

## Terms of Service (“TOS”)

### 1. DEFINITIONS.

“**Account Information**” means billing, contact, payment and 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.

“**Anniversary Billing Date**” means the date of each month that is the Effective Date, unless the Anniversary Billing Date does not exist in a calendar month, in which case it will be the last date of that month (e.g., if the Anniversary Billing Date is the 31st, then in April, the Anniversary Billing Date will be April 30th).

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

“**Customer Content**” means all data, software and information created, uploaded or transferred in connection with the Services by You or on Your behalf, or by Your Customer End Users.

“**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 You, 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 You first install, order and/or begin using the Services.

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

“**Initial Term**” means the period commencing on the Effective Date until the first Anniversary Billing Date.

“**IP Address Policy**” means the policy governing the use and provision of IP addresses, which is located at [www.softlayer.com/about/legal](http://www.softlayer.com/about/legal).

“**PII**” means information that can be used, alone or with other information, to directly or indirectly identify, contact, or locate a single person.

“**Privacy Agreement**” means the terms governing the use of PII, which is located at [www.softlayer.com/about/legal](http://www.softlayer.com/about/legal).

“**Renewal Term**” means the period commencing after the last day of the Initial Term or a Renewal Term and extending until the next Anniversary Billing Date.

“**SLA**” means the Service Level Agreement which is located at [www.softlayer.com/about/legal](http://www.softlayer.com/about/legal).

“**Site**” means [www.softlayer.com](http://www.softlayer.com) (or such other location as SoftLayer may designate).

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

“**SoftLayer**” has the following meanings for purposes of this MSA: (1) if You used a non-U.S. billing address to order the Services, then SoftLayer refers to SoftLayer Dutch Holdings B.V.; (2) if You used a U.S. billing address to order the Services, then SoftLayer refers to SoftLayer Technologies, Inc.

“**Third Party Services**” mean services which are provided by third parties directly to You, such as content delivery network services, which are provided by EdgeCast. The definition of Services does not include Third Party Services.

“**TPS Agreements**” means agreements for Third Party Services. TPS Agreements are separate from the MSA. SoftLayer is not a party to TPS Agreements.

“**You**” means the individual or entity who agrees to the terms of the MSA, and/or who installs and uses the Services.

### 2. SOFTLAYER’S OBLIGATIONS.

**2.1 Provision of Services.** SoftLayer will provide the Services, subject to the terms of the MSA. SoftLayer grants You a non-exclusive, non-transferable, non-sublicenseable, revocable right to: (a) use and access the Services for internal purposes; and (b) use the Services to create, offer and provide Customer Offerings. SoftLayer retains the right to reject a request for Services. SoftLayer may change, discontinue, add, modify, re-price or remove features or functionality from the Services upon notice to You provided through the Customer Portal. It is Your responsibility to review the Customer Portal for such notices on a frequent basis. If You continue to use the Services following any such modification, You will be deemed to have accepted such modification.

### 3 USE OF AND ACCESS TO THE SERVICES.

**3.1 Ordering and Modification of Services.** You may order Services through the Customer Portal, or as otherwise designated by SoftLayer, and SoftLayer will give You notice of acceptance of Your order through the Customer Portal. SoftLayer requires notice of any downgrade or cancellation of Services a minimum of 24 hours prior to 00:00:01 CST (GMT-6) on the Anniversary Billing Date. Notice must be provided by way of a ticket in the Customer Portal that specifies the Services to be cancelled or downgraded. Failure to do so will result in an additional Renewal Term for those Services.

**3.3 Your Obligations.** You agree to: (i) comply with all applicable laws, rules and regulations, including, without limitation, all applicable anti-corruption and intellectual property laws, and the Digital Millennium Copyright Act; (ii) pay the fees for the Services when due; (iii) use reasonable security precautions for providing access to the Services and immediately notify SoftLayer of any known or suspected unauthorized use; (iv) cooperate with SoftLayer’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 which You use or access when using the Services; (vi) keep Account Information current; (vii) be responsible for the use of the Services by You, Customer End Users and other parties to whom You give access to the Services or Customer Offering; (viii) comply with the TPS Agreements; and (ix) where You provide a Customer Offering, enter into an agreement with Your Customer End Users which includes terms necessary to meet your obligations under this Agreement and releases SoftLayer and its Affiliates from liability for damages or losses Customer End Users may incur as a result of using the Customer Offering. You may not use the Services (a) in any situation in which failure or fault of the Services could lead to death or serious bodily injury, or to physical or environmental damage, including but not limited to, use with aircraft or other modes of mass transportation, nuclear or chemical facilities, or Class III medical devices under the Federal Food, Drug and Cosmetic Act; or (b) in connection with offering emergency services (i.e., services necessary for the prevention of death or serious injury, or the protection of public health or local or national security) in the European Economic Area. You may not resell any of the Services alone to any third party without first entering into a reseller agreement with SoftLayer.

**3.4 Special Terms for Third Party Services.** To the extent You order Third Party Services under TPS Agreements, the Third Party Service provider is solely responsible for such services; however, Sections 7, 8, 9, 10, 12 and 13 of this MSA still apply.

### 4. PAYMENT.

**4.1 Fees.** All fees for the provision of Services (except as provided in 4.2 below) are due in advance of the first day of the relevant term. For example, the fees for Services during the Initial Term are due on or before the Effective Date. The fees Services for each Renewal Term are due on or before the Anniversary Billing Date. The amount due may be adjusted by the addition, upgrade, discontinuance or downgrade of Services, or 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 and billed as a one-time pro-rata charge, then will be due for successive Renewal Terms until cancelled.

## Terms of Service (“TOS”)

**4.2 Additional Service Fees/Hourly Service Fees/One Time Fees.** Fees for additional services, such as Content Delivery Network (CDN) overages, bandwidth use overages, and backup overages are due on the next Anniversary Billing Date. You must request Hourly Services in minimum increments of one hour and payment will 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.

**4.3 Payment Methods.** Payment must be made by a credit card maintained on file with SoftLayer, electronic funds transfers or such other method as approved by SoftLayer. For methods such as credit card, the payment of fees will be automatic on the due date.

**4.4 Taxes.** All prices and fees are exclusive of any tax, including withholding, sales, use, excise and value added taxes, levies, import and customs duties or other similar or equivalent taxes. Any such taxes must be paid by You. Neither party shall be liable for the other party's taxes based on income. If withholding tax applies to any payments for Services, You may deduct such taxes and pay them to the appropriate tax authority; provided that You notify SoftLayer prior to payment and You 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 You are responsible, You must pay the appropriate amount in addition to the amount of the invoice, unless You provide SoftLayer with a valid tax exemption certificate. The parties agree to cooperate, where possible, to minimize the amount of withholding tax due, but in any event, You agree to account for any tax withheld to the tax authorities on a timely basis.

**4.5 Additional Fees.** If You fail to pay any fees on the due date, You will be assessed a late fee of \$20. If SoftLayer has suspended Your access to the Services, You will incur a \$50 reconnection fee. Such fees are due upon receipt of notice, and SoftLayer will not reconnect any Services until full payment is made.

**4.6 Refunds & Disputes.** All fees paid for Services are non-refundable. If You believe that any fee for the Services is incorrect, Your exclusive remedy is to seek SLA credits by opening an accounting ticket within 30 days of Your receipt of the disputed bill. Any charges not disputed by You within 30 days of receipt will be deemed conclusively accepted by You. You may 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 You agree is a reasonable estimate of SoftLayer's additional administrative costs. You are 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.

### 5. OWNERSHIP OF SITE.

You acknowledge and agree that SoftLayer (or its licensors) owns all legal rights to the Site and the Services, including 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).

### 6. SECURITY/DATA INTEGRITY.

SoftLayer agrees to maintain reasonable and appropriate measures related to physical security to protect Customer Content. You are solely responsible for maintenance, integrity, retention, security and backup of Your Customer Content. You are solely responsible for compliance with all applicable security and privacy laws, rules and regulations (including any requirements regarding cryptography) in any applicable regions or countries regarding the Customer Content.

### 7. INDEMNIFICATION BY YOU.

You hereby agree to indemnify, defend and hold harmless SoftLayer and its Affiliates, licensors and providers of Third Party Services (collectively, the “SoftLayer Parties”) from all liability (including, without limitation, attorneys' fees and costs) incurred by them in connection with any claim arising out of: (a) Your use of the Services or Third Party Services; (b) any breach or alleged breach by You, anyone You give access to the Services, or any Customer End User, of this MSA, or of a third party's rights, including intellectual property rights; (d) any damage caused by You or Your Customer End Users to the Site or Services; or (e) any actual or alleged violation by You or Your Customer End Users of any applicable law, court order, rule or regulation in any jurisdiction. You agree that You will not engage counsel to represent the SoftLayer Parties, nor consent to any judgment, settlement, or other act adverse to the SoftLayer Parties without their consent, and You will cooperate fully with the SoftLayer Parties in the defense or settlement of any such matter.

### 8. DISCLAIMER OF WARRANTIES.

EXCEPT AS REQUIRED BY LAW, SOFTLAYER: (A) EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE; (B) DOES NOT WARRANT THAT THE SERVICES WILL MEET YOUR 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 REGARDING THE USE OF THE SERVICES IN TERMS OF ACCURACY, RELIABILITY, TIMELINESS, COMPLETENESS, OR OTHERWISE. YOU ASSUME TOTAL RESPONSIBILITY FOR USE OF THE SERVICES BY YOU AND YOUR CUSTOMER END USERS.

### 9. DISCLAIMER OF CONSEQUENTIAL DAMAGES.

EXCEPT AS REQUIRED BY LAW, IN NO EVENT WILL SOFTLAYER BE LIABLE TO YOU 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, 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.

### 10. LIMITATION OF LIABILITY.

EXCEPT AS REQUIRED BY LAW, SOFTLAYER WILL NOT BE LIABLE TO YOU FOR DAMAGES FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION. IF SOFTLAYER IS FOUND TO BE LIABLE TO YOU FOR ANY DAMAGES ARISING IN CONNECTION WITH THE SERVICES, SOFTLAYER'S TOTAL CUMULATIVE LIABILITY MAY NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY YOU FOR THE SERVICES FOR THE SIX MONTHS PRIOR TO THE EVENT(S) GIVING RISE TO SOFTLAYER'S LIABILITY.

### 11. DISPUTE RESOLUTION.

The parties will attempt in good faith to resolve all disputes, disagreements, or claims 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 arising out of or related to this MSA more than two years after the cause of action arose; and ii) after such time limit, any such legal action and all respective rights related thereto will lapse. Notwithstanding the above, You acknowledge that Your breach of Section 3.3 or violation of the terms of the AUP would cause irreparable injury to SoftLayer and agree that in the event of any such breach, SoftLayer will be entitled to seek temporary and preliminary injunctive relief without the necessity of proving actual damages or posting any bond or other security. Where required by applicable law, upon request, SoftLayer will provide You with information regarding approved mechanisms for alternative dispute resolution.

## Terms of Service (“TOS”)

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### 12. SUSPENSION.

**12.1 Suspension.** SoftLayer may suspend provision of Services to You without liability if: (i) SoftLayer reasonably believes that the Services are being used by You (or Your authorized users) in violation of the MSA or any applicable law, court order, rule or regulation in any jurisdiction, and/or You fail to cooperate with SoftLayer’s investigation of any such suspected violation; (ii) SoftLayer reasonably believes that Services provided to You have been accessed or manipulated by a third party without Your consent; (iii) SoftLayer reasonably believes that suspension of the Services is necessary to avoid an adverse impact to SoftLayer’s network or other SoftLayer customers; (iv) a payment for the Services is overdue by more than 5 days including the Anniversary Billing Date; (v) SoftLayer reasonably believes that the use of the Services by You may subject SoftLayer, its Affiliates, or any Third Party to liability; or (vi) suspension is required by law, statute, regulation, rule or court order. SoftLayer will give You reasonable advance notice of a suspension, unless SoftLayer determines 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. If SoftLayer suspends Your right to access or use all or any portion of the Services:

- a. You remain responsible for all fees and charges (i) You have incurred through the date of suspension, and (b) for any Services to which You have continued to have access after the date of suspension;
- b. You are not entitled to any SLA Credits for any period of suspension; and
- c. SoftLayer will not be liable for any damages or losses You may incur as a result of Your loss of access to Customer Content during the suspension.

### 13. TERMINATION.

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

**13.2 Termination for Convenience.** You may terminate this MSA for convenience at any time as provided in Section 3.1. If You do so, You must pay SoftLayer all amounts that would be due within 5 days after such termination. SoftLayer may terminate the MSA for convenience upon providing You with notice of non-renewal at least 10 days prior to the expiration of the Initial Term or any Renewal Term.

**13.3 Termination for Breach.** SoftLayer may terminate the MSA immediately upon notice provided through the Customer Portal if: (i) SoftLayer discovers that any information You provided to SoftLayer is inaccurate or incomplete; (ii) You did not have the legal capacity, right or authority to enter into the MSA at the time You submitted the Order; (iii) You fail to pay any undisputed overdue amount within 5 days of the due date; (iv) You or Your Customer End Users use the Services in violation of this MSA and fail to remedy the violation within 5 days of SoftLayer’s written notice; (v) You or Your Customer End User violates the AUP; (vi) Your account has been suspended for 30 days or more; or (vii) You have multiple violations of the MSA. SoftLayer will give You written notice of termination using the Customer Portal unless SoftLayer determines, in its reasonable commercial judgment, that a termination on shorter or contemporaneous notice is necessary to protect SoftLayer or its other customers from operational, security, or other risks.

**13.4 Effect of Termination.** You hereby instruct SoftLayer to delete the Customer Content upon expiration or termination of this MSA, or upon cancellation of a Service upon which Customer Content resides. You understand and agree that deletion of Customer Content will be automatic immediately after the effective date of such termination, expiration or cancellation. You must discontinue use of the Services, and relinquish use of the IP addresses, infrastructure and all other materials provided to You in connection with the Services, including pointing the DNS for Your domain name(s) away from the Services, upon expiration or termination of the MSA.

### 14. 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.

### 15. THIRD PARTIES.

SoftLayer will provide support only to You, not to Customer End Users, Customer Affiliates, or other third parties. There are no third party beneficiaries to this MSA.

### 16. MISCELLANEOUS.

**16.1 Changes to the MSA.** SoftLayer may modify the terms and conditions of this MSA by notifying You through the Customer Portal and all modifications will be effective upon such notice. It is Your responsibility to review the Customer Portal for such notices. Your use of the Services following any such notice will be deemed acceptance of such modifications. Any modifications You request to the MSA must be approved in writing by SoftLayer.

**16.2 Notices.** Communications regarding the Services should be sent in English through the Customer Portal, except for notices of breach, indemnification, or other non-routine legal matters, which should be sent by electronic mail and first-class U.S. mail to the address and email address listed at <http://www.softlayer.com/legal>.

**16.3 Export Matters.** You are responsible for compliance with all applicable laws, and You agree 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 Your 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 a country subject to a U.S. and/or U.N. embargo, 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, You represent and warrant that You and Your 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, You and

## Terms of Service (“TOS”)

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Your 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 Part 740 of the U.S. Export Administration Regulations. You assume 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. You and Your Customer End Users must 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) You have provided SoftLayer at least 10 days’ prior written notice that ITAR Data will be transferred to or through the Services; (ii) You and/or Your Customer End User has received prior written authorization from the U.S. Government to transfer the ITAR Data to SoftLayer; and (iii) You agree to provide SoftLayer with all necessary assistance to enable SoftLayer to obtain such U.S. Government permission. You are responsible for all costs, expenses or damages incurred by SoftLayer in connection with such transfer of ITAR Data.

**16.4 Assignment/Subcontractors.** You may not assign or delegate the MSA or Your rights and obligations thereunder without SoftLayer’s prior written consent. SoftLayer may assign the MSA to (i) its Affiliates or (ii) any entity as a result of a merger or sale of all or substantially all of the assets of SoftLayer. 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.

**16.5 Force Majeure.** Except for its rights in Sections 12 and 13, neither party will be in violation of the MSA if a failure to perform is due to an event beyond the party’s control, such as significant failure of a part of the power grid, sabotage, a denial of service attack, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor actions, 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.

**16.6 Marketing.** You agree that SoftLayer may identify you as a customer of SoftLayer in connection with SoftLayer marketing communications.

**16.7 Governing Law, Lawsuits.** The MSA is governed by the laws of the State of New York. 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 will be in the state courts in Westchester County, New York or the Federal District Court for the Southern District of New York. You waive all objections to this venue and agree not to dispute personal jurisdiction or venue in these courts.

**16.8 Integration.** This MSA is the complete and exclusive agreement between You and SoftLayer regarding the Services and supersedes all other agreements or communication – whether written or oral – pertaining to provision of the Services to You.

**16.9 Business Contact Information.** SoftLayer and its affiliates and subcontractors may process the business contact information of Client, its employees and contractors worldwide for our business relationship, and Client has obtained the necessary consents.

**16.10 Additional terms for Customers with PCI DSS Workloads.** SoftLayer acknowledges that it is responsible for the security of credit cardholder data to the extent that SoftLayer has control of that data, and is responsible for the physical security of the systems that house cardholder data stored there by You. You acknowledge that You are responsible for determining the PCI DSS requirements applicable to You and Your unique workload(s).