

Master Services Agreement

Contact Us
1-866-398-7638
214-442-0602
softlayer.com

Legal

PLEASE READ CAREFULLY: THIS MASTER SERVICES AGREEMENT is between SoftLayer Technologies, Inc., an IBM Company ("SoftLayer") and the individual or entity ("Customer") for certain computer infrastructure and related services provided by SoftLayer as ordered or accepted pursuant to the Terms of Service ("Services"). The Customer's use of and access to Services is governed by the Master Services Agreement which includes the Terms of Services, Service Level Agreement, Privacy Agreement, IP Address Policy, SoftLayer Acceptable Use Policy and relevant appendices (which may include without limitation the international-related addenda that is attached below) ("MSA"). **BY CLICKING OR CHECKING THE BOX PRESENTED WITH THE MSA OR INSTALLING OR USING THE SERVICES, THE CUSTOMER AGREES THAT (1) CUSTOMER HAS ACCEPTED THE MSA IN ITS ENTIRETY, (2) AGREES TO BE BOUND BY THE MSA (AS AMENDED FROM TIME TO TIME AS PROVIDED IN SECTION 19.1 OF THE TERMS OF SERVICE), (3) IF THE CUSTOMER IS AN INDIVIDUAL, THEN THE INDIVIDUAL REPRESENTS AND WARRANTS THAT HE HAS THE LEGAL RIGHT TO ENTER INTO THE MSA AND IF THE CUSTOMER IS AN ENTITY, THEN THE INDIVIDUAL WHO AGREES TO THE MSA REPRESENTS AND WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO BIND SUCH ENTITY AND (4) THIS MSA CONSTITUTES A BINDING AND ENFORCEABLE OBLIGATION BETWEEN SOFTLAYER AND CUSTOMER. IF THE CUSTOMER DOES NOT AGREE WITH ALL THE TERMS OF THIS MSA AND DOES NOT AGREE TO BE BOUND BY THIS MSA, PLEASE DO NOT CLICK OR CHECK THE BOX PRESENTED WITH THE MSA OR INSTALL OR USE THE SERVICES.**

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, SOFTLAYER AND CUSTOMER ACKNOWLEDGE AND AGREE THAT THEY ARE ALREADY BOUND TO THE TERMS AND CONDITIONS OF THIS MSA; MANUALLY EXECUTING THIS MSA IS FOR RECORD KEEPING PURPOSES ONLY; AND MANUALLY EXECUTING THIS MSA DOES NOT AMEND OR SUPERSEDE ANY OF THE EXISTING TERMS AND CONDITIONS OF THIS MSA:

Company Name: SoftLayer Technologies, Inc., an IBM Company

By: _____

Name: _____

Title: _____

Company Name: _____

By: _____

Name: _____

Title: _____

Terms of Service (“TOS”)

1. DEFINITIONS.

“Account Information” means billing information, contact information, payment information and such other information defined as “Account Information” in the Customer Portal.

“Affiliate” means any legal entity that a party controls, that controls a party, or that is under common control with a party. For purposes of this definition, “control” shall mean beneficial ownership of the securities entitled to vote in the election of directors (or, in the case of an entity that is not a corporation, of the election of the corresponding management authority) in the entity of (i) more than fifty percent (50%) of the securities or (ii) such lesser percentage of securities as is the maximum ownership permitted in the country where the entity exists.

“Anniversary Billing Date” means the date of the month of the Effective Date except as provided in this definition. For example, if the Effective Date is May 20, 2012, then the Anniversary Billing Date is the twentieth of the calendar month. If the Anniversary Billing Date is a date in a calendar month which does not exist in each calendar month, then the Anniversary Billing Date shall be the last date of such month (i.e. if the Anniversary Billing Date is the 30th, then in February, the Anniversary Billing Date shall be either February 28 or 29, depending on the year).

“AUP” means the Acceptable Use Policy which is located at www.softlayer.com/about/legal (or such other location as SoftLayer may designate from time to time).

“Customer” means the individual or entity who agrees to the terms of the MSA by clicking or checking the box presented with the MSA, installing and/or using the Services.

“Customer Content” means all data, software and information, including, without limitation, data text, software, scripts, video, sound, music, graphics and images that are created, uploaded or transferred in connection with the Services by Customer or its Affiliates.

“Customer End User” means a Third Party or its Affiliate which is an end user of a Customer Offering.

“Customer Offering” means services created by Customer based in whole or in part on the Services which are used by authorized Third Parties.

“Customer Portal” means the portal at <https://manage.softlayer.com> (or such other location as SoftLayer may designate from time to time) or the SoftLayer Application Programming Interface.

“Effective Date” means the date on which the Customer accepts the MSA by clicking or checking the box presented with the MSA, installing and/or using the Services.

“Feedback” means any and all suggestions, comments, improvements, or other feedback about the Services that Customer or any Affiliate provides to SoftLayer either directly or indirectly via a SoftLayer-controlled web site.

“Flow-Through Provisions” mean the terms of agreements for services provided by Third Parties which are included in the MSA as required by providers of those services. The Flow-Through Provisions apply only to the relevant services provided by Third Parties. Such services provided by Third Parties are part of the Services and are subject to the terms of the MSA as well as the Flow-Through Provisions.

“Hourly Services” means the Services that SoftLayer offers on an hourly basis.

“Initial Term” means the period commencing on the Effective Date until the next Anniversary Billing Date, unless terminated as provided in Section 16.

“IP Address Policy” means the policy governing the use and provision of any IP Addresses which is located at www.softlayer.com/about/legal (or such other location as SoftLayer may designate from time to time).

“MSA” has the meaning set forth in the recitals.

“Order” means an order for a Service which may include a new order for a Service or an upgrade or a downgrade of a Service. The Order must be placed through the Customer Portal or such other method designated by SoftLayer from time to time. Orders do not apply to Third Party Services.

“PII” means information that can be used to identify, contact, or locate a single person or that can be used with other sources to uniquely identify a single individual.

“Privacy Agreement” means the terms governing the use of PII which is located at www.softlayer.com/about/legal (or such other location as SoftLayer may designate from time to time).

“Private Network” means the term as described in the AUP.

“Public Network” means the term as described in the AUP.

“Renewal Term” means the period commencing after the last day of the Initial Term or the Renewal Term and extending until the next Anniversary Billing Date unless terminated as provided in Section 16.

“Services” has the meaning set forth in the recitals.

“Service Level Agreement” means the Service Level Agreement which is located at www.softlayer.com/about/legal (or such other location as SoftLayer may designate from time to time).

“Site” means www.softlayer.com (or such other location as SoftLayer may designate from time to time).

“SLA Credits” mean the credits for applicable qualifying service downtime as described in the Service Level Agreement.

“SoftLayer” has the meaning set forth in the recitals.

“Term” means the term as set forth in Section 16.

Terms of Service (“TOS”)

“Third Party” means an individual or an entity which is not a Customer, SoftLayer, or an Affiliate of SoftLayer.

“Third Party Services” mean services which are provided by Third Parties directly to Customer. The definition of Services does not include Third Party Services.

“TOS” means the terms of service for the Services.

“TPS Agreements” mean agreements for Third Party Services which are directly between the Customer and the provider of the Third Party Services. These agreements are separate and independent from the MSA and SoftLayer is not a party to these agreements.

2. SOFTLAYER’S OBLIGATIONS.

2.1 Provision of Services. Contingent on SoftLayer’s acceptance of an Order and subject to the terms of the MSA, SoftLayer agrees to use reasonable efforts to provide the Services subject to the terms of Service Level Agreements. SoftLayer retains the right to reject the request for Services by any individual or entity in its sole discretion. SoftLayer may change, discontinue, add, modify, re-price or remove features or functionality from the Services upon notice to Customer provided through the Customer Portal. It is the Customer’s responsibility to review the Customer Portal for such notices on a frequent basis. If Customer continues to use the Services following any such modification, such use will be deemed acceptance of such modification by Customer. The Third Party Services are provided by the relevant Third Parties and SoftLayer is not responsible for the provision of Third Party Services.

2.2 Age. Customer must be at least 18 years of age or otherwise have the legal capacity to order Services. If Customer is ordering Services on behalf of an employer, company, or other legal entity, Customer represents and warrants that it has the legal right and authority to order Services and be bound to this MSA.

3. PRIVACY.

3.1 Collection of PII. The collection and use of PII is governed by the Privacy Agreement.

4. USE OF AND ACCESS TO THE SERVICES.

4.1 Ordering and Modification of Services. Customer may order Services and all upgrades to such Services through the Customer Portal or as otherwise designated by SoftLayer. SoftLayer may accept such Orders in its sole discretion and shall give notice to Customer of acceptance of such Order through the Customer Portal. For downgrades or cancellation of Services, SoftLayer requires a written cancellation notice by cancellation ticket in accordance with the procedures in the Customer Portal and through the Customer Portal a minimum of 24 hours prior to 00:00:01 CST (GMT-6) on the Anniversary Billing Date for downgrades or discontinuance of Services. The failure to provide the required 24 hours written notice will result in the downgrade or discontinuance of Services being effective on the following Anniversary Billing Date and Customer will be charged for the Services during the relevant Renewal Term. Any Services cancelled prior to such 24 hour period will remain accessible to Customer until the automated process reclaims the server on the Anniversary Billing Date.

4.2 Rights to Use Services. Subject to the terms and conditions of this MSA (including the Term), SoftLayer grants Customer a non-exclusive, non-transferable, non-sublicenseable (except to the extent required to exercise rights under Section 4.2(b)), revocable right in the Services solely to: (a) use and access the Services for internal purposes; and (b) use the Services to create, offer and provide the Customer Offerings.

4.3 Customer Obligations. Customer agrees to do each of the following: (i) comply with all applicable laws, rules and regulations, including, without limitation, the Foreign Corrupt Practices Act international anti-corruption laws and the Digital Millennium Copyright Act and intellectual property laws; (ii) pay the fees for the Services when due; (iii) use reasonable security precautions for providing access to the Services by its employees or other individuals to whom it provides access; (iv) cooperate with SoftLayer’s or its Affiliate’s investigation of outages, security problems, and any suspected breach of the MSA; (v) comply with all license terms or terms of use for any software, content, service or website (including Customer Content) which Customer uses or accesses when using the Services; (vi) give SoftLayer true, accurate, current, and complete Account Information; (vii) keep Customer’s Account Information up to date; (viii) be responsible for the use of the Services by Customer and Customer End Users and any other person to whom Customer has given access to the Services or Customer Offering; (ix) comply with the TPS Agreements; (ix) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and immediately notify SoftLayer of any known or suspected unauthorized use of Customer’s account, the Services or any other breach of security; and (xi) where the Customer provides Customer Offering as permitted under this Agreement, Customer must enter into an agreement with Customer’s End User which shall include the relevant terms of this Agreement and release SoftLayer and its Affiliates from any and all liability for damages or losses Customer’s End Users may incur as a result of using the Customer Offering. Customer may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, Customer may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or Class III medical devices under the Federal Food, Drug and Cosmetic Act. Customer may not resell any of the Services alone to any Third Party without first entering into a reseller agreement with SoftLayer.

4.4 Special Terms for Third Party Services. To the extent Customer orders Third Party Services under TPS Agreements, SoftLayer is not responsible for such Third Party Services and the provider of the Third Party Service is solely responsible for providing such Third Party Services. However, the Customer also agrees that the following terms of the TOS apply to such Third Party Services: Sections 8, 9, 10, 11, 15 and 16.

5. PAYMENT.

5.1 Fees. All fees for the provision of Services (except as provided below for Additional Service Fees, Hourly Service Fees and One Time Fees) are due in advance of the first day of the relevant term. For example, the fees for such Services during the Initial Term shall be due on the Effective Date or before the provision of Services. The fees for the Services for Renewal Term would be due on or prior to the Anniversary Billing Date for such Renewal Term. The amount due may be adjusted by addition of Services, upgrade of Services, discontinuance of Services or downgrade of Services and through the use of SLA Credits. The fees for additional or upgraded Services for which the Order is accepted on the Anniversary Billing Date will be due on the Anniversary Billing Date. The fees for additional or upgraded Services for which the Order is accepted after an Anniversary Billing Date will be pro-rated on a calendar day basis to the next Anniversary Billing Date and billed as a one-time pro-rata charge on the next Anniversary Billing Date. Such fees will be due for the following Renewal Terms until cancelled as provided in Section 4.1.

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5.2 Additional Service Fees/Hourly Service Fees/One Time Fees. For fees for additional services such as Content Delivery Network (CDN) overages, bandwidth use overages, backup overages and VMware use (including archive storage), payment shall be due on the next Anniversary Billing Date. For Orders for Hourly Services, Customer shall specify the period of time for which the Hourly Services are requested in minimum increments of one hour and payment shall be due on the next Anniversary Billing Date. One time fees, such as setup fees, bandwidth, storage, administrative fees and late fees, are due and payable when invoiced, and/or as agreed by SoftLayer through the Customer Portal.

5.3 Payment Methods. The payment shall be made by the credit card maintained on file with SoftLayer, automatic file transfer or such other method as approved by SoftLayer. For methods such as credit card, the payment of fees shall be automatic on the due date.

5.4 Taxes. All prices and fees specified in or referred to in this MSA are stated exclusive of any tax, including withholding tax, sales, use, value added, levies, import and custom duties, excise or other similar or equivalent taxes imposed on the supply of Services. Any sales, use, levies, excise, withholding taxes or similar charges, direct or indirect, applicable or to become applicable, which are levied as a result of the supply of the Services shall be paid by the Customer. Neither party shall be liable for the other party's taxes based on income. If withholding tax applies to any payments for Services made under this MSA, the Customer may deduct such taxes and shall pay such taxes to the appropriate tax authority; provided that Customer shall provide SoftLayer with an official receipt for any such taxes withheld and must notify SoftLayer prior to payment that withholding tax is required to be paid and Customer shall pay to SoftLayer any additional amount to ensure that SoftLayer receives the full amount of the invoice. If SoftLayer has the legal obligation to pay or collect taxes for which Customer is responsible under this paragraph, the appropriate amount shall be charged to and paid by Customer in addition to the amount of the invoice, unless Customer provides SoftLayer with a valid tax exemption certificate authorized by the appropriate taxing authority. The parties undertake to cooperate, where possible, to minimize the amount of withholding tax due by making advance clearance applications under the relevant double taxation treaties (where applicable) to the relevant tax authority to reduce the rate of withholding tax or exempt entirely this amount if applicable. In any event, the Customer undertakes to account for any tax withheld to the tax authorities on a timely basis.

5.5 SLA Credits. SLA Credits, if issued to Customer's account, shall be used only to offset future charges for certain Services as provided in the Service Level Agreement. SLA Credits may not be sold, converted to cash or transferred to Third Parties or Affiliates. SLA Credits shall expire on the termination or expiration of the MSA.

5.6 Additional Fees. The Customer's failure to pay any fees on the due date shall result in incurring a late fee of \$20. If SoftLayer has suspended the Customer's access to the Services over the Public Network as provided in Section 15, the Customer shall incur a \$50 reconnection fee. Such fees shall be due upon receipt, and SoftLayer will not reconnect any Services to the Customer until full payment of such fees.

5.7 Refunds & Disputes. All fees paid for Services to SoftLayer are non-refundable. If the Customer believes that the bills are in error, the Customer's sole and exclusive remedy is to seek SLA credits through the Customer Portal by opening an accounting ticket to give notice to SoftLayer within 30 days of the receipt of the disputed bill. Any invoice not disputed by Customer in accordance with Section 5.7 within 30 days of receipt of the invoice shall be conclusively accepted by Customer as correct. Customer shall not chargeback any credit card payments to SoftLayer and any such chargeback will result in an additional payment to SoftLayer of up to \$500 which is a reasonable estimate of SoftLayer's additional administrative costs. Customer is responsible for any fees and costs (including, but not limited to, reasonable attorneys' fees, court costs and collection agency fees) incurred by SoftLayer in enforcing collection of fees.

6. OWNERSHIP OF SITE.

Customer hereby acknowledges and agrees that SoftLayer (or its licensors) own all legal right, title and interest in and to the Site and the Services provided by SoftLayer, including, without limitation, any intellectual property or other proprietary rights which subsist in the Site and Services (whether such rights are registered or unregistered, and wherever in the world those rights may exist). As between Customer and SoftLayer, all materials on the Site, including, but not limited to, graphics, user and visual interfaces, images, software, applications, and text, as well as the design, structure, selection, coordination, expression, "look and feel", and arrangement of the Site and its content (except for any Customer Content), and the domain names, trademarks, service marks, proprietary logos and other distinctive brand features found on the Site, are all owned by SoftLayer or its licensors.

7. SECURITY.

SoftLayer agrees to maintain reasonable and appropriate measures related to physical security to protect Customer Content. Other than responsibility for physical security, Customer shall be solely responsible for data maintenance, integrity, retention, security, and backup of the Customer Content. If Customer transfers or is otherwise involved in the transfer of any Customer Content (whether in connection with its business or otherwise) over the Public Network or Private Networks, then Customer is solely responsible for compliance with any applicable laws, rules and regulations in any and all applicable regions or countries regarding the security, privacy, legality and/or safe handling of such Customer Content.

8. INDEMNIFICATION BY CUSTOMER.

Customer hereby agrees to indemnify, defend and hold harmless SoftLayer and its Affiliates, licensors and providers of Third Party Services, and their respective directors, officers, employees, contractors, agents, successors, and assigns, (collectively, the "SoftLayer Parties") (SoftLayer and each of the SoftLayer Parties an "Indemnified Party"), from and against any and all liability (including, without limitation, attorneys' fees and costs) incurred by the Indemnified Parties in connection with any actual or alleged claim ("Claim") arising out of: (a) Customer's use of the Services or Third Party Services; (b) any breach or alleged breach by Customer of this MSA; (c) any breach or alleged breach by Customer including any person given access or Customer End Users of a Third Party's rights, including, without limitation, any actual or alleged infringement or misappropriation of a Third Party's copyright, trade secret, patent, trademark, privacy, publication or other proprietary right; (d) any damage caused by or alleged to have been caused by Customer or Customer End Users to the Site or Services; or (e) any actual or alleged violation or non-compliance by Customer or Customer End Users with any applicable law, court order, rule or regulation in any jurisdiction. The counsel which Customer selects for the defense or settlement of a Claim must be approved in writing in advance by SoftLayer prior to such counsel being engaged to represent the Indemnified Parties. Customer shall not in any event consent to any judgment, settlement, attachment, or lien, or any other act adverse to the interests of SoftLayer or any SoftLayer Parties without the prior written consent of SoftLayer and/or applicable SoftLayer Parties. Customer and Customer's counsel will cooperate as fully as reasonably required, and provide such information as reasonably requested, by the SoftLayer or the SoftLayer Parties in the defense or settlement of any such matter.

Terms of Service (“TOS”)

9. DISCLAIMER OF WARRANTIES.

EXCEPT AS REQUIRED BY LAW CUSTOMER'S USE OF THE SITE AND SERVICES IS ENTIRELY AT CUSTOMER'S OWN DISCRETION AND RISK. THE SITE AND SERVICES ARE FURNISHED BY SOFTLAYER “AS IS” AND WITHOUT WARRANTIES OR CONDITIONS, STATUTORY OR OTHERWISE, OF ANY KIND. SOFTLAYER; (A) EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE; (B) DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THEIR OPERATION WILL BE TIMELY, UNINTERRUPTED, SECURE, OR ERROR-FREE OR THAT ANY DEFECTS WILL BE CORRECTED; AND (C) DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS OR CONDITIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICES IN TERMS OF ITS ACCURACY, RELIABILITY, TIMELINESS, COMPLETENESS, OR OTHERWISE. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR ITS AND CUSTOMER END USERS' USE OF THE SERVICES.

10. DISCLAIMER OF CONSEQUENTIAL DAMAGES.

EXCEPT AS REQUIRED BY LAW IN NO EVENT WILL SOFTLAYER BE LIABLE TO CUSTOMER, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, COMPENSATION, REIMBURSEMENT OR DAMAGES IN CONNECTION WITH, ARISING OUT OF, OR RELATING TO, THE USE, OR LOSS OF USE OF, THE SERVICES, LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF, OR DAMAGE TO, DATA OR CONTENT, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, SUBSEQUENT OR OTHER COMMERCIAL LOSS, OR FOR ANY OTHER REASON OF ANY KIND, WHETHER BASED ON CONTRACT OR TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY), EVEN IF SOFTLAYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. LIMITATION OF LIABILITY.

EXCEPT AS REQUIRED BY LAW SOFTLAYER WILL NOT BE LIABLE TO CUSTOMER FOR DAMAGES FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY RELATED TO THE SITE OR SERVICES. IF, NOTWITHSTANDING THE FOREGOING, SOFTLAYER IS FOUND TO BE LIABLE TO CUSTOMER FOR ANY DAMAGE OR LOSS WHICH ARISES UNDER OR IN CONNECTION WITH THE SERVICES, SOFTLAYER'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY THE CUSTOMER FOR THE SERVICES FOR THE SIX MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO SOFTLAYER'S LIABILITY.

12. ALLOCATION OF LIABILITY.

THE PARTIES ACKNOWLEDGE THAT THE DISCLAIMER OF WARRANTIES, DISCLAIMER OF CONSEQUENTIAL DAMAGES AND LIMITATIONS OF LIABILITY IN THE MSA AND IN THE OTHER PROVISIONS OF THIS MSA AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH SOFTLAYER WOULD NOT HAVE ENTERED INTO THIS MSA. SOFTLAYER'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THESE LIMITATIONS.

13. DISPUTE RESOLUTION.

Notwithstanding the provisions for non-payment by Customer, each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this MSA. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this MSA. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring legal action, regardless of form, arising out of or related to this MSA or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse. Notwithstanding the provisions of this Section 13, Customer acknowledges that Customer's breach of Sections 4.2, 4.3 or violation of any terms and conditions of the AUP would cause irreparable injury to SoftLayer and agrees that in the event of any such breach, SoftLayer shall be entitled to seek temporary and preliminary injunctive relief without the necessity of proving actual damages or posting any bond or other security.

14. TRADEMARKS.

Customer hereby grants to SoftLayer a non-exclusive, worldwide, royalty-free, fully paid-up license during the Term to use Customer's trademarks, marks, logos or trade names in connection with SoftLayer's provision of Services (including support of Services) to Customer and to be listed as a customer of the Services by SoftLayer or its designees. The license granted in this Section 14 will include the right of SoftLayer to sublicense its Affiliates and any Third Parties providing all or part of the Services on behalf of SoftLayer to achieve the foregoing.

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15. SUSPENSION.

15.1 Suspension. SoftLayer may suspend provision of Services to Customer without liability if: (i) SoftLayer reasonably believes that the Services are being used (or have been or will be used) by Customer in violation of the MSA or any applicable law, court order, rule or regulation in any jurisdiction; (ii) Customer does not cooperate with SoftLayer's investigation of any suspected violation of the MSA or any applicable law, court order, rule or regulation in any jurisdiction; (iii) SoftLayer reasonably believes that Services provided to Customer have been accessed or manipulated by a Third Party without Customer's consent or in violation of the MSA; (iv) SoftLayer reasonably believes that suspension of the Services is necessary to protect SoftLayer's network or other SoftLayer customers; (v) a payment for the Services is overdue by more than 5 days including the Anniversary Billing Date (and in addition, SoftLayer may, in SoftLayer's sole discretion, continue to make the Services available through the Public Network and may suspend such access to the Private Network if the fees are not paid within 7 days of the due date); (vi) the continued use of the Services by the Customer may adversely impact the Services or the systems or content of any other SoftLayer customer, (vii) SoftLayer reasonably believes that the use of the Services by Customer may subject SoftLayer, its Affiliates, or any Third Party to liability; or (viii) suspension is required by law, statute, regulation, rule or court order. SoftLayer will give Customer reasonable advance notice of a suspension under this paragraph and a chance to cure the grounds on which the suspension are based, unless SoftLayer determines, in SoftLayer's reasonable commercial judgment, that a suspension on shorter or contemporaneous notice is necessary to protect SoftLayer or its other customers from operational, security, or other risk or the suspension is ordered by a court or other judicial body. A violation of the Flow-Through Provision shall be treated the same as a violation of the MSA for this provision. If SoftLayer suspends the Customer's right to access or use any portion or all of the Service:

- a. Customer remains responsible for all fees and charges Customer has incurred through the date of suspension;
- b. Customer remains responsible for any applicable fees and charges for any Services to which Customer has continued to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension;
- c. Customer will not be entitled to any SLA Credits under the Service Level Agreement for any period of suspension; and
- d. at SoftLayer's sole discretion, SoftLayer may terminate Customer's access to Customer Content stored in the Services during a suspension, and SoftLayer shall not be liable to Customer for any damages or losses Customer may incur as a result of such suspension.

16. TERMINATION.

16.1 Term. Except in the case of Hourly Services which are provided based on the number of hours in the Order or as otherwise agreed to by the parties in writing, the term shall commence on the Effective Date and is automatically renewed each Anniversary Billing Date until terminated as provided below.

16.2 Termination for Convenience. Customer may terminate the MSA for convenience at any time as provided in Section 4.1 through the Customer Portal. If Customer terminates this MSA for convenience, Customer shall pay SoftLayer all amounts that would be due within 5 days after such termination. SoftLayer may terminate the MSA for convenience upon providing Customer with notice of non-renewal at least 10 days prior to the expiration of the Initial Term or any Renewal Term.

16.3 Termination for Breach. SoftLayer may terminate the MSA immediately upon notice provided through the Customer Portal if: (i) SoftLayer discovers that the information Customer provided to SoftLayer about Customer's proposed use of the Services or Account Information was inaccurate or incomplete; (ii) if Customer is an individual, Customer was not at least 18 years old or otherwise did not have the legal capacity to enter into the MSA, install, or accept Services at the time Customer submitted the Order, or if Customer is an entity, the individual submitting the Order for Customer did not have the legal right or authority to enter into the MSA, install or accept Services on behalf of the person represented to be the Customer; (iii) Customer payment of any invoiced amount is overdue, and Customer does not pay the undisputed overdue amount within 5 days of the due date; (iv) Customer use of the Services or Customer End Users use of the Customer Offering in violation of this MSA and fails to remedy any violation within 5 days of SoftLayer's written notice; (v) Customer or Customer End User violates the AUP; (vi) Customer's account has been suspended for 30 days or more; (vii) Customer has multiple violations of the MSA; or (viii) Customer fails to comply with any other provision of this MSA and does not remedy the failure within 30 days of SoftLayer notice to Customer describing the failure. SoftLayer will give Customer written notice of termination under this paragraph unless SoftLayer determines, in SoftLayer's reasonable commercial judgment, that a termination on shorter or contemporaneous notice is necessary to protect SoftLayer or its other customers from operational, security, or other risks. A breach of the Flow-Through Provision shall be deemed to be a breach of the MSA.

16.4 Access to Customer Content. The deletion of Customer Content is automatic upon termination or expiration of the MSA. Consequently, unless SoftLayer determines otherwise, Customer will not have access to Customer Content, and SoftLayer may immediately erase or delete Customer Content from its computer infrastructure after the effective date of termination or expiration of this MSA.

16.5 Effect of Termination. Upon expiration or termination of the MSA, Customer must discontinue use of the Services and relinquish use of the IP addresses and server names assigned to Customer by SoftLayer and any other materials provided to Customer by SoftLayer in connection with the Services, including pointing the DNS for Customer domain name(s) away from the Services. SoftLayer will have no obligation to provide any transition services or access to data except as expressly stated in Section 16.4 above.

17. U.S. GOVERNMENT CUSTOMERS AND U.S. GOVERNMENT RIGHTS.

SoftLayer provides the Services for ultimate federal government end use solely in accordance with the following license rights to use, modify, reproduce, release, perform, display, or disclose: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this MSA. This customary commercial license is provided in accordance with the Federal Acquisition Regulation (“FAR”) at 48 C.F.R. 12.211 (Technical Data) and FAR 12.212 (Software) for civilian agencies of the federal government, and, for Department of Defense transactions, the Defense Federal Acquisition Regulation Supplement (“DFARS”) at 48 C.F.R. 252.227-7015 (Technical Data – Commercial Items), 48 C.F.R. 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). This U.S. Government Rights clause, consistent with 48 C.F.R. 12.211, 48 C.F.R. 27.212 (federal civilian agencies) or 48 C.F.R. 227.7202-4 (DoD agencies) is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses U.S. Government rights in computer software, computer software documentation or technical data related to the SoftLayer Commercial Computer Software and Commercial Computer Software Documentation licensed under this MSA or in any contract or subcontract under which this SoftLayer Commercial Computer Software and Commercial Computer Software Documentation is acquired or licensed. If a government agency has a need for rights not conveyed under these terms, it must negotiate with SoftLayer to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in writing and agreed to by SoftLayer in any applicable contract or agreement.

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18. THIRD PARTIES.

Unless otherwise agreed in writing, SoftLayer will provide support only to Customer, not to Customer End User, Customer Affiliate, Third Party or Third Party Affiliate to whom Customer provides access to use the Services or the Customer Offering. There are no Third Party beneficiaries to the Agreement, meaning that Third Parties do not have any rights against either SoftLayer or Customer under the MSA.

19. MISCELLANEOUS.

19.1 Changes to the MSA. As noted in the recitals, SoftLayer may modify the terms and conditions of this MSA as provided below. SoftLayer will notify its Customers through the Customer Portal of any such modifications and all modifications shall be effective upon their posting on the Customer Portal. It is the Customer's responsibility to review the Customer Portal for such modifications on a frequent basis if Customer continues to use the Services following any such modification such use will be deemed acceptance of such modification by Customer. Any modifications requested by Customer to any of the terms of the MSA must be approved in writing by SoftLayer.

19.2 Certain Employment Issues. If Customer's employees or third parties which have been contracted by Customer for rendering contractually agreed services that are in all material respects equivalent to the Services prior to the beginning of this Agreement assert the transfer of their employment relationship or claims thereto against SoftLayer under EU Directive 2001/23/EC or similar national legislation, Customer shall use its best efforts to either prevent the transfer of the employment relationship or to hold off such claims. Customer shall hold harmless and indemnify SoftLayer from all prosecution costs incurred in connection with the transfer prevention as well as from any compensation payments to the employee and fees for any external legal counsel, as well as any and all incurred costs and financial claims of the employee or third party that arise from or are due to a claim of further employment or re-employment. These expenses include costs or salary, health insurance, social security contributions, voluntary and legal pension contributions, company pension scheme, pension funds and any severance costs in line with SoftLayer's standard generally-applicable policy.

19.3 Notices. Customer communications regarding the Services should be sent through the Customer Portal except for the following types of notices: for breach, indemnification, or other non-routine legal matters, Customer should send it by electronic mail and first-class United States mail to:

SoftLayer Technologies, Inc., an IBM Company
ATTN: Legal Department
4849 Alpha Road
Dallas TX 75244
Email: legal@softlayer.com
Phone: 1 (214) 442-0600

SoftLayer's communications regarding the Services and legal notices will be sent through the Customer Portal. Notices are deemed received as of the time delivered. Notices must be given in the English language.

19.4 Export Matters. If Customer chooses to use these Services, Customer does so on its own initiative and is responsible for compliance with applicable laws. Customer agrees to comply with all restrictions and regulations of the U.S. Department of Commerce and any other United States or foreign agencies and authorities in connection with Customer's and Customer End Users' use of these Services and to not, in violation of any laws, transfer, or authorize the transfer, of any Services (a) into or for the benefit of an entity located in any U.S. and/or U.N. embargoed countries or (b) to anyone on the U.S. Treasury Department's List of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders or Entity List of proliferation concern, or the U.S. State Department's Debarred Parties List. By using these Services, Customer represents and warrants that Customer and Customer End Users are not located in, under the control of, or a national or resident of any such country or on any such list. In addition, Customer and Customer End Users may not use the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D: 4 and D: 3, as set forth in Supplement No. 1 to the Part 740 of the United States Export Administration Regulations. Customer assumes responsibility for compliance with laws and regulations applicable to export, re-export or import of products, technology or technical data provided hereunder and for obtaining required export and import authorizations. Customer and Customer End Users will not transfer to or through the Services any data, materials or other items controlled for export under the International Traffic in Arms Regulations (“ITAR Data”) or other applicable laws unless SoftLayer has agreed to the transfer and (i) Customer has provided SoftLayer not less than 10 days' prior written notice that ITAR Data will be transferred to or through the Services, (ii) Customer and/or Customer End User has received prior written authorization from the U.S. Government to transfer the ITAR Data to SoftLayer, and (iii) Customer agrees to provide SoftLayer with all necessary assistance to enable SoftLayer to obtain such U.S. Government permission. Customer is responsible, and will reimburse SoftLayer, for all costs, expenses or damages incurred by SoftLayer in connection with Customer and Customer End User transfer of ITAR Data.

19.5 Assignment/Subcontractors. Customer may not assign the MSA or Customer rights and/or delegate Customer obligations under the MSA without SoftLayer's prior written consent. Any assignment or transfer of the MSA by Customer in violation of this section will be void. SoftLayer may assign the MSA to (i) its Affiliates and (ii) any entity as a result of a merger or sale of all or substantially all of the assets of SoftLayer to such entity and such entity agrees in writing to be bound by the terms of the MSA. This MSA will be binding on and inure to the benefit of Customer's and SoftLayer's respective permitted successors and permitted assigns. However, SoftLayer may use Third Parties or Affiliates to provide all or part of the Services. This provision does not apply to the Third Party Services which are governed by separate agreements.

19.6 Force Majeure. Except for its rights in Sections 15 or 16, neither SoftLayer nor Customer will be in violation of the Agreement if the failure to perform the obligation is due to an event beyond either party's control, such as significant failure of a part of the power grid, sabotage, denial of service attack, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry; provided however if the force majeure event continues beyond thirty (30) days, the performing party may terminate the MSA.

19.7 Feedback. SoftLayer shall own all right, title and interest in and to Feedback. Upon providing the Feedback, Customer hereby irrevocably assigns to SoftLayer all right, title, and interest in and to the intellectual property rights in the Feedback and agrees to provide SoftLayer with any assistance SoftLayer may require to document, perfect, and maintain SoftLayer's rights in the Feedback.

Contact Us
1-866-398-7638
214-442-0602
softlayer.com

Terms of Service (“TOS”)

19.8 Governing Law, Lawsuits. The MSA is governed by the laws of the State of New York, exclusive of any choice of law principle that would require the application of the law of a different jurisdiction, and the laws of the United States of America, as applicable. The application to the MSA of the United Nations Convention on the International Sale of Goods is excluded in its entirety. The exclusive venue for all disputes arising out of the MSA shall be in the state courts in Westchester County, New York or federal district court for the southern district of New York, and the parties each agree not to bring an action in any other venue. Customer waives all objections to this venue and agrees not to dispute personal jurisdiction or venue in these courts.

19.9 Relationship of the Parties. The parties' relationship is that of independent contractors and not business partners. Neither of the parties is the agent for the other, and neither party has the right to bind the other on any agreement with a Third Party.

19.10 No Waiver. SoftLayer's failure to exercise or delay in exercising any of its rights under this MSA will not constitute a waiver, forfeiture, or modification of such rights. SoftLayer's waiver of any right under this MSA will not constitute a waiver of any other right under this Agreement or of the same right on another occasion. SoftLayer's waiver of any right under this MSA must be in writing.

19.11 Survival. All provisions that by their nature are intended to survive expiration or termination of the MSA shall survive expiration or termination of the MSA.

19.12 Integration. This MSA is the complete and exclusive agreement between Customer and SoftLayer regarding its subject matter and supersedes and replaces any agreement (including without limitation any computer infrastructure hosting and related agreements between Customer and The Planet.com Internet Services, Inc.), understanding, or communication, whether written or oral, prior or contemporaneous.

19.13 Severability. If any part of this MSA is found unenforceable by a court or other tribunal, the rest of the MSA will nonetheless continue in effect, and the parties agree that any court or other tribunal may reform the unenforceable part if it is possible to do so consistent with the material economic incentives of the parties resulting in this MSA.

19.14 Language. The official language of the MSA shall be the English language and no translation into any other language may be used in its interpretation. All services, support, notices, designations, specifications, and communications will be provided in the English language.

Service Level Agreement (“SLA”)

The SLA is incorporated into the MSA and applicable to all Services delivered to Customers. This SLA does not apply to the availability of Third Party Services which are subject to the TPS Agreements. The SLA is binding only on the Customer and SoftLayer and does not apply to any Third Parties, including Customer End Users. **The issuance of SLA Credits (defined below) is the sole and exclusive remedy of Customer and SoftLayer's sole and exclusive obligation, for any failure by SoftLayer to satisfy the requirements set forth in the SLA.**

SLA Credit Claim

To claim a credit the Customer shall follow the Approved Procedure within seven (7) days of the end of the Claimed Outage. The claim will be reviewed by SoftLayer, any credit for Verified Outages (“SLA Credits”) shall be issued as provided below.

“**Claimed Outage**” means the period (measured in minutes) during which Customer claims a Loss of Service during a Measurement Period as reported using the Approved Procedure.

“**Excluded Minutes**” means the period of any outage measured in minutes due to the exclusions set forth in the SLA Credit Exclusion in the Measurement Period.

“**Measurement Period**” means the relevant Initial Term or Renewal Term.

“**Qualifying Outage Minutes**” mean the aggregate of all minutes of a Verified Outage during a Measurement Period, minus any Excluded Minutes in that Measurement Period.

“**Services**” means the services ordered by Customer and accepted by SoftLayer as provided in the MSA.

“**Loss of Services**” means the Customer's inability to connect to the SoftLayer data centers providing the Services to access either (i) the Customer Portal or (ii) a Service. If Customer can connect to one of the SoftLayer data centers to access either the Customer Portal or any of the Services, there is no Loss of Services, whether or not Customer can use the Customer Content.

“**Verified Outage**” means a Claimed Outage for a particular Service that has been verified by SoftLayer using its monitoring logs of accessibility of the SoftLayer data centers or any of the Services.

Services Commitments

Public Network: SoftLayer will use reasonable efforts to provide a service level of 100% for the Public Network.

Private Network: SoftLayer will use reasonable efforts to meet the service level of 100% for the Private Network.

Customer Portal: SoftLayer will use reasonable efforts to meet the service level of 100% for access to the Customer Portal.

Redundant Infrastructure: SoftLayer will use reasonable efforts to meet the service level of 100% for access to the power and HVAC services provided to Customers.

SLA Credits

For each 30 continuous minute period of Qualifying Outage Minutes for a Service in a Measurement Period, SoftLayer shall provide a SLA Credit of 5% of the fees for the relevant Service which was subject to the Loss of Service during the Measurement Period. Any period of Qualifying Outage Minutes for a Service which is less than 30 continuous minutes shall not be eligible for an award of SLA Credits. The Customer cannot combine alleged Claimed Outages for different Services (such as Public Network and Private Network) to meet this calculation. The calculation of SLA Credits for failure of hardware replacement or hardware upgrade shall be as set forth respectively, in Table A and Table B.

Approved Procedure

Customer is eligible to receive SLA Credit, subject to the following process:

1. The Customer's identified master administrative user will report a Claimed Outage by opening a ticket on the Customer Portal. The ticket must include Service type, IP Address, dates and times, error messages received (if any), contact information, and full description of the interruption of Service including logs, if applicable.
2. In order to receive a SLA Credit, Customer must submit a report of Claimed Outage to the Customer Portal within seven (7) days of the end of the Claimed Outage after the technical issues have been resolved.
3. SoftLayer will review Claimed Outages against Verified Outages.
4. SoftLayer's determination of SLA Credits is final.
5. Customer agrees to pay all invoices in full while a Claimed Outage is being reviewed or SLA Credit is being determined.
6. SoftLayer will communicate the SLA Credits to Customer through SoftLayer accounting and the ticket will be updated, provided that, the SLA Credit may not be used to reduce the payments due in a Renewal Term below zero. SoftLayer will apply the SLA Credits to the Customer's future invoices for the relevant Services subject to SoftLayer's standard policies.

Ineligible Customers

Customers who at the time of the report of the Claimed Outage are not current on their payment of the fees for the Services do not qualify for SLA Credits for such Claimed Outages. In addition, Customers who have not paid their fees when due for the Services three or more times in the previous twelve calendar months do not qualify for SLA Credits.

Service Level Agreement (“SLA”)

Use of SLA Credits

SLA Credits may be used solely for future payments due for the particular Service or failure of other obligations (such as hardware) for which the Service Credits are issued. The SLA Credits may not be sold or transferred to other parties. SLA Credits may not be used until any Customer violations of the MSA are resolved to SoftLayer's reasonable satisfaction. Any Customer making false or duplicative claims for Claimed Outages will incur a one-time charge of \$50 per incident for such claims. False or duplicative claims are also a violation of the MSA and may, in SoftLayer's sole discretion, result in a suspension of Services. SLA Credits shall expire on the termination or expiration of the MSA.

SLA Credit Exclusion

Service Level Credits do not apply for periods during which the Services are not available for the following reasons:

- SoftLayer or its third party service providers performing system upgrades, enhancements and routine maintenance activities which are announced on the Customer Portal upon two days advance notice or for maintenance determined by SoftLayer to be an emergency upon notice provided through the Customer Portal (“Scheduled Maintenance”);
- Customer use of the Services or any Customer End User's use of the Customer Offering in violation of the MSA;
- Issues relating to Customer Content;
- Problems with Customer's access to Internet;
- System administration, commands, file transfers performed by Customer representatives;
- Events described in the Force Majeure provision;
- Suspension of Customer's access to the Services as provided in the MSA;
- Violation of the AUP;
- Problems caused by Customer's use of the Services or any Customer End User's use of the Customer Offering after SoftLayer advised Customer or any Customer End User to modify such use, if Customer or any Customer End User did not modify its use as advised;
- Problems arising from Customer or any Third Party's software, hardware, or other technology or equipment.

Special Obligations relating to Hardware Replacement and Hardware Upgrades

Hardware Replacement: SoftLayer will use reasonable efforts to replace failed hardware and hardware components located within our data centers at a service level of two hours after SoftLayer verification of Customer's notification in the Customer Portal ticketing system of a hardware failure. This response period does not include time required to reload the operating system or applications. If the installation does not meet this service level, Customer shall be eligible for SLA Credits as provided in Table A below for the future fees directly related to the hardware if the Customer follows the Approved Procedure.

Hardware Upgrades: SoftLayer will use reasonable efforts to ensure that all planned hardware upgrades will commence and be completed at a service level within two hours of hardware upgrade maintenance periods that have been scheduled and confirmed in advance through the online ticketing system in the Customer Portal. This response period does not include time required to reload the operating system or applications. If the installation does not meet this service level, Customer shall be eligible for SLA Credits as provided in Table B below for the future fees directly related to the hardware upgrade if the Customer follows the Approved Procedure.

Table A: Hardware Replacement

Table B: Hardware Upgrade

| Response Period | SLA Credit |
|------------------|------------------------------|
| 2 hours or less | N/A |
| 2.1 to 6 hours | Twenty Percent (“20%”) |
| 6.1 to 10 hours | Forty Percent (“40%”) |
| 10.1 to 14 hours | Sixty Percent (“60%”) |
| 14.1 to 18 hours | Eighty Percent (“80%”) |
| 18 hours + | One Hundred Percent (“100%”) |

| Response Period | SLA Credit |
|------------------|------------------------------|
| 2 hours or less | N/A |
| 2.1 to 6 hours | Twenty Percent (“20%”) |
| 6.1 to 10 hours | Forty Percent (“40%”) |
| 10.1 to 14 hours | Sixty Percent (“60%”) |
| 14.1 to 18 hours | Eighty Percent (“80%”) |
| 18 hours + | One Hundred Percent (“100%”) |

Acceptable Use Policy (“AUP”)

General Statement

SoftLayer is dedicated to the use of the Internet to improve the lives of individuals throughout the world. Our goal is to deliver enterprise quality on-demand IT Services to all of our Customers at a reasonable price and make available the benefits of the Internet as broadly as possible. The purpose of this AUP is to inform all Customers of the acceptable uses of the Services. SoftLayer is committed to encouraging the use of the Internet through its Services and Third Party Services, but such use must be consistent with the laws and regulations governing use of the Internet and must protect the right of its other customers to use its Services. The AUP is designed to achieve these goals. Customer agrees to comply with the AUP and is responsible for the use of the Services and Third Party Services by all entities and individuals whom Customer permits to use the Services, Third Party Services or the Customer Offering. In addition to its rights under Section 19.1 of the Terms of Service, SoftLayer has the right to change or modify the terms of the AUP at any time, effective when posted to the Customer Portal. Customer's use of the Services or Third Party Services after changes to the AUP are posted shall constitute acceptance of any changed or additional terms.

Public Network

The Public Network of SoftLayer provides public Internet access to Customer servers and data storage services on SoftLayer's network. All Customers are granted equal access to the Public Network.

Private Network

The Private Network of SoftLayer provides Customer with secure private network connectivity from Customer's private backend network directly to Customer servers and data storage devices on SoftLayer's internal network and to other Services. Customer may use the Private Network to upload/download content, administer Customer servers and data storage devices, transmit information between Customer servers and data storage devices, transmit information between Customer's private backend servers and Customer servers and data storage devices provided by SoftLayer, administer the Customer Content, retrieve data, access server consoles, and otherwise manage the Customer Content. The Private Network can also be utilized for access during periods of temporary suspension of Services to Customer as provided under the MSA.

IP Addresses

The IP Address Policy (as described in the Terms of Services) which may be changed from time to time at SoftLayer's sole discretion, is incorporated into this MSA by reference. Customer acknowledges and agrees to adhere to the IP Address Policy. All IP Addresses assigned to Customer are owned and managed by SoftLayer. Such IP Addresses are non-transferable, and Customer retains no ownership or transfer rights to such IP Addresses. All IP Addresses are assigned by the SoftLayer engineering team on a per VLAN, per server basis. Attempted use by Customer of any unallocated IP Address or any IP Addresses on VLANs not assigned to Customer is a violation of this AUP.

Prohibited Uses

The following list provides a number of general prohibited uses of the Services and/or Third Party Services that are violations of this AUP. Please note that the following list does not represent a comprehensive or complete list of all prohibited uses.

1. **Unlawful Activities:** The Services and/or Third Party Services shall not be used in violation of any criminal, civil or administrative violation of any applicable local, state, provincial, federal, national or international law, treaty, court order, ordinance, regulation or administrative rule. This includes, but is not limited to:
 - a. Child pornography
 - b. Unlawful gambling activities
 - c. Threats, harassment and abuse of any individual, organization or business
 - d. Fraudulent activities
 - e. Terrorist websites or other sites advocating human violence and hate crimes based upon religion, ethnicity or country of origin
 - f. Unlawful high yield investment plans, Ponzi schemes or linking to and or advertising such schemes
2. **Child Pornography:** In particular, the Services and/or Third Party Services shall not be used to publish, submit, receive, upload, download, post, use, copy or otherwise produce, transmit, distribute or store child pornography.
3. **Unsolicited Email:** The use of the Services and/or Third Party Services to send or receive mass unsolicited email (“SPAM”). This prohibition includes the direct sending and receiving of such messages, support of such messages via web page, splash page or other related sites, or the advertisement of such services. The falsifying of packet header, sender, or user information whether in whole or in part to mask the identity of the sender, originator or point of origin or knowingly deleting any author attributions, legal notices or proprietary designations or labels in a file that the Customer mails or sends.
4. **Email Bombing:** The sending, return, bouncing or forwarding of email to specified user(s) in an attempt to interfere with or overflow email services.
5. **Proxy Email:** The use of the Services and/or Third Party Services as a proxy email server to forward email to unrelated Third Parties.
6. **UseNet SPAM:** The use of Services to send, receive, forward, or post UseNet unsolicited email or posts. This includes UseNet services located within the SoftLayer network or unrelated networks of Third Parties.
7. **Hacking:** The use of the Services and/or Third Party Services or hacking, attacking, gaining access to, breaching, circumventing or testing the vulnerability of the user authentication or security of any host, network, server, personal computer, network access and control devices, software or data without express authorization of the owner of the system or network.
8. **Threatening Material or Content:** The Services and/or Third Party Services shall not be used to host, post, transmit, or retransmit any content or material that harasses, or threatens the health or safety of others. In addition, SoftLayer reserves the right to decline to provide Services and/or Third Party Services if the content is determined by SoftLayer to be obscene, indecent, hateful, malicious, racist, defamatory, fraudulent, libelous, treasonous, excessively violent or promoting the use of violence or otherwise harmful to others.

Acceptable Use Policy (“AUP”)

9. **Violation of Intellectual Property Rights:** The Services and/or Third Party Services shall not be used to publish, submit/receive, upload/download, post, use, copy or otherwise reproduce, transmit, retransmit, distribute or store any content/material or to engage in any activity that infringes, misappropriates or otherwise violates the intellectual property rights or privacy or publicity rights of SoftLayer or any other party, including but not limited to any rights protected by any copyright, patent, trademark laws, trade secret, trade dress, right of privacy, right of publicity, moral rights or other intellectual property right now known or later recognized by statute, judicial decision or regulation. Please refer to <http://www.softlayer.com/about/legal> to file complaints or counter notifications related to copyright or trademark claims.
10. **Distribution of Malware:** The storage, distribution, fabrication, or use of malware, including without limitation, virus software, root kits, password crackers, adware, key stroke capture programs and other programs normally used in malicious activity is prohibited. The use of such programs in the normal ordinary course of business, however, may be requested by Customer and approved by SoftLayer on a case by case basis. Example: Security company using the Services to analyze the latest root kit for new security analysis/software.
11. **Phishing:** Any activity designed to collect personal information (name, account numbers, usernames, passwords, etc.) under false pretense. Splash pages, phishing forms, email distribution, proxy email or any activity related to phishing activities may result in the immediate suspension of Customer's account.
12. **Violation of Agreements relating to Third Party Services:** Any activity which violates any TPS Agreements.
13. **Denial of Service:** Any activity to implement or assist in the implementation of denial of service attack. SoftLayer absolutely prohibits the use of Services for the origination, propagation or control of denial of service attacks (“DoS”) or distributed denial of service attacks (“DDoS”). Customers may not utilize the Services to perform DoS or DDoS mitigation activities (such as service proxying or data scrubbing) which may result in attracting inbound denial of service attacks toward the Services. Any relation to DoS or DDoS type activity is a direct violation of SoftLayer's AUP.

Reporting Violation of the Acceptable Use Policy

SoftLayer accepts reports of alleged violations of this AUP via email sent to abuse@softlayer.com. Reports of alleged violations must be verified and must include the name and contact information of the complaining party, and the IP address or website allegedly in violation, and a description of the alleged violation. Unless otherwise required by law, such as the DMCA, SoftLayer owes no duty to Third Parties reporting alleged violations. SoftLayer will review all verified Third Party reports and will take such actions as it deems appropriate in its sole discretion.

SoftLayer will comply with and respond to valid (as SoftLayer determines in its sole discretion) subpoenas, warrants, and/or court orders. If permitted by applicable law or regulation, SoftLayer will forward such subpoenas, warrants, and/or orders to Customer and Customer may respond; however, SoftLayer reserves the right to respond to any such subpoena, warrant and/or order if it is the named party in such subpoena, warrant, and/or order.

Methods of Resolution for Violations of SoftLayer's Acceptable Use Policy

The goal of our Methods of Resolution is to mitigate service interruptions while resolving potential violations under this AUP. Our sales, support and abuse staffs are dedicated to working with the Customer in resolving potential violations, and are available via phone, ticket, or email. The Methods of Resolution below is provided for informational purposes only and forms the framework and guidance with respect to resolving potential violations, but in the event of any conflicts between the Acceptable Use Policy (in particular its enforcement) and Terms of Services, the Terms of Services shall control. Timing for resolution differs according to the degree of the violation, the nature of the violation, involvement of law enforcement, involvement of third party litigation, or other related factors.

Step 1: First alleged violation of AUP. A ticket will be generated under SoftLayer to provide the Customer's master user with information regarding the potential violation of SoftLayer's AUP. This is often a fact-finding email requiring further information or notifying Customer of the potential violation and the required actions to resolve the issue.

Step 2: Acknowledgement of violation of AUP. A ticket is generated under the Customer's master user account with information specific to the violation. This ticket will also include any additional facts about the situation and will notify Customer of the action required to resolve the violation.

Step 3: Violation of AUP disregarded, not properly addressed, or continuing violation if a ticket has been disregarded, not properly addressed, or resolved by the Customer for a specified period of time. SoftLayer engineers will turn the public network port to the specified dedicated services off. Access to the dedicated services may then be achieved through the secure private service network for Customer resolution. As soon as the violation is addressed, the public access shall be restored and service will continue as normal.

Step 4: Failure to address violation and resolve violation. If Customer fails to address the violation AND fails to resolve the violation, a suspension of services shall occur. This is a last resort for SoftLayer and only results when the Customer completely fails to participate in SoftLayer's resolution process. A permanent suspension of services includes reclamation of all dedicated services and the destruction of Customer's data.

Disclaimer: SoftLayer retains the right, at its sole discretion, to refuse new service to any individual, group, or business. SoftLayer also retains the right to discontinue service to Customers with excessive and/or multiple repeated violations.

Privacy Agreement ("PA")

SoftLayer considers user privacy paramount, and SoftLayer utilizes great care in keeping the information of the users of the Site (including Customers) ("Users" or "You") private and secure. SoftLayer adheres to the U.S.-Swiss Safe Harbor Framework as well as the Safe Harbor Principles as agreed to and set forth by the United States Department of Commerce and the European Union ("EU"), <http://export.gov/safeharbor/>. To demonstrate our firm commitment to privacy, the following agreement has been created to explain our policies and procedures in relation to all data collected. In this Privacy Agreement ("PA") we describe the information that we collect; how we use, disclose, and share your information; and how we protect your information. Capitalized terms not defined in the PA are defined in the Terms of Service. This PA does not apply to Third Party Services which are governed by their own privacy policies.

Types of Data Collected

SoftLayer collects data related to our users through the following methods:

- Automated means such as communication protocols and cookies
- Online registration and online signup forms
- Sales inquiries and transactions
- Online Customer communications
- Offline communications and interactions
- Third party sources of information

Depending upon the method of collection and use, the data collected may include information about the User from forms, registrations and transactions (such as name, title, address, company, phone number and e-mail address), financial/transaction information (such as credit card, card verification value (cvv), and payment information), information about use of Site (such as electronic communications protocols, web pages visited, and cookies) and User preferences and privileges.

Electronic Communications Protocols and Cookies

SoftLayer may receive data from you as part of the communication connection itself through the standard electronic greeting between your computer and our servers. This information often consists of network routing (where you came from), equipment information (browser type), internet protocol address, date and time. At this time our server will also query your computer to see if there are "cookies" previously set by softlayer.com to facilitate log in or other site navigation procedures. A "cookie" is a small piece of information sent by a web server to store in a web browser so it can later be read back from that browser.

Cookies: Some parts of the Site use cookies (including signup forms) to collect information about visitors' use of the Site and to facilitate return visits. The information collected from cookies is tracked to enhance security and/or to improve the functionality of the Site by avoiding duplicate data entry, facilitating navigation, and increasing the relevance of content.

Cookies on the Site may collect the following information: a unique identifier, User preferences and profile information used to personalize the content that is shown, and User information to access SoftLayer's user forums. Some cookies used by softlayer.com may remain on the user's computer after they leave the Site, but the majority is set to expire within thirty ("30") – three hundred sixty five ("365") days. There may be some cookies on certain tools that are of longer duration. Cookies may also be of benefit to you by creating a more streamlined login process, keeping track of shopping cart additions or preserving order information between sessions. In the future, as we enable further customization of the Site, cookies will help in ensuring that information provided to you will be the most relevant to your needs.

Browsers provide you with information and control over cookies. You can set your web browser to alert you when a cookie is being used. You can also get information on the duration of the cookie and what server your data is being returned to. You then have the opportunity to accept or reject the cookie. Additionally, you can set your browser to refuse all cookies or accept only cookies returned to the originating servers. You can generally disable the cookie feature on their browser without affecting their ability to use the Site, except in some cases where cookies are used as an essential security feature or to provide functionality necessary for transaction completion.

Users visiting the website through an IP address that is associated with (a member state of) the European Union ("EU Users") will by default only receive cookies that expire once they leave the website. This may result in reduced website functionality. EU Users may opt-in to the receipt of cookies of a longer duration by giving their consent in a pop-up window or bar shown at the homepage of the website. Following their consent, EU Users will receive all cookies discussed above and full website functionality will be available. EU Users may choose to revoke their consent at any time by deleting all cookies associated with SoftLayer through their browser settings (as discussed above).

We may also engage Third Parties to track and analyze non-personally and personally identifiable website data and to serve advertisements. To do so, we may permit Third Parties to place cookies on devices of Users of our Site, where permitted by law, and, subject to your right to opt-out through the Site "insert link". We use the data collected by such Third Parties to help us administer and improve the quality of the Site and to analyze Site usage. Such Third Parties may combine the information that we provide about you with other information that they have collected. These Third Parties are required to use your information in accordance with this PA.

Customer is solely responsible for any processing or international transfer of all PII in the Customer Content and agrees to comply with all applicable rules, laws and regulations in any and all applicable regions or countries related to the transfer of such PII. To the extent PII is subject to rules, laws, regulations or the like implementing EU Data Protection Directive 95/46/EC, SoftLayer will be considered a "data processor" and will, as such, act on Customer's instructions and implement security measures in accordance with the MSA.

The Data We Collect and How We Use It

SoftLayer collects data from users for the following purposes:

Privacy Agreement (“PA”)

- To engage in transactions for service. Name, address, email, purchase details, and credit card/payment information may be collected and stored as part of the transaction history. The majority of the data collected under this category is contact information. SoftLayer may need to share some of this data (address, payment) with credit card clearing houses, banking institutions, and other similarly situated Agents, who may require the information in order to complete the transaction (as used here, “Agents” are persons or companies who act on behalf of or under the direction of SoftLayer). SoftLayer will not transfer information to any of its Agents unless it first either ascertains that the Agent subscribes to the Safe Harbor Principles or is subject to the EU Directive on Data Protection or another adequacy finding or enters into a written agreement with such Agent requiring that the Agent provide at least the same level of privacy protection as is required by the relevant Safe Harbor Principles.
- To provide future service and support. Information collected for this purpose is both contact data and information related to products and service/support requested. This information is also used to provide service, product update, and similar notices.
- To select content, data may be collected to help create Site content and navigation that is most relevant and user friendly. This includes data collected as a result of site navigation, as well as data provided in forms.
- To respond to user inquiries and requests for information. This data includes registrations for online newsletters, opt-in mailing lists and specific requests for further information.
- To respond to law enforcement organizations, government officials, third parties when compelled by subpoena, court order, or applicable law, or to report or prevent suspected fraudulent or illegal activity in the use of the Services. SoftLayer will notify Customer of the information request or submission as, and if, allowed.
- To our contractors who provide services or perform functions on our behalf.
- To our Affiliates, if we do so their use and disclosure of your PII will be subject to this PA.
- If we are acquired by or merged with another company, if substantially all of our assets are transferred to another company, or as part of a bankruptcy proceeding, we may transfer the information we have collected from you to another entity if applicable.
- To provide various SoftLayer communities, such as resellers, with relevant product alerts and updates. These updates are related to product releases, prices, terms, special offers and associated campaigns. This data is sent when the program member signs up for the relevant program or online account.
- To better tailor marketing to User needs. We may use information from User purchases and User-specified requirements to provide you with timely and pertinent notices of SoftLayer product releases and service developments that address your needs and specified requirements and/or which are similar to products and services previously purchased by the User from SoftLayer.
- To better respond to requests for service or quotes for product and equipment purchase. SoftLayer will pass contact information to the appropriate SoftLayer sales person, or reseller for follow-up related to SoftLayer products or services.
- From referral “tell a friend” function. If a User elects to use our referral service for informing a friend about our Site, we ask them for the friend’s name and email address. SoftLayer will automatically send the friend a one-time email inviting them to visit the Site and send a copy of said e-mail to the User. The e-mail(s) sent shall clearly identify the sender of such email(s). SoftLayer uses this data for the sole purpose of sending this one-time email. Such email sent to a friend at User’s request will not be stored for additional processing.
- As a result of your participation in interactive discussions and public forums. There are parts of the Site that permit you to participate in interactive discussions. Some of these are moderated; all are subject to access for technical reasons. SoftLayer does not control the content that Users post and some may serve as public discussion forums. As in any interactive forum open to many Users, you should carefully consider whether you wish to submit data and should tailor any other content submitted accordingly.

Customer Portal, Customer Customization, Preferences and Opt-Out

New Customers are automatically registered for access at <https://manage.softlayer.com>. The Customer Portal allows Customers the ability to create users, add/delete users, add/delete user privileges and opt in (or out) of Services and mailing lists. The Customer Portal provides the Customers with control over their preferences for electronic information delivery.

SoftLayer has also provided the Customer’s master user the ability to manage the Customer’s Account Information. We maintain the data and allow the Customer’s master user to update it at any time. To change this information, you must be a current Customer and login with a user ID and password and follow the prompts to “update my profile” on the Customer Portal. We continue to expand the profile of Services and information that you may access and update.

Please note that some email communications are not subject to general opt-out. These include communications related to downloads; communications about sales transactions; information about software updates, patches and fixes; disclosures to comply with legal requirements; and network upgrades or other related maintenance for Service.

If an individual’s PII is to be (a) disclosed to a Third Party who is not an Agent; or (b) used for a purpose that is incompatible with the purpose(s) for which it was originally collected or subsequently authorized by the individual, then the individual will be notified prior to such disclosure and may opt-out of having the PII disclosed by responding to the email and/or author of the notification, where such information shall be clearly set forth.

Security

SoftLayer is concerned with the security of the data we have collected and utilizes reasonable measures to prevent unauthorized access to that information. These measures include policies, procedures, employee training, physical access and technical elements relating to data access controls. In addition, SoftLayer uses standard security protocols and mechanisms to facilitate the exchange and the transmission of sensitive data, such as credit card details. SoftLayer does not process PII in a way that is incompatible with the purposes for which it has been collected or subsequently authorized by the individual.

Contact Us
1-866-398-7638
214-442-0602
softlayer.com

Privacy Agreement (“PA”)

In the event that PII is acquired, or is reasonably believed to have been acquired, by an unauthorized person and applicable law requires notification, SoftLayer will notify the affected individual of the breach by email or ticket on the Customer Portal or, if SoftLayer is unable to contact the individual by email or ticket on the Customer Portal, then by regular mail. Notice will be given promptly, consistent with the legitimate needs of law enforcement and any measures necessary for SoftLayer or law enforcement to determine the scope of the breach and to ensure or restore the integrity of the data system. SoftLayer may delay notification if SoftLayer or a law enforcement agency determines that the notification will impede a criminal investigation, and in such case, notification will not be provided unless and until SoftLayer or the agency determines that notification will not compromise the investigation.

Enforcement

SoftLayer has established internal mechanisms to verify its ongoing adherence to its privacy policy, including the Safe Harbor Principles. SoftLayer also encourages individuals covered by this privacy policy to raise any concerns about our processing of personal information by contacting SoftLayer at the address below. SoftLayer will seek to resolve any concerns. SoftLayer has also agreed to participate in the dispute resolution program provided by the European Data Protection Authorities.

Policy Updates

If we are going to use your PII in a manner different from that stated at the time of collection, we will notify you via email. In addition, if we make any material changes in our privacy practices that do not affect the PII already stored in our database, we will notify you by email or post a prominent notice on the Customer Portal notifying users of the change. In some cases, when we post the notice, we will also email users who have opted to receive communications from us, notifying them of the changes in our privacy practices. We may update this policy from time to time to describe how new site features affect our use of your PII and to let you know of new control and preference features that we provide.

Contact Information and Inspection Rights

Questions, concerns or comments about this privacy policy should be addressed to:

SoftLayer Technologies, Inc., an IBM Company
ATTN: Legal Department
4849 Alpha Road
Dallas, TX 75244
Email: legal@softlayer.com
Phone: 1 (214) 442-0600

If at any time you decide that you no longer desire that we hold, use, correct or supplement any of your PII, receive information regarding any PII processed in relation to you or you wish to change the manner in which your PII may be used, please let us know by contacting us as set forth above.

[PLEASE NOTE THAT ADDENDA THAT MAY APPLY TO YOUR MSA ARE PROVIDED BELOW.]

Contact Us
1-866-398-7638
214-442-0602
softlayer.com

APPLE LICENSED APPLICATIONS

NOTE: If Customer downloads or uses any SoftLayer applications ("Licensed Application") that run on the Apple Inc. ("Apple") operating system ("iOS"), such as with the iPhone, iPod touch, iPad or other related device using such iOS, the following terms apply and Customer must agree to and acknowledge these terms in addition to those contained in SoftLayer's Master Services Agreement:

1. Acknowledgement: SoftLayer and Customer acknowledge that the Master Services Agreement ("MSA"), also commonly referred to as the End User License Agreement ("EULA"), is concluded between SoftLayer and Customer only, and not with Apple Inc. ("Apple"), and SoftLayer, not Apple, is solely responsible for the Licensed Application and the content thereof. SoftLayer's MSA requirements and usage rules for Licensed Applications are not less restrictive than the Usage.
Rules set forth for Licensed Applications in, and are not otherwise in conflict with, the App Store terms of service as of the Effective Date, which SoftLayer and Customer acknowledge having had the opportunity to review.
2. Scope of License: The license granted to Customer for the Licensed Application is limited to a non-transferable license to use the Licensed Application on any iOS that Customer owns or controls and as permitted by the Usage Rules set forth in the App Store terms of service (<http://www.apple.com/legal/itunes/appstore/dev/stdeula/>).
3. Maintenance and Support: SoftLayer is solely responsible for providing any maintenance and support services with respect to the Licensed Application, as specified in the EULA, or as required under applicable law. SoftLayer and Customer acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Licensed Application.
4. Warranty: SoftLayer is solely responsible for any product warranties, whether express or implied by law, to the extent not otherwise disclaimed. In the event of any failure of the Licensed Application to conform to any applicable warranty, Customer may notify Apple, and Apple will refund the purchase price for the Licensed Application to Customer; and that, 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.
5. Product Claims: SoftLayer and Customer acknowledge that SoftLayer, not Apple, is responsible for addressing any claims of Customer or any third party relating to the Licensed Application or Customer's possession and/or use of that 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. SoftLayer's MSA does not limit its liability to Customer beyond what is permitted by applicable law.
6. Intellectual Property Rights: SoftLayer and Customer acknowledge that, in the event of any third party claim that the Licensed Application or Customer's possession and use of that Licensed Application infringes that third party's intellectual property rights, SoftLayer and/or Customer, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.
7. Contact Information: Any Customer questions, complaints or claims with respect to the Licensed Application should be directed to:

SoftLayer Technologies, Inc., an IBM Company
ATTN: Sales Department
4849 Alpha Road
Dallas, TX 75244
Email: sales@softlayer.com
Phone: 1 (214) 442-0600

8. Third Party Beneficiary: SoftLayer and Customer acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of the EULA, and that, upon Customer's acceptance of the terms and conditions of the EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce the EULA against Customer as a third party beneficiary thereof.

Contact Us
1-866-398-7638
214-442-0602
softlayer.com

**CONTRACTING PARTY ADDENDUM
(APPLIES TO ANY NON-U.S. BASED CUSTOMER)**

This Contracting Party Addendum ("CP Addendum") is entered into by and among SoftLayer Technologies, Inc., an IBM Company, a Delaware corporation, SoftLayer Dutch Holdings, B.V., an IBM Company, a company incorporated in Amsterdam, Registration Number 52461041 ("SoftLayer Dutch Holdings, B.V."), SoftLayer Technologies Asia Private Limited, an IBM Company, a company incorporated in Singapore, Registration Number 201118816K ("SoftLayer Technologies Asia Private Limited"), and Customer. All capitalized terms used in this CP Addendum that are not defined in this CP Addendum shall have the meanings ascribed to such terms in the MSA.

SoftLayer Technologies, Inc., an IBM Company and Customer are parties to the MSA;

Customer used a non-U.S. billing address to order products and services under the MSA ("Non-U.S. Based Customer" as further described below);

The parties now intend to amend the MSA as provided in this CP Addendum;

NOW THEREFORE, in consideration of the mutual premises contained in this CP Addendum, the parties agree as follows:

1. Customer represents and warrants that in connection with ordering products and services under the MSA, it provided a billing address outside of the United States and any territory of the United States ("Non-U.S. Based Customer").
2. Each party acknowledges and agrees that SoftLayer Dutch Holdings B.V. or SoftLayer Technologies Asia Private Limited will be the counterparty to any MSA with a Non-U.S. Based Customer. Given that Customer is a Non-U.S. Based Customer, each party further acknowledges and agrees (a) any reference to "SoftLayer Technologies, Inc., an IBM Company" and/or "SoftLayer" shall be replaced to refer to "SoftLayer Dutch Holdings B.V., a company incorporated in Amsterdam, Registration Number 52461041" or "SoftLayer Technologies Asia Private Limited, a company incorporated in Singapore, Registration Number 201118816K", as applicable and (b) any address that refers to "4849 Alpha Road, Dallas, Texas 75244" shall be replaced to refer to "SoftLayer Dutch Holdings, B.V., Paul van Vlissingenstraat 16, 1096BK Amsterdam" or "SoftLayer Technologies Asia Private Limited, 29A International Business Park Singapore 609934", as applicable.
3. This CP Addendum shall be effective as of the effective date of the MSA.
4. In the event of any conflict between the terms of this CP Addendum and the MSA, the terms of this CP Addendum shall control.
5. Except as expressly amended in this CP Addendum, all other terms and conditions of the MSA shall continue in full force and effect in accordance with the provisions of the MSA.

**SINGAPORE PRODUCTS AND SERVICES ADDENDUM
(APPLIES TO ANY CUSTOMER WHETHER AN U.S. BASED OR NON-U.S. BASED CUSTOMER THAT
ORDERS PRODUCTS AND SERVICES FROM A SINGAPORE DATACENTER)**

This Singapore Products and Services Addendum ("SPS Addendum") is entered into by and among SoftLayer Technologies, Inc., an IBM Company, a Delaware corporation, SoftLayer Dutch Holdings B.V., a company incorporated in Amsterdam, Registration Number 5246104, SoftLayer Technologies Asia Private Limited, a company incorporated in Singapore, Registration Number 201118816K, and Customer. All capitalized terms used in this SPS Addendum that are not defined in this SPS Addendum shall have the meanings ascribed to such terms in the MSA.

SoftLayer Technologies, Inc., an IBM Company, SoftLayer Dutch Holdings, B.V., and/or SoftLayer Technologies Asia Private Limited and Customer are parties to the MSA;

Customer has ordered products and services from a SoftLayer Singapore datacenter ("Singapore Services");

The parties now intend to amend the MSA as provided in this SPS Addendum:

NOW THEREFORE, in consideration of the mutual premises contained in this SPS Addendum, the parties agree as follows:

1. The Customer represents and warrants that it has ordered Singapore Services.
2. The parties acknowledge and agree that a United States (which includes any territory of the United States) based Customer ("U.S. Based Customer") and SoftLayer Technologies, Inc., an IBM Company will be the contracting parties to the MSA. The parties further agree that in the event that a U.S. Based Customer obtains Singapore Services, SoftLayer Technologies, Inc., an IBM Company will assign, transfer, and/or subcontract its service provider's duties, rights, and obligations under the MSA to SoftLayer Dutch Holdings B.V., and/or SoftLayer Technologies Asia Private Limited, and such applicable entity shall perform and/or hold such duties, rights, and obligations under the MSA.
3. In the event that any of the Singapore Services are within the scope of Singapore's Telecom Competition Code 2005 ("Telco Code"), each party acknowledges and agrees that:
 - a. Section 16 of the TOS is hereby amended to include Section 16.6, and Section 16.6 of the TOS will read in its entirety as follows: "16.6 Customer acknowledges and agrees that each of Customer's obligations described in this MSA is a material and essential obligation of Customer; that nonperformance of such obligations will adversely and substantially affect SoftLayer; and that exercise by SoftLayer of the rights and remedies set forth in this MSA is appropriate and reasonable."
 - b. Section 5.7 of the TOS ("Refunds & Disputes") is hereby amended so that it reads, in its entirety, as follows: "5.7 Refunds & Disputes: The parties acknowledge that Customer is responsible for paying SoftLayer for all Services ordered and/or engaged under this MSA and Customer is not responsible for paying for products or services and/or engagements that Customer did not order or consent to receive under this MSA. All fees paid for Services to SoftLayer are non-refundable. If the Customer believes that the bills are in error, the Customer's sole and exclusive remedy is to seek SLA credits through the Customer Portal by opening an accounting ticket to give notice to SoftLayer within 30 days of the receipt of the disputed bill. Any invoice not disputed by Customer in accordance with Section 5.7 within 30 days of receipt of invoice shall be conclusively accepted by Customer as correct. Customer shall not chargeback any credit card payments to SoftLayer and any such chargeback will result in an additional payment to SoftLayer of up to \$500 which is a reasonable estimate of SoftLayer's additional administrative costs. Customer is responsible for any fees and costs (including, but not limited to, reasonable attorneys' fees, court costs and collection agency fees) incurred by SoftLayer in enforcing collection of fees. Customer acknowledges and agrees that the payment provisions and procedures in this MSA are appropriate and reasonable."
 - c. Each party will adhere to the applicable dispute resolutions requirements set forth in the Telco Code.
4. Customer acknowledges that the terms and conditions of the Privacy Agreement of the MSA are appropriate and reasonable and expressly consents to SoftLayer Technologies, Inc., an IBM Company, SoftLayer Dutch Holdings B.V., and/or SoftLayer Technologies Asia Private Limited use of Customer data as set forth in the Privacy Agreement of the MSA.
5. This SPS Addendum shall be effective as of the effective date of the MSA.
6. In the event of any conflict between the terms of this SPS Addendum and the MSA, the terms of this SPS Addendum shall control.
7. Except as expressly amended in this SPS Addendum, all other terms and conditions of the MSA shall continue in full force and effect in accordance with the provisions of the MSA.