal: SoftLayer will not be liable for indirect damages, including loss of profit.

In Belgium, Netherlands, and Luxembourg: IBM will not be liable for indirect or consequential damages, lost profits, business, value, revenue, goodwill, damage to reputation or anticipated savings, any third party claim against Client, and loss of (or damage to) data

In the second paragraph, delete the following:

In Hungary: and tangible personal property

In the second paragraph, replace "and (iv) damages that cannot be limited under applicable law" with the following:

In Germany: (iv) loss or damage caused by a breach of guarantee assumed by SoftLayer in connection with any transaction under the Agreement; and (v) caused intentionally or by gross negligence.

Termination

In the second paragraph, delete:

In Switzerland: Failure to pay is a material breach.

Insert the following to the end of clause "a)" before "; or":

In Russia: without payment of any damages or penalties to the other party on the basis of early termination

Insert the following at the end:

In Netherlands: The Parties waive their rights under Title 7.1 ('Koop') and clause 7:401 and 402 of the Dutch Civil Code, and their rights to invoke a full or partial dissolution ('gehele of partiele ontbinding') of the Agreement under section 6:265 of the Dutch Civil Code

General

Add to the end the last paragraph:

In Czech Republic: Pursuant to Section to Section 1801 of Act No. 89/2012 Coll. (the "Civil Code"), Section 1799 and Section 1800 of the Civil Code as amended, do not apply to transactions under this Agreement. Client accepts the risk of a change of circumstances under Section 1765 of the Civil Code.

In Hungary: By entering into the Agreement, Client confirms that Client was sufficiently informed of all the provisions of the Agreement and had the opportunity to negotiate those terms. The following provisions may significantly deviate from the provisions generally applied by Hungarian law and both parties accept those provisions by signing the Agreement: Cloud Services; Warranty; Charges, Taxes, Payment and Verification; Liability and Indemnity, Termination; Governing Laws and Geographic Scope; and General.

Delete the following sentence in the last paragraph:

In Bulgaria, Croatia, Poland, Russia, Serbia, and Slovenia: Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose.

In the last paragraph, second sentence, replace the word "two" with:

In Latvia and Ukraine: three

In Slovakia: four

In the last paragraph, add to the end of the following sentence: "Neither party is responsible for failure to fulfil its non-monetary obligations due to causes beyond its control":

In Russia: , including but not limited to earthquakes, floods, fires, acts of God, strikes (excluding strikes of the parties' employees), acts of war, military actions, embargoes, blockades, international or governmental sanctions, and acts of authorities of the applicable jurisdiction.

In Ukraine: , including but not limited to import, export and economic sanctions requirements of the United States.

Add the following new paragraph at the end of the document, after the signatures:

In Italy: Pursuant to the art. 1341 and 1342 of Italian Civil Code, Client expressly accepts the following articles of the Agreement: Programs; Services – Cloud Services; Services – Other Services; Machines and Appliances; Machine Code and Built in Capacity; Warranty and Post Warranty Support; Charges, Taxes, Payment and Verification; Liability and Indemnity, Termination; Governing Laws and Geographic Scope, and General.

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SoftLayer Services

This Service Description describes the Cloud Service that SoftLayer, an IBM Company (SoftLayer), provides or makes available to Client under the terms of this Service Description, any applicable IBM Service Description and the terms of the SoftLayer Cloud Services Agreement (collectively, Agreement). "Client" means and includes the contracting party, whether an individual or corporate entity, and the contracting party's authorized users or recipients of the Cloud Service. "SoftLayer" means either: 1) SoftLayer Technologies, Inc., if Client registers a principal business address in the U.S. or U.S. territories; or 2) SoftLayer Dutch Holdings B.V., if Client registers a principal business address outside the U.S. and U.S. territories.

1.   Cloud Service

Upon SoftLayer's acceptance of Client's order, SoftLayer will register and activate an account to enable Client to order and manage available Cloud Services, including those provided by SoftLayer or IBM or by third parties (Third Party Services), using SoftLayer's on-line Portal, mobile app, application programming interfaces (APIs), or by assisted ordering by contacting SoftLayer sales support staff who place an order at the direction and on behalf of Client. Information regarding Cloud Services, the Portal, account information, and support are provided and processed on-line and may be presented only in English, but if translations are available and there is a conflict, the English version will govern.

1.1   Ordering Services

Client may order Cloud Services using standard procedures as available in the Portal or APIs or by assisted ordering. Client agrees that by placing an order by the Portal, or by using APIs or assisted ordering, Client agrees that i) the terms of the Agreement apply to any such Cloud Service ordered, and ii) as applicable, Client has reviewed and agrees to third party agreement terms applicable to a Third Party Service (TPS Agreement) governing Client's use of such Third Party Service.

SoftLayer may, at its sole discretion, modify the Portal, APIs or assisted ordering procedures, and require Client to use the most current version of an API. SoftLayer may discontinue, suspend, or modify use of the Portal, APIs or assisted ordering at any time effective upon notice posted in the Portal.

SoftLayer will use commercially reasonable efforts to provide 1) advance notice of API changes, and 2) continued support for prior versions of APIs for a reasonable period of time before discontinuation, unless there are operational, legal, or security risks or burdens to do so.

1.2   Cloud Services Enablement and Support

SoftLayer will enable administrative rights to Client's specified account administrative user. Using the Portal or APIs, the administrative user can perform account administration to enable users, specify authorizations, place orders, monitor use, support ticketing, and submit SLA claims.

All support for the Cloud Services, APIs and communications use the Portal ticketing and support system. SoftLayer notices are sent to the Client thru the Portal. The SoftLayer standard support policy is available in the Portal (or such other location as SoftLayer may designate) and explains SoftLayer's standard support (available without charge), as well as Portal access and standard support resources and limitations. Unless otherwise agreed in writing, SoftLayer provides support only to Client (and its authorized users), not to any of Client's customer end users. Client is solely responsible for providing all customer support and services (if any) to such end users. Additional support or premium services may be available from SoftLayer for a fee.

1.3   Use and Access to the Cloud Services

Cloud Services are self-managed by Client, including configuration and management of the computing resources (such as security, backup, failover, restore, and monitoring), which Client determines necessary to meet Client's requirements and applicable laws.

Client selects the data center locations that will host Cloud Services; however Client understands that global resources (non-permanent residents used locally and personnel in locations worldwide) may be used to provide site and remote support. Client agrees no content exported to or from a selected location, or otherwise accessible by SoftLayer to support use of the Cloud Services is (a) controlled as a defense article under the US International Traffic in Arms Regulation (ITAR) or under any other country's laws or

regulations, or (b) requires an export license or is otherwise restricted from export to any global resources or personnel under applicable export control laws.

1.3.1 Third Party Services

Third Party Services may be ordered from SoftLayer and are provided directly from a third party and are provided under the applicable TPS Agreement. The Third Party Services provider is solely responsible for its Third Party Services. SoftLayer is not responsible for such Third Party Services and is acting solely as an ordering agent and is not a party to such TPS Agreements even if SoftLayer charges for such Third Party Services. SoftLayer does not endorse any Third Party Services.

When ordering Third Party Services, some Third Party Services providers require SoftLayer to disclose and obtain agreement to the applicable TPS Agreement terms. SoftLayer makes such TPS Agreements available on the Portal. Client is responsible, prior to placing an order for Third Party Services, to carefully review the applicable TPS Agreement terms, which may include links to additional terms such as a privacy policy, or redirects to the Third Party Service provider's website. By placing an order directly or indirectly, by any of the Cloud Services ordering methods, Client agrees to such TPS Agreement terms and is responsible to comply with such terms in the use of the Third Party Service.

1.3.2 Client Solutions

Client may use a Cloud Service to create a "Solution", based in whole or in part on a Cloud Service, which Client makes available to Client's Solution end users. Client may not resell direct access to Cloud Services using Client's account information to any third party without entering into a separate agreement with SoftLayer. Client is responsible to have appropriate agreements in place with its Solution end users and is responsible for their use of Client's Solution, including Client or Solution end user content. Client is solely responsible for any liability for damages or losses Client's Solution end users may incur as a result of using Client's Solution.

1.4 Cloud Service Order

The "Effective Date" for an order for Cloud Services or any upgrade is when Client first installs, orders, or begins using a Cloud Service. Upon acceptance of an order, the Portal ticketing system will initiate or change Cloud Services based upon Client's selections and Client may begin using the Cloud Services, including creating or uploading content. Client is responsible for saving, maintaining, and protecting all access keys generated for each Cloud Service. These are not maintained by SoftLayer. All orders submitted by users using Client account information are orders under such account.

For each Cloud Service ordered, the "Initial Term" is the period commencing on the Effective Date until the first Anniversary Billing Date. The "Anniversary Billing Date" is the date of each month that is the Effective Date, unless such date does not exist in a calendar month (e.g. 30th or 31st), in which case it will be the last date of that month. A "Renewal Term" is the period commencing after the last day of the Initial Term or a subsequent Renewal Term to the next Anniversary Billing Date. All Cloud Services automatically renew until cancelled by Client or upon termination of the Agreement. Hourly Cloud Services are provided based on the number of hours in an order or otherwise agreed in writing by the parties.

Client must submit a notice to downgrade or cancel a Cloud Service using a cancellation ticket through the Portal in accordance with SoftLayer specified procedures, with a minimum of 24 hours prior to 00:00:01 CST (GMT-6) of the Anniversary Billing Date. Failure to provide timely notice will result in an additional Renewal Term. Client is responsible to monitor status of any order to cancel or downgrade Cloud Services to ensure it was successful. The effective date of downgrade or cancellation is the end of the term for the downgraded or cancelled Cloud Service. Cloud Services will continue to be available until the end of such term and no refund or credits are provided for any unused portion.

1.5 Network Access

Each ordered Cloud Service will be connected to SoftLayer's "Private Network", SoftLayer's "Public Network" (except for those Cloud Services which are not exposed to the Internet), SoftLayer's internal administrative network, and assigned to a Client dedicated private virtual local area network (VLAN). Network information and support documentation is available in the Portal. Client may disable the Public Network access at any time. SoftLayer's Private Network enables a virtual private network (VPN) connection for administrative access, intra-application communications, and communications from one SoftLayer point of delivery / data center to another SoftLayer point of delivery / data center and for access to SoftLayer shared services. The administrative VPN enables Client to administer and manage ordered Cloud Services, and to upload, download, and manage content.

Client has no ownership or transfer rights to any IP address assigned to Client Cloud Services and may not use IP addresses or VLANs not assigned to Client. The SoftLayer IP Address Policy (available at http://www.softlayer.com/Legal or such other location designated by SoftLayer) governs use and provisioning of IP addresses, including IP addresses Client provides.

If a Cloud Service is suspended, Public Network or Private Network access may be disabled until resolution of the violation. Temporary access using the Private Network VLAN to remedy a violation may be available.

2. Security

Cloud Services use reasonable and appropriate measures related to physical and network infrastructure security to protect Client content. Client is responsible for the selection and management of security features and measures for the Cloud Services that Client orders including determining and implementing any requirements to manage unique workloads for any personal or regulated data (such as subject to Payment Card Industry Data Security Standard (PCI DSS) requirements) Client collects or processes. Client is responsible for the maintenance, integrity, retention and backup of all content. If Client orders SoftLayer managed hosting services for data backup services, SoftLayer will use commercially reasonable measures to maintain the confidentiality of Client's content when performing such data backup services.

SoftLayer will not access Client content except: i) when Client expressly authorizes access in connection with requested support; ii) as specifically described in this Service Description or a mutually agreed addendum; or iii) to the extent required by law or as necessary to comply with the request of a governmental or regulatory body or order from a court of competent jurisdiction. In the event of any such valid legal or governmental request and to the extent reasonably able, SoftLayer will provide notice to Client, if allowed.

Client is responsible for security of its access passwords and credentials. SoftLayer may suspend access to the Portal or APIs at any time for unauthorized access or suspected misuse effective on Portal notice, or immediately in case of operational, legal, or security risks. Client agrees to promptly report to SoftLayer any security concerns, lost or stolen account information, or unauthorized access, whether generally or by use of account access credentials, passwords or authorizations. Security concerns or unauthorized access reports may be sent to security@softlayer.com.

3. Service Level Agreements

The service level agreements (SLAs) applicable to the SoftLayer Cloud Services are set forth in SoftLayer's Service Level Agreement (available at www.softlayer.com/about/legal or such other location designated by SoftLayer). Client must submit a SLA claim within days after the end of the claimed outage as described in the SLA procedures. The claim will be reviewed and credit for verified outages (SLA Credits) will be issued. SLA Credits are available only to Client and are the exclusive remedy for failure of a specified service level. SLA Credits may not be sold or transferred to other parties, and may only be used as credit toward future charges. False or duplicative SLA claims may incur a one-time charge of $50 (or equivalent in local currency) per incident.

SLAs for IBM Cloud Services will be as described in the applicable IBM Service Description.

4. Charges and Payment

4.1 Charges

Monthly charges begin and are due on or before the Effective Date of the Initial Term and continue and will be due on the Anniversary Date of each Renewal Term until Client submits a cancellation ticket for a Cloud Service as described in section 1.4 (Cloud Service Order) or upon termination of the Cloud Services. The amount due may be adjusted by the addition, upgrade, discontinuance, or downgrade of a Cloud Service, or through the use of SLA Credits. Monthly charges for additional or upgraded Cloud Services added during a term will be pro-rated on a calendar-day basis for the remainder of such term as a one-time prorated charge. The monthly charges thereafter will be due on or before the Anniversary Billing Date for each Renewal Term.

Charges for additional services fees or hourly services will be based upon actual overage or usage and are due on the next Anniversary Billing Date. Hourly Cloud Services are available in one hour increments. One time charges will be due upon acceptance of an order.

4.2 Payment

Payment must be made by a credit card maintained on file with SoftLayer, electronic funds transfer or such other method as approved by SoftLayer. By providing credit card information, including relevant personal data, Client agrees SoftLayer can use such information for purpose of processing payment of charges. Payment of charges will be automatic on the due date. Client is responsible to keep information current to avoid any disruption of service. SoftLayer will secure and manage Clients' credit card data SoftLayer collects as Client's account data.

A late payment fee of $20 (or equivalent in local currency) will be due for failure to pay charges on the due date. If SoftLayer suspends access to the Cloud Services due to a material breach of Client's obligations, a $50 reconnection fee will be due. Such fees are due upon receipt of notice, and SoftLayer will not reconnect the Cloud Service until full payment is made.

If Client believes a charge to be incorrect, Client must open an accounting ticket within 30 calendar days from the charge due date. A credit will be provided upon validation of such incorrect charge. Client accepts the charges for Cloud Services if not disputed within such period.

If Client requires specific funding authorization for SoftLayer to invoice charges, such as a purchase order, Client is responsible to provide and keep such authorization timely and current with sufficient funding authorization to cover the Initial Term and all Renewal Terms for all orders submitted using Client's account credentials to avoid any disruption of service.

5. Term and Termination

5.1 Term

The term for a Cloud Service starts on the Effective Date and monthly Cloud Services automatically renew on each Anniversary Billing Date, until Client submits a cancellation order, or upon any termination of the Cloud Services. Hourly Cloud Services are provided based on the number of hours in an order or as otherwise agreed by the parties in writing.

5.2 Suspension and Termination

SoftLayer may suspend Cloud Services without liability as set forth in the Agreement if SoftLayer reasonably determines: i) there is a material breach of Client's obligations; ii) a security breach affecting Client or SoftLayer infrastructure, network, or other customers; iii) a violation of law; or iv) Client's use may subject SoftLayer, IBM or a SoftLayer third party provider to liability. Client agrees to cooperate with SoftLayer in any investigation to resolve a suspension. SoftLayer will only suspend the SoftLayer Services causing, or the basis for, a suspension.

SoftLayer will try to give reasonable advance notice of a suspension and an opportunity to remedy the cause of a suspension, unless immediate suspension is necessary to protect SoftLayer or its customers from operational, security, or other risk, or if ordered by a court or other judicial body.

If SoftLayer suspends use for all or any portion of the Cloud Services:

a. Client remains responsible for all charges incurred through the date of suspension and for any Cloud Services Client has continued access during or after a suspension;

b. Client is not entitled to any SLA Credits for any period of suspension; and

c. SoftLayer is not liable for any damages or losses Client may incur as a result of loss of access to content during a suspension.

Client may cancel or terminate a Cloud Service at any time as described in section 1.4 (Cloud Service Order).

SoftLayer may withdraw or terminate for convenience a particular Cloud Service by providing Client notice through the Portal of non-renewal at least 10 days prior to the expiration of the Initial Term or a Renewal Term, or at the end of the next billing period for hourly services. SoftLayer will provide at least 90 days' notice if SoftLayer entirely withdraws SoftLayer Cloud Services from the market.

SoftLayer may terminate in whole or in part the Agreement and the Cloud Services immediately upon notice provided through the Portal if: i) SoftLayer discovers Client provided inaccurate or incomplete information; ii) Client did not have the legal capacity, right or authority to enter into agreement with SoftLayer at the time an order was submitted; iii) Client fails to pay any undisputed overdue amount within 5 days of the due date; iv) Client uses the Cloud Services in violation of the Agreement terms and fails to remedy the violation within 5 days of SoftLayer's written notice; v) Client's account has been suspended for 30 days or more; or vi) there are multiple violations of the Agreement terms. SoftLayer will give Client

written notice of termination using the Portal unless SoftLayer determines, in its reasonable commercial judgment, that a termination on shorter or contemporaneous notice is necessary to protect SoftLayer or its other customers from operational, legal or security risks.

Client instructs SoftLayer to delete content upon expiration, cancellation, or termination, and Client understands that deletion is automatic and content is not recoverable. Client must discontinue use of the Cloud Services on such effective date, and relinquish use of IP addresses, infrastructure and all other materials provided in connection with the Cloud Services, including pointing the Domain Name System (DNS) for Client's domain names away from the Cloud Services.

SoftLayer may close Client's account and terminate the Agreement if no Cloud Services are ordered or remain active within any six month period.

6. General

SoftLayer (or its licensors) own all legal rights to the Portal and APIs, including, without limitation, any intellectual property rights which subsist in the Portal and APIs (whether such rights are registered or unregistered, and wherever in the world those rights may exist).

Client agrees SoftLayer may publicly refer to Client as a subscriber to the Cloud Services in a publicity or marketing communication.

6.1 Apple Licensed Applications

The following terms of use apply to any download or use of any SoftLayer applications that run on the Apple Inc. (Apple) operating system (iOS) (Licensed Application) to enable use of mobile app access to the Cloud Services, such as use with the iPhone, iPod touch, iPad or other related device using such iOS.

a. This agreement is between Client and SoftLayer and not with Apple, and SoftLayer is solely responsible for the Licensed Application and the content thereof. These terms for use of the Licensed Application are not less restrictive than the usage rules set forth in the App Store terms of service (http://www.apple.com/legal/itunes/appstore/dev/stdeula/) (Usage Rules).

b. These terms of use for the Licensed Application are not in conflict with the App Store terms of service as of the effective date of the order, which Client has had the opportunity to review.

c. The license granted to Client for the Licensed Application is limited to a non-transferable license to use the Licensed Application on any iOS that Client owns or controls and as permitted by the Usage Rules.

d. Apple has no obligation to furnish any maintenance and support services with respect to the Licensed Application. Any available maintenance and support will be provided by SoftLayer.

e. In the event of any failure of the Licensed Application to conform to any applicable warranty, Client may notify Apple, and Apple will refund any purchase price for the Licensed Application to Client; and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Licensed Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be SoftLayer's sole responsibility, whether express or implied by law, to the extent not otherwise disclaimed.

f. SoftLayer, not Apple, is responsible for addressing any claims Client or any third party may have relating to the Licensed Application or Client's possession and/or use of the Licensed Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

g. In the event of any third party claim that the Licensed Application or Client's possession and use of the Licensed Application infringes that third party's intellectual property rights, SoftLayer and/or Client, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

h. Any questions, complaints or claims with respect to the Licensed Application may be emailed to sales@softlayer.com or mailed to one of the SoftLayer business addresses below.

i. Apple, and Apple's subsidiaries, are third party beneficiaries of the terms pertaining to the Licensed Application, and upon Client's acceptance of these terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these terms solely with regard to the Licensed Application against Client as a third party beneficiary thereof.

6.2 SoftLayer Business Address

SoftLayer Technologies, Inc.
14001 Dallas Parkway, Suite M100
Dallas, TX 75244 75240, USA
Email: legal@softlayer.com

SoftLayer Dutch Holdings B.V.
Trade Registry No. 52461041
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1096BK Amsterdam, NETHERLANDS
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