



**SoftLayer Services & Solution Provider Program Addendum**  
*(Unversion vOCTOBER 2016)*

This Addendum modifies the SoftLayer Cloud Services Agreement (the “SL CSA”) and the Bluemix Services Description (the “BM SD”) (collectively the SL CSA and BM SD is referred to herein as the “Agreement”) between SoftLayer and Client (referred to in this Addendum as “Solution Provider”). A copy of SoftLayer’s current SL CSA and BM SD can be reviewed at <http://www.softlayer.com/legal>. In the event of conflict of terms, this Addendum shall take precedence over the Agreement.

**1. SoftLayer Responsibilities.** The current standard solution provider discount for Cloud Services which SoftLayer provides to solution providers for solution providers’ purchase of Cloud Services from SoftLayer through the Portal, including Solution Provider under the Agreement, is set forth in the following table:

**Standard Solution Provider Discount Program - Volume Tiered Discounts**

<u>Monthly Recurring Revenue (USD*)</u>	<u>Monthly Discount Level</u>
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*\* All Dollars are stated in United States Dollars*

Tier 1: \$1,500 - \$2,999.99	5%
Tier 2: \$3,000 - \$4,999.99	8%
Tier 3: \$5,000 - \$14,999.99	10%
Tier 4: \$15,000 - \$24,999.99	15%
Tier 5: \$25,000 - \$99,999.99	18%
Tier 6: \$100,000 +	20%

On a programmatic basis via Portal or other notice, SoftLayer may increase or decrease discounts on one month's notice. SoftLayer reserves the right to adjust or eliminate solution provider discounts for SoftLayer brand Cloud Services sold with “Special Bid” pricing or any other promotional offering. SoftLayer is the sole determiner of the award of any and all solution provider discounts provided under this Addendum. SoftLayer also will provide Solution Provider with SoftLayer’s Services & Solution Provider Program additional program features as listed at the SoftLayer “Services & Solution Provider Program” webpage currently found at <http://www.softlayer.com/solution-provider-program> (or such other location as SoftLayer may designate from time to time) (the “SoftLayer Service & Solution Provider Page”). SoftLayer may change such program features from time to time in the same manner as SoftLayer may modify the solution provider discounts.

**2. Additional Services & Solution Provider Terms and Conditions**

- a. If SoftLayer suspends or terminates either the BM SD or the Agreement, this Addendum is also immediately suspended or terminated;
- b. Either party may terminate this Addendum upon 30 days’ written notice to the other. No solution provider discounts will be due Solution Provider under this Addendum after the termination of this Addendum, other than those solution provider discounts that have been earned pursuant to the terms of this Addendum, prior to the effective date of termination.

**3. Modified Agreement Terms.** Add to the BM SD new Section 9 (**Trademarks**) after Section 8 (**General**):

**9 Trademarks**

**9.1 Trademark License.** Client is licensed to use the Trademarks (defined below) identified in the Trademark Terms (defined below) in Promotional Materials (defined below) in accordance with the Trademark Terms.

**9.2 Approval of Your Promotional Materials.** All Promotional Materials used by Client must be approved in advance by SoftLayer in accordance with the Trademark Terms.

**9.3 Approval of End Users’ Promotional Materials.** Any use of the Trademarks in any Promotional Materials by Client or Client Solution end users will be made in accordance with the Trademark Terms, and all such Promotional Materials must be approved in advance by SoftLayer. Client agrees to obtain from each Client Solution end user any Promotional Materials for SoftLayer’s review and approval prior to any use.

**9.4 Definitions.** As used in this Section and in this Service Description, “Promotional Materials” means the term as defined in the Trademark Terms, “Trademarks” means the Bluemix trademark identified in the Trademark Terms, and “Trademark Terms” mean the SoftLayer Bluemix Trademark License Agreement, the current version of which is attached to this Agreement as Exhibit TM.

Except as modified above, the terms of the Agreement shall remain valid and in full force and effect. This Addendum and the Agreement are the complete agreement regarding the transactions contemplated by this Addendum and the Agreement, and replace any prior oral or written communications between the parties.

By signing this Addendum, each party accepts the terms of this Addendum and the Agreement without modification. Once signed, any reproduction made by reliable means is considered an original, to the extent permissible under applicable law. Each party agrees that the individual signing below is authorized to execute this Addendum for the legal entity on whose behalf the individual signing below



is accepting this Addendum. SoftLayer will return a fully signed copy of this Addendum to you and this Addendum will become effective on the date indicated in connection with SoftLayer's signature.

Accepted:

Solution Provider: \_\_\_\_\_ **(insert full corporate legal name)**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Solution Provider's principal business address is: \_\_\_\_\_

\_\_\_\_\_ **(insert principal business address)**

*The SoftLayer signatory party to this Addendum and the Agreement depends on where Solution Provider is based, meaning where Solution Provider's principal business address is located. Only the correct SoftLayer signatory entity will sign or be deemed to execute this Addendum.*

If Solution Provider is based in the United States, the signatory is **SoftLayer Technologies, Inc.**

If Solution Providers is based outside the United States, the signatory is **SoftLayer Dutch Holdings B.V.**

**SoftLayer's signatory will fill in the correct entity.**

SoftLayer: **SoftLayer** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



Exhibit TM  
Trademark Terms

SoftLayer Bluemix Trademark License Agreement

This SoftLayer Bluemix Trademark License Agreement ("Agreement") is made between SOFTLAYER TECHNOLOGIES, INC., a Delaware corporation ("LICENSOR") and the Counterparty ("LICENSEE") who are parties to the Associated Agreement. This Agreement is made pursuant to and incorporated by this reference into the terms of the Associated Agreement and need not be signed by the parties. This Agreement shall be valid and in effect for so long as the Associated Agreement is valid and in effect.

**Section 1. DEFINITIONS**

1.1 "Associated Agreement" shall mean the parties' applicable SoftLayer Cloud Services Agreement, the SoftLayer Reseller Agreement, or the SoftLayer Referral Agreement.

1.2 "Communications or Marketing Materials" shall have the meaning set forth in Exhibit 2.

1.3 "Licensed Marks" shall mean the Bluemix Trademark and the Bluemix Logo Trademark in Exhibit 1.

1.4 "Licensed Territory" shall mean Canada, France, Australia, China, CTM (which includes Austria, Benelux (Belgium, the Netherlands and Luxembourg), Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom) India, Japan, Mexico, Russian Federation, Switzerland, U.S.

1.5 "Logo Usage Guidelines for Co-Marketing" shall mean such guidelines as may be established by LICENSOR and modified from time to time, upon reasonable notice by LICENSOR, providing for the use and display of the Licensed Mark. The current Logo Usage Guidelines for Co-Marketing are set forth in Exhibit 3.

1.6 "Style Guide" shall mean such guidelines as may be established by LICENSOR and modified from time to time, upon reasonable notice by LICENSOR, providing for the use and display of the Licensed Mark. The current Style Guide is set forth in Exhibit 4.

1.7 "Website" shall mean the LICENSEE's Website separately identified by LICENSEE to LICENSOR.

**Section 2. LICENSE GRANT**

2.1 LICENSOR grants LICENSEE a non-exclusive, non-transferable, royalty free, revocable right and license to use the Licensed Marks in the Licensed Territory on Communications or Marketing Materials and on the Website in strict accordance with the terms of this Agreement to promote LICENSOR's business relationship with LICENSEE.

**Section 3. USE OF THE LICENSED MARK**

3.1 LICENSEE agrees to display and use the Licensed Marks solely in the form, manner and style required by the Logo Usage Guidelines for Co-Marketing and the Style Guide.

3.2 LICENSEE agrees to use the Licensed Marks only on Communications or Marketing Materials developed as a result of a joint collaboration between LICENSOR and LICENSEE.

**Section 4. OWNERSHIP OF THE LICENSED MARK**

4.1 All ownership rights in the Licensed Marks belong exclusively to LICENSOR's parent company, International Business Machines Corporation ("IBM"). LICENSEE has no ownership rights in the Licensed Marks and shall acquire no ownership rights in the Licensed Marks as a result of its performance (or breach) of this Agreement. All use and goodwill resulting from the use of the Licensed Marks or variations thereon shall inure solely to the benefit of IBM. Upon termination of this Agreement all rights of LICENSEE to use the Licensed Marks shall terminate immediately except as otherwise provided herein.

4.2 LICENSEE agrees:

1. not to take any action which will interfere with any of LICENSOR's rights in and to the Licensed Mark;



2. not to challenge IBM's or LICENSOR's right, title or interest in and to the Licensed Marks or the benefits therefrom;
3. not to make any claim or take any action adverse to IBM's ownership of the Licensed Mark;
4. not to register or apply for registrations, anywhere, for the Licensed Marks or any other mark which is confusingly similar to the Licensed Marks or which incorporates the Licensed Mark; and
5. not to use any mark, anywhere, which is confusingly similar to the Licensed Mark.

## **Section 5. QUALITY CONTROL**

5.1 LICENSEE agrees that it is of fundamental importance that the LICENSEE's Communications or Marketing Materials and Website bearing the Licensed Marks be of the highest quality and integrity and that the Licensed Marks be properly used and displayed. For that reason, LICENSEE shall present its proposed use of the Licensed Mark, on its Communications or Marketing Materials or Website, including any significant variations to any previously approved use, to LICENSOR for approval no less than thirty (30) days prior to its proposed use, and shall not implement such proposed use until such approval is received in writing from LICENSOR.

5.2 Failure to meet the quality standards set forth in this Agreement shall be deemed to be a breach thereof for which this Agreement may be terminated by LICENSOR in accordance with Section 9.3.

## **Section 6. PROTECTION OF THE LICENSED MARK**

6.1 If LICENSEE becomes aware of any of the following, LICENSEE agrees to notify LICENSOR within twenty (20) business days.

1. any uses of, or any application or registration for, a trademark, service mark or trade name that conflicts with or is confusingly similar to the Licensed Mark;
2. any acts of infringement or unfair competition involving the Licensed Mark; or
3. any allegations or claims, whether or not made in a lawsuit, that the use of the Licensed Marks by LICENSOR or LICENSEE infringes the trademark or service mark or other rights of any other entity.

6.2 LICENSOR or IBM may, but shall not be required to, take whatever action it, in its sole discretion, deems necessary or desirable to protect the validity and strength of the Licensed Marks at LICENSOR's or IBM's sole expense. LICENSEE agrees to comply with all reasonable requests from LICENSOR or IBM for assistance in connection with any action with respect to the Licensed Marks that LICENSOR or IBM may choose to take.

6.3 LICENSEE shall not institute or settle any claims or litigation affecting any rights in and to the Licensed Marks without LICENSOR's or IBM's prior written approval.

## **Section 7. INDEMNITY**

7.1 LICENSOR (or IBM) shall settle or defend all claims made by third parties against LICENSEE and shall thereby indemnify and hold LICENSEE, its officers, agents and employees, harmless from any and all claims made against LICENSEE for infringement or unfair competition arising from LICENSEE's use of the Licensed Marks in strict accordance with the terms of this Agreement provided (1) LICENSEE was using the Licensed Marks as required in both the Logo Usage Guidelines for Co-Marketing and the Style Guide (2) in the Licensed Territory and (3) the claims arise from Communications or Marketing Materials or Website. Following notice of an infringement claim or at any time LICENSOR deems appropriate, LICENSOR may provide LICENSEE with a substitute logo for use under the terms and conditions of this Agreement.

7.2 LICENSEE shall defend, indemnify and hold harmless LICENSOR, IBM, and their respective officers, agents and employees from and against any and all claims (including those for infringement), damages, liabilities, suits, actions, judgments, penalties and taxes, civil and criminal, and all costs and expenses (including without limitation reasonable attorneys' fees) incurred in connection therewith, arising out of or related to:

1. LICENSEE's manufacture, sale and/or distribution of, or any third party's use or possession of, the LICENSEE's products and/or services which are associated with or featured in the Communications or Marketing Materials or on the Website; or
2. LICENSEE's distribution, promotion, marketing and content of, or a third party's access to or use of, the LICENSEE's Communications or Marketing Materials and the Website.

7.3 Notwithstanding the above, LICENSOR shall not be liable for any incidental, indirect, special, exemplary or consequential damages, lost or prospective profits, or lost business opportunities even if advised of the possibility of the same.



7.4 Notwithstanding the above, to qualify for indemnification under this Section 7, LICENSEE must notify LICENSOR in writing of any such claim within ten (10) business days of LICENSEE's receipt of such claim, and allow LICENSOR (or IBM) to control and fully cooperate with LICENSOR in the defense of and all settlement negotiations related to such claim.

7.5 LICENSOR'S liability under this License Agreement shall not exceed ten thousand US Dollars (\$10,000).

#### Section 8. WARRANTY

8.1 LICENSOR represents and warrants that it has a registration for the Bluemix Trademark in the United States and in other jurisdictions in the Licensed Territory. LICENSOR makes no other warranties of any kind, either expressed or implied, with respect to the Licensed Marks.

#### Section 9. TERMINATION AND OBLIGATIONS ON TERMINATION

9.1 Either party may terminate this Agreement for convenience on 30 days' notice to the other party. Either party may terminate this Agreement for breach, without terminating the Associated Agreement, on notice after a reasonable opportunity to cure the breach, if the breach is one capable of cure, as specified in the notice. A termination or expiration of the Associated Agreement automatically terminates this Agreement.

9.2 In the event that the Associated Agreement is terminated, then the license granted under this Agreement is terminated. LICENSEE shall remove the Licensed Marks from its Website and dispose of all Communications or Marketing Materials in its inventory within thirty (30) days after the effective date of the Associated Agreement's termination, provided that if the Associated Agreement is terminated for breach of any of the terms of this Agreement, then LICENSEE must take such actions within five (5) days after such termination for breach. LICENSEE shall provide LICENSOR with proof of the destruction of all existing Communications or Marketing Materials which bear the Licensed Mark.

#### Section 10. NOTICES

10.1 All notices and other communications under this Agreement shall be in writing and shall be sent by certified mail with return receipt requested to the other party's then current Executive Coordinator, or designee, at their respective addresses as set forth below. Notification of a change of address must be given in writing. All such mailed notices shall be deemed given and received upon the date indicated on the certified mail receipt.

#### LICENSOR:

SoftLayer Technologies, Inc.  
C/O Legal Department  
Stanford Corporate Center  
14001 North Dallas Parkway, Suite M100  
Dallas, TX 75240  
Email: [legal@softlayer.com](mailto:legal@softlayer.com)

#### LICENSEE:

This information has been separately provided by LICENSEE to LICENSOR

#### Section 11. TRANSFER OF RIGHTS

11.1 LICENSEE may not, either directly or indirectly, sublicense, assign, or in any way encumber this Agreement or the license granted herein. Any attempt to do so shall be void and shall result in termination of the license of Section 2 effective immediately upon receipt of a notice so stating.

#### Section 12. ENTIRE AGREEMENT

12.1 This Agreement and its attached Exhibits and the Associated Agreement sets forth the entire agreement between the parties regarding the subject matter of this Agreement, and fully supersede any and all prior agreements or understandings between the parties pertaining to the licensing of the Licensed Marks by LICENSOR to LICENSEE. This Agreement may not be amended or modified, in whole or in part, except by a written instrument duly executed by the parties hereto.

12.2 The failure by LICENSOR to insist upon strict adherence to any provision of this Agreement, in whole or in part, on one or more occasions, shall not constitute a waiver of its right to insist upon the strict performance of that or any other provision or part thereof in the future.



12.3 This Agreement and any amendments hereto may be signed in one or more counterparts, each of which, when signed and delivered, shall be deemed to be an original. All such counterparts together shall constitute one and the same valid and binding agreement, even if all of the parties have not signed the same counterpart. Signatures to this Agreement may be delivered electronically or by facsimile, in which case the electronic or facsimile copy of an original signature shall be deemed to be an original signature.

12.4 This Agreement shall be governed by the substantive laws of the State of New York without regard to its conflicts of laws principles.

THE EXHIBITS TO THIS AGREEMENT FOLLOW:

**EXHIBIT 1**  
**BLUEMIX®**  
(Bluemix Trademark)



(Bluemix Logo Trademark)

**EXHIBIT 2**  
**COMMUNICATIONS OR MARKETING MATERIALS**

“Communications or Marketing Materials” shall mean only brochures, specifications, flyers, booth signage, case studies, white papers, other marketing documents and any other printed or electronic documents created for marketing or promotional purposes of Bluemix. Except as may be specifically approved by LICENSOR in writing, Communications or Marketing Materials shall not include products, product packaging, or promotional items (such as clothing, bags, glassware and writing instruments).

**EXHIBIT 3**  
**BLUEMIX USAGE GUIDELINES FOR CO-MARKETING ON COMMUNICATIONS OR MARKETING MATERIALS AND WEB SITES**

These Guidelines set forth the standards and requirements for use of Bluemix on Communications or Marketing Materials and Websites bearing Bluemix and the logo, trademark or trade name of another company.

Compliance with these Guidelines is required. In the event of a conflict between the terms and conditions of the Trademark License Agreement and this Exhibit 3, the Exhibit 3 shall prevail.

Guidelines as to the Nature and Content of the Communications or Marketing Materials and Websites:

1. Use of Bluemix may occur only on Communications or Marketing Materials and Websites which clearly and explicitly communicate:
  - a. the scope and nature of the relationship between the parties;
  - b. the responsibilities of each of the parties.Bluemix may not be used in such a way as to attribute to IBM a product or service not actually originating from IBM.
2. Communications or Marketing Materials and Websites may not contain any statements, imagery or other materials which are illegal or which may, in the sole judgment of IBM, be in bad taste or inconsistent with IBM's public image, or tend to bring disparagement, ridicule or scorn upon IBM.
3. Bluemix may not be placed or applied in a manner which may cause confusion as to the source or origin of the offering or communication.
4. Bluemix must always remain distinct and separate. Bluemix may not be combined with any other trademark or logo owned by another company nor may it be combined with any text, graphics, imagery or product identifiers. Bluemix may not be contained within the text of a sentence.
5. In a sponsorship, when used in proximity to one or more company identifiers, Bluemix should be placed and sized to match the visual weight and emphasis of all the other sponsors logos.



6. The use of Bluemix must clearly communicate the context or relationship IBM has with the company, event or offering. This may be done by the addition of "relationship text" in the headline, body copy and/or in association with the logo signatures of a communication.

7. The following trademark attribution statement shall be applied on the page on which Bluemix is being used or in the legal attribution segment of the Communications or Marketing Materials and Websites:

Bluemix is a registered trademark of IBM in the United States and other countries and is used under license. IBM responsibility is limited to IBM products and services and is governed solely by the agreements under which such products and services are provided.

**Correct Appearance of Bluemix:**

1. Do not create your own version of Bluemix.
2. Do not change the size, color or proportion of the artwork provided by IBM.
3. Always allow a "safe space" around the logotype that is equal to or greater than the height of Bluemix in use.
4. Do not place Bluemix on active backgrounds that may reduce legibility.
5. Always use the approved colors of the Bluemix logo as specified in the Style Guide.