

SoftLayer Cloud Services Agreement

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

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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 users 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.