

Mass Data Migration Services Agreement

IBM Cloud

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SOFTLAYER

This Mass Data Migration Services Agreement (“Agreement”) between SoftLayer and Client is effective on the date Client accepts the agreement by checking the box presented with the Agreement or by requesting the Services, and is part of Client’s SoftLayer Cloud Services Agreement (“CSA”) and Cloud Services Description (“SD”). If the terms of this Agreement are inconsistent with the CSA or the SD, this Agreement governs.

1. **Data Transfer Process.** Client may order Mass Data Migration Services (the “Services”) through the IBM Cloud Control Portal (the “Portal”) at the price set forth in the Portal subject to the following terms:

- (a) After Client places the Order, SoftLayer will send a portable storage device (“Device”) to the address specified by Client (“Client’s Address”).
- (b) Client will copy Client’s content (data) onto the Device, and the Device will automatically encrypt the data. Client will then ship the Device to the datacenter designated by IBM in the region selected by Client.
- (c) SoftLayer will connect the Device to Client’s specified SoftLayer hardware (“Hardware”), transfer Client’s data from the Device to the SoftLayer Hardware, and delete all data from the Device after the transfer is complete.
- (d) Client is responsible for all shipping, delivery, insurance, taxes and related charges associated with delivery of the Device to Client and to the agreed SoftLayer datacenter.
- (e) Client is not authorized to transfer the device to any address other than the selected SoftLayer datacenter unless approved in advance by the IBM Cloud Global Trade Compliance team. Client’s removal of the Device from the country in which Client’s Address is located¹ will automatically terminate this Agreement, and IBM will deem this a loss of the Device by Client for purposes of Section 5 liability.
- (f) The Device is for the exclusive use of Client for the purpose of the Services, and the Device may not be used for any other purpose. Client may not transfer the Device into the possession of a third party unless approved in advance by the IBM Cloud Global Trade Compliance team.
- (g) Only authorized account users may request the Services.
- (h) Client is solely responsible for and assumes the risk of harm caused by the actions of any third parties authorized by client to assist with transfer of the data, and indemnifies SoftLayer for all damages caused thereby.

2. **The Data You Transfer.** Client represents and warrants that Client has the right and authority to transfer the data onto the Device, and subsequently onto the SoftLayer Hardware; and that these transfer comply with all applicable laws, rules and regulations. Client is solely responsible for backing up all data before it is copied onto the Device, and for retaining that data until Client has verified that transfer of the data was successful and complete. SoftLayer is not responsible for any loss, damage or destruction of data at any point during SoftLayer’s provision of the Services to Client.

3. **The Device.** The Device and all proprietary software, programming, specifications, designs and trademarks remain the exclusive property of SoftLayer throughout the performance of the Service. Client may not disassemble, reverse engineer or otherwise tamper with the Device, nor circumvent or disable any feature of the Device.

4. **Export Control.** Client hereby represents and warrants, for itself and any end user whose data is on the Device, that (a) neither the Device nor the data on the Device is classified as military or dual-use article/data requiring an export license and (b) Client and any Client customer end user providing data to Client are not subject, either directly or indirectly, to any order issued by any government authority preventing IBM from doing business with said party.

5. **Liability and Responsibilities of the Parties.** SoftLayer will use reasonable care in performing the Services, but will be responsible only to the extent of correcting any errors due to gross negligence or willful misconduct. Client acknowledges that Client’s data is automatically encrypted by the Device and that SoftLayer is not responsible for encryption of Client’s data. Client is solely responsible for any harm resulting from (1) failure of the automatic encryption function on the device; and (2) loss, destruction or damage of the Device while in Client’s possession or in transit, in which case Client will be responsible for reimbursing SoftLayer the full replacement value of the Device. No failure or delay on the part of SoftLayer in performing the Services will be considered a material breach of this Agreement, the CSA or the SD. THE LIABILITY OF SOFTLAYER WITH RESPECT TO THIS AGREEMENT TO CLIENT, ITS AFFILIATES, AND END USERS SHALL NOT IN

¹ Clients located in Hong Kong may not remove the Device from the Hong Kong Special Administrative Region.

ANY EVENT EXCEED USD \$1,000.00 AND SHALL NOT INCLUDE ANY CONTINGENT LIABILITY. CLIENT, ON BEHALF OF ITSELF AND ITS END USERS, ASSUMES THE RISK OF ANY HARM RESULTING FROM AN ENCRYPTION FAILURE OF THE DEVICE OR ANY FAILURE TO BACK UP DATA THAT IS STORED ON THE DEVICE AND/OR ON THE SOFTLAYER HARDWARE.

6. **Warranty and Damages.** SOFTLAYER PROVIDES THE SERVICES ON “AS IS” TERMS AND, EXCEPT AS PROVIDED ABOVE, MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOFTLAYER ASSUMES NO RESPONSIBILITY WITH RESPECT TO USE OF THE SERVICES. CLIENT, ON BEHALF OF ITSELF AND ITS END USERS, AGREES THAT SOFTLAYER WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SERVICES. CLIENT BEARS FULL RESPONSIBILITY FOR RISK OF LOSS FOR THE DEVICE(S) AND THE DATA STORED ON THE DEVICE(S) AND ACKNOWLEDGES AND AGREES THAT THE DEVICE(S) ARE PROVIDED “AS IS”.

7. **Indemnity.** CLIENT AGREES TO INDEMNIFY AND HOLD HARMLESS SOFTLAYER AND ITS AFFILIATES, AGENTS, AND EMPLOYEES AGAINST ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, PENALTIES, AND FINES (INCLUDING REASONABLE ATTORNEYS’ FEES AND COURT COSTS) ARISING OUT OF OR RELATED TO THE SERVICES, INCLUDING ANY CLAIMS MADE BY CLIENT’S END USERS, AND ANY THIRD PARTIES.

8. **Termination and Expiration.** Either party may terminate this Agreement with or without cause at any time effective on written notice. The term of this Agreement will automatically terminate upon the termination or expiration of the CSA and/or the SD.

9. **Miscellaneous.**

- (a) Client is responsible to pay any tax, levy, or any other charge associated with Client’s use of the Services.
- (b) Client may use the Services for the specified period or until SoftLayer withdraws or terminates them. Client may terminate use of the Services at any time.
- (c) SoftLayer may suspend, limit use, change, or withdraw the Services or change these terms at any time, with notice to Client.
- (d) This Agreement is governed by and construed in accordance with the laws of the United States and the State of New York. Exclusive venue and jurisdiction for any dispute arising out of this Agreement is Westchester County, New York.
- (e) This Agreement shall be binding on the parties and their successors. None of the rights and privileges granted under this Agreement shall be assignable by Client without SoftLayer’s prior written approval.

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