

## Cloud Service Agreement

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Using this agreement (CSA), Client may order Cloud Services from SoftLayer. As used in this CSA, "SoftLayer" means either: 1) SoftLayer Technologies, Inc., a Delaware corporation, with its principal address located at Stanford Corporate Centre, 14001 North Dallas Parkway, Suite M100, Dallas, TX 75240, for Clients registering with a principal business address in the U.S. or U.S. territories; or 2) SoftLayer Dutch Holdings B.V., Company No. 52461041, VAT No. NL 8504.55.820.B01, a Netherlands company, with its principal address at Paul van Vlissingenstraat 16, 1096BK Amsterdam, The Netherlands, for Clients registering principal business address outside the U.S. or U.S. territories. This CSA and applicable Attachments and Transaction Documents (TDs) are the complete agreement (Agreement) regarding transactions under the Agreement. If translations of the Agreement are available and there is a conflict, the English version will govern translation.

### Cloud Services

A Cloud Service is an IBM branded offering hosted or managed by SoftLayer or International Business Machines Corporation (IBM) and made available via a network. Each Cloud Service is described in an Attachment or a TD, such as a Service Description (references to "IBM" in an Attachment or TD mean SoftLayer, as the selling or licensing party for the Cloud Service). Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance. Technical support and service level commitments, if applicable, are specified in an Attachment or TD.

Client accepts an Attachment or TD by ordering, enrolling, using, or making payment for the Cloud Service. When SoftLayer accepts Client's order, SoftLayer provides Client the authorizations specified in the TD. The term, including any renewal term, for a Cloud Service is described in an Attachment or TD.

SoftLayer or IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Cloud Services and generally available user guides and documentation to support Client's use of the Cloud Service. Client will provide hardware, software and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates. An Attachment or TD may have additional Client responsibilities.

Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any user who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly. Unless expressly provided in an Attachment or TD, Client is not authorized to use a Cloud Service to provide hosting or timesharing services to any third party.

### Data Protection

Each Cloud Service is designed to protect content that Client inputs into the Cloud Service. Except for account data, Client is the sole controller for any personal data included in the content, and appoints SoftLayer as a processor to process such personal data (as those terms are defined in EU Directive 95/46/EC). Except as specified in an Attachment or TD and if SoftLayer has access to content, SoftLayer will treat content as confidential by not disclosing content other than to SoftLayer or SoftLayer affiliate employees and contractors for use only to the extent needed to deliver the Cloud Service. SoftLayer will destroy it upon the expiration or cancellation of the Cloud Service, or earlier upon Client's request. SoftLayer may charge for certain activities performed at Client's request.

Client is responsible for obtaining all necessary permissions to use, provide, store, and process content in the Cloud Service and grants SoftLayer permission to do the same. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by SoftLayer for an offering. Client will not input or provide such content unless SoftLayer has first agreed in writing to implement additional required security measures.

The Attachment or TD for each Cloud Service describes the security functions and features of the Cloud Service. By using the Cloud Service, Client acknowledges that it meets Client's requirements and processing instructions. SoftLayer will provide Client notice of any unauthorized third party access to Client's content of which SoftLayer becomes aware and will use reasonable efforts to remediate identified security vulnerabilities. If Client's content is lost or damaged, SoftLayer will assist Client as may be specified in the Attachment or TD, in restoring it to the Cloud Service from the last available backup copy in compatible format.

SoftLayer may use processors and subprocessors (including personnel and resources) in locations worldwide to deliver the Cloud Services. SoftLayer may transfer Client's personal data across country borders including outside the European Economic Area (EEA). A list of countries where content may be processed for an IBM Cloud Service is available at [www.ibm.com/cloud/datacenters](http://www.ibm.com/cloud/datacenters) or as described in the Attachment or TD. A list of subprocessors is available upon request.

Upon request by either party, SoftLayer, Client, or their affiliates will enter into additional agreements required by law for the protection of personal data included in content, such as the standard unmodified EU Model Clauses agreement pursuant to EC Decision 2010/87/EU with optional clauses removed. The parties agree (and will procure that their respective affiliates agree), that such additional agreements will be subject to the terms of the Agreement.

SoftLayer, its affiliates, and their third party suppliers may process, store, and use account data wherever they do business to enable product features, administer use, personalize experience, and otherwise support or improve the Cloud Service account

data is all information (which may be further described in an Attachment or TD) about Client or its users provided to or collected by SoftLayer or IBM (including through tracking and other technologies, such as cookies) which is processed in accordance with the IBM Online Privacy Statement available at [www.ibm.com/privacy/details/us/en/](http://www.ibm.com/privacy/details/us/en/).

## **Changes**

SoftLayer may modify a Cloud Service, without degrading its functionality or security features. Any change that affects the commercial terms (e.g. charges) of the Cloud Service will not be effective until the next agreed renewal or extension.

SoftLayer may withdraw a Cloud Service as stated in an Attachment or TD. SoftLayer will either continue to provide the Cloud Service for the remainder of Client's unexpired term, or work with Client to migrate to another Cloud Service.

Since the Agreement may apply to many future orders, SoftLayer may modify the Agreement by providing Client at least one month's written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing Cloud Services that do not expire, and renewals. For transactions with a defined renewable contract period, Client may request that SoftLayer defer the change effective date until the end of the current contract period. Client accepts changes by placing new orders or continuing use after the change effective date or allowing transactions to renew after receipt of the change notice. Except as provided above, all changes to the Agreement must be in a writing accepted by both parties. If there is a conflict, an Attachment or TD prevails over the other terms of the Agreement.

## **Warranties**

SoftLayer warrants that it provides Cloud Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD. The warranty for a Cloud Service ends when the Cloud Service ends.

SoftLayer does not warrant uninterrupted or error-free operation of a Cloud Service or that SoftLayer will correct all defects or prevent third party disruptions or unauthorized third party access. These warranties are the exclusive warranties from SoftLayer and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. SoftLayer warranties will not apply if there has been misuse, modification, damage not caused by SoftLayer, failure to comply with instructions provided by SoftLayer, or if otherwise stated in an Attachment or TD. Non-SoftLayer or non-IBM products and services are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client.

## **Charges, Taxes, and Payment**

Client agrees to pay all applicable charges specified by SoftLayer, charges for use in excess of authorizations, and any late payment fees. Prepaid Services must be used within the applicable period. SoftLayer does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid. Payment for amounts due will be as specified in an Attachment or TD.

Charges are exclusive of any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under the Agreement. Any such duty, tax, levy, or fee must be paid by Client. Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) notify SoftLayer prior to payment and furnish a tax certificate evidencing such payment to SoftLayer; iii) pay SoftLayer any additional amount to ensure SoftLayer receives the full amount of the charges invoiced; and iv) fully cooperate with SoftLayer in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents. If SoftLayer is legally required to pay or collect taxes for which Client is responsible, Client must pay SoftLayer the appropriate amount in addition to the amount of the charges, or provide a valid tax exemption certificate.

## **Liability and Indemnity**

SoftLayer's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid by Client in the previous 12 months for the service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to SoftLayer, its affiliated entities, contractors, and suppliers. SoftLayer will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that a Cloud Service acquired under the Agreement infringes a patent or copyright, SoftLayer will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by SoftLayer, provided that Client promptly (i) notifies SoftLayer in writing of the claim, (ii) supplies information requested by SoftLayer, and (iii) allows SoftLayer to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

SoftLayer has no responsibility for claims based on non-SoftLayer products and services, items not provided by SoftLayer, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

## **Termination**

SoftLayer may suspend, revoke, or limit Client's use of a Cloud Service if SoftLayer determines there is a material breach of Client's obligations, a security breach, or violation of law. If the cause of the suspension can reasonably be remedied,

SoftLayer will provide notice of the actions Client must take to reinstate the Cloud Service. If Client fails to take such actions within a reasonable time, SoftLayer may terminate the Cloud Service.

Either party may terminate the Agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees. Termination of the CSA does not terminate TDs, and provisions of the CSA and Attachments as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms.

## **Governing Laws and Geographic Scope**

Each party is responsible for complying with: i) laws and regulations applicable to its business and content; and ii) import, export, and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services, or data, directly or indirectly, to or for certain countries, end uses, or end users. Client is responsible for its use of SoftLayer and non-SoftLayer products and services.

Both parties agree to the application of the laws of the: i) State of New York, United States, for U.S. and U.S. territory Clients; and ii) Netherlands for all other Clients; without regard to conflict of law principles. The rights and obligations of each party are valid only in the country of Client's business address. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

## **General**

SoftLayer is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation.

SoftLayer maintains a robust set of business conduct and related guidelines covering: conflicts of interest; market abuse; anti-bribery & corruption; and fraud. SoftLayer and its personnel comply with such policies and require contractors to have similar policies.

SoftLayer resellers and IBM business partners are independent from SoftLayer and unilaterally determine their prices and terms. SoftLayer is not responsible for their actions, omissions, statements, or offerings.

Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other, except no consent is required if SoftLayer assigns to IBM or an IBM company. Assignment of SoftLayer rights to receive payments and by SoftLayer in conjunction with the sale of the portion of SoftLayer's business that includes a service is not restricted.

The Agreement applies to SoftLayer and Client and their respective Enterprise companies who avail themselves of the Agreement. The parties shall coordinate the activities of Enterprise companies under the Agreement. Enterprise companies include (i) companies within the same country that Client or SoftLayer control (by owning greater than 50% of the voting shares), (ii) any other entity that controls, is controlled by or is under common control with Client or SoftLayer and has signed a participation Attachment, and (iii) for SoftLayer IBM and its respective IBM group companies.

All notices under the Agreement must be in writing and sent as described in a TD. The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions or representations between the parties.

No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.

## Appendix A - Country-Specific Terms

Country specific Attachments, if any, regarding data protection are available at <http://www.softlayer.com/csa>. Such data protection terms may if specified apply to Clients that select a data center within such country or geographic territory, e.g. the European Union.

In the country of Client's business address, the following terms replace or modify the referenced terms:

### AMERICAS

#### Cloud Services

*Replace the first sentence of second paragraph with:*

**In Latin America (all countries):** Client accepts the terms in an Attachment or TD by signing it.

#### Charges, Taxes, Payment, and Verification

*Add at the end of the second paragraph:*

**In Canada and United States:** Where taxes are based upon the location(s) receiving the benefit of the Cloud Service, Client has an ongoing obligation to notify SoftLayer of such location(s) if different than Client's business address listed in the applicable Attachment or TD.

#### General

*Add as a last sentence in the section:*

**In Canada in Province of Quebec:** Both parties agree to write this document in English. Les parties ont convenu de rédiger le présent document en langue anglaise.

### ASIA PACIFIC

#### Cloud Services

*In the first sentence of the second paragraph, before the word "ordering," add:*

**In Hong Kong and Macau:** signing (by hand or electronically),

#### Charges, Taxes, and Payment

*In the first sentence of the second paragraph, remove the word "and" before "(iv)", and at the end of the sentence, add:*

**In India:** – and (v) file accurate Taxes Deducted at Source (TDS) returns on a timely basis. If any tax, duty, levy or fee ("Taxes") are not charged on the basis of the exemption documentation provided by the Client and the taxation authority subsequently rules that such Taxes should have been charged, then the Client will be liable to pay such Taxes, including any interests, levies and/or penalties applicable thereon.

#### General

*Replace the second sentence of the sixth paragraph with:*

**In India:** Neither party will bring a legal action arising out of or related to the Agreement more than three years after the cause of action arose.

### EMEA

#### Warranties

*In the last paragraph, before the last sentence, insert the following:*

**In Czech Republic, Estonia, and Lithuania:** , or liabilities for defects. The parties hereby exclude any liability of SoftLayer for defects beyond the agreed warranties.

#### Charges, Taxes, and Payment

*In the first sentence, replace "specified by IBM" with the following:*

**In Belgium and Luxembourg:** specified in or calculated in accordance with the Agreement

*In the third paragraph, after the phrase: “IBM may change one-time charges without notice” add:*

**In Czech Republic:** , though Client may terminate the Agreement if Client disagrees with the change.

*Add the following to the end of the first sentence of the first paragraph:*

**In France:** equal to the most recent European Central Bank rate plus 10 points, in addition to debt collection costs of forty (40) euros or, if these costs exceed forty euros, complementary indemnification subject to justification of the amount claimed)

**In Italy:** due based on SoftLayer’s notice to Client.

**In Ukraine:** ,on the overdue amount from the next day after the due date up to the date of actual payment, prorated for each day of delay, at the interest rate of double the discount rate determined by the National Bank of Ukraine (NBU) during the delay period (paragraph 6 of article 232 of Commercial Code of Ukraine does not apply).

## **Liability and Indemnity**

*In the first sentence of the first paragraph insert the following before the words “the amounts paid”:*

**In Belgium, France, Germany, Italy, Malta, Portugal, and Spain:** the greater of €500,000 (five hundred thousand euro) or

**In UK and Ireland:** 125% of

*In the first sentence of the first paragraph, replace the phrase “direct damages incurred by Client” with:*

**In Spain:** and proven damages incurred by Client as a direct consequence of the SoftLayer default

*Insert after the first sentence of the first paragraph:*

**In Slovakia:** The total foreseeable damage shall not exceed the amount above.

*Insert before the last sentence of the first paragraph:*

**In Russia:** SoftLayer will not be liable for the forgone benefit.

*In the last sentence of the first paragraph, replace “special, incidental, exemplary” with:*

**In France and Spain:** damages to reputation

*In the last sentence of the first paragraph, delete:*

**In Ireland and UK:** economic

*In the last sentence of the first paragraph, replace “indirect, or economic consequential damages” with:*

**In France:** or indirect damages

*Replace the last sentence of the first paragraph with:*

**In Portugal:** SoftLayer will not be liable for indirect damages, including loss of profit.

**In Belgium, Netherlands, and Luxembourg:** IBM will not be liable for indirect or consequential damages, lost profits, business, value, revenue, goodwill, damage to reputation or anticipated savings, any third party claim against Client, and loss of (or damage to) data

*In the second paragraph, delete the following:*

**In Hungary:** and tangible personal property

*In the second paragraph, replace “and (iv) damages that cannot be limited under applicable law” with the following:*

**In Germany:** (iv) loss or damage caused by a breach of guarantee assumed by SoftLayer in connection with any transaction under the Agreement; and (v) caused intentionally or by gross negligence.

## Termination

*In the second paragraph, delete:*

**In Switzerland:** Failure to pay is a material breach.

*Insert the following to the end of clause “a)” before “; or”:*

**In Russia:** without payment of any damages or penalties to the other party on the basis of early termination

*Insert the following at the end:*

**In Netherlands:** The Parties waive their rights under Title 7.1 ('Koop') and clause 7:401 and 402 of the Dutch Civil Code, and their rights to invoke a full or partial dissolution ('gehele of partiele ontbinding') of the Agreement under section 6:265 of the Dutch Civil Code

## General

*Add to the end the last paragraph:*

**In Czech Republic:** Pursuant to Section to Section 1801 of Act No. 89/2012 Coll. (the “Civil Code”), Section 1799 and Section 1800 of the Civil Code as amended, do not apply to transactions under the Agreement. Client accepts the risk of a change of circumstances under Section 1765 of the Civil Code.

**In Hungary:** By entering into the Agreement, Client confirms that Client was sufficiently informed of all the provisions of the Agreement and had the opportunity to negotiate those terms. The following provisions may significantly deviate from the provisions generally applied by Hungarian law and both parties accept those provisions by signing the Agreement: Cloud Services; Warranty; Charges, Taxes, Payment and Verification; Liability and Indemnity, Termination; Governing Laws and Geographic Scope; and General.

*Delete the following sentence in the last paragraph:*

**In Bulgaria, Croatia, Poland, Russia, Serbia, and Slovenia:** Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose.

*In the last paragraph, second sentence, replace the word “two” with:*

**In Latvia and Ukraine:** three

**In Slovakia:** four

*In the last paragraph, add to the end of the following sentence: “Neither party is responsible for failure to fulfil its non-monetary obligations due to causes beyond its control”:*

**In Russia:** , including but not limited to earthquakes, floods, fires, acts of God, strikes (excluding strikes of the parties' employees), acts of war, military actions, embargoes, blockades, international or governmental sanctions, and acts of authorities of the applicable jurisdiction.

**In Ukraine:** , including but not limited to import, export and economic sanctions requirements of the United States.

*Add the following new paragraph at the end of the document, after the signatures:*

**In Italy:** Pursuant to the art. 1341 and 1342 of Italian Civil Code, Client expressly accepts the following articles of the Agreement: Programs; Services – Cloud Services; Services – Other Services; Machines and Appliances; Machine Code and Built in Capacity; Warranty and Post Warranty Support; Charges, Taxes, Payment and Verification; Liability and Indemnity, Termination; Governing Laws and Geographic Scope, and General.

## IBM Bluemix

This Service Description describes IBM Bluemix Cloud Services available to Client. Client means the contracting party and its authorized users and recipients of the Cloud Service.

### 1. Cloud Services

IBM Bluemix includes both Platform Services and Infrastructure Services that allow Client to deploy selected services and Client content, including Client applications and data, within IBM's public Bluemix offering environment. Bluemix also supports Client's hybrid cloud strategy with Bluemix dedicated and local offerings, which allow Client to deploy selected services in a dedicated IBM data center environment or directly on Client's own local infrastructure.

Platform Services enable Client to more quickly compose, build, and deploy enterprise-grade applications by providing access to a vast portfolio of composable Cloud Services.

Infrastructure Services provide access to computing, storage, and network resources to enable Client to quickly provision or set-up cloud computing infrastructure environments.

Platform and Infrastructure Services are self-managed by Client, including selection of available data centers and selection, configuration, and management of services (such as security, backup, failover, restore, and monitoring), which Client determines are necessary to meet Client's requirements and applicable laws, including regulatory requirements for content.

#### 1.1 Bluemix UI

Upon acceptance of Client's order and, if applicable, set-up of the dedicated or local environment, Client can use the Bluemix UI, which consists of on-line portals, mobile apps, APIs, command line interfaces, or, where available, assisted ordering (Client order placement via IBM sales support staff).

The Bluemix UI, support, and other information may be presented only in English, and the English version governs any conflict with a translation. Client is responsible for actions of Client's authorized users, including their use and associated charges for such use. Client is responsible for saving, maintaining, and protecting all access keys generated for each Cloud Service.

#### 1.2 Cloud Service Use

Specific services and offerings within Bluemix have additional terms, such as service levels, unique security provisions, or identification of enabling software, provided in an additional Service Description or Attachment available in the Bluemix UI, which override inconsistent provisions in this Service Description. Non-IBM services are provided by the third party service provider under the provider's agreement terms as disclosed in the Bluemix UI or via a link to the provider's website. IBM is not a party to such agreements and is not responsible for the provision of or support for the third party services, even if IBM invoices for them. Client's deployment and use of the Cloud Services constitutes Client's agreement with any additional or third party terms. Client should review the additional or third party terms before placing an order or deploying the service.

IBM will provide Client at least 30 days' notice in the Bluemix UI of any changes to Service Descriptions or Attachments, or the withdrawal of a particular service. Continued use of the Cloud Services after the effective date constitutes Client's acceptance of any changed pricing or terms. IBM may enable Client to continue to use existing instances of a withdrawn service during a transition period. For those services that are identified as Tier 1 in the Bluemix UI, IBM will not withdraw the service without making a functional equivalent available or providing at least five years' notice of the withdrawal.

If IBM disables or modifies an API, IBM will use commercially reasonable efforts to provide 1) advance notice of such change and 2) continued support for prior versions of the API for a reasonable period of time, unless there are operational, legal, or security risks or burdens.

Client agrees IBM may publicly refer to Client as a subscriber to the Cloud Services in a publicity or marketing communication.

#### 1.3 Setup and Maintenance

For Bluemix local environments, Client provides a local cloud infrastructure on Client's computers in conformance with the requirements specified in applicable Service Description or provided at <http://www.ng.bluemix.net/docs/overview/localinfrastructure.html>, which may be updated by IBM from time to time. Client agrees to provide IBM complete access to and control over the required cloud infrastructure during the term of the Cloud Service, except as Client may need to retain access to perform mandatory maintenance and support activities on the infrastructure as described in such requirements.

IBM will maintain and update public instances of the Platform and Infrastructure Services on a regular basis during scheduled maintenance windows as published in support documentation available from the Bluemix UI portal. IBM will deploy software updates to Client's dedicated and local environments as scheduled in advance, with appropriate notification to Client, with the goal of keeping the dedicated and local environments reasonably current with the public instances as described at <http://www.ng.bluemix.net/docs/dedicated/index.html#maintaindedicated.html> and <http://www.ng.bluemix.net/docs/overview/maintainlocal.html>, and in the relevant Service Description, as may be updated by IBM from time to time.

## 1.4 Client Solutions

Client may use the Cloud Services to create and make available to Client's end users Client solutions based on the Cloud Services. However, Client may not resell direct access to any of the Cloud Services to any third party without entering into a separate agreement with IBM. Client is responsible to have appropriate agreements in place with Client's end users, including rights to process content requested or provided by Client or Client's end users, and is responsible for their use of a Client solution. For Client's applications where Client permits Client's end users to log into Client's application using Facebook, Google, or other third party user credentials, these rights must include permission from Client's end users for IBM to receive and process all identifying information that is provided by that third party service.

Without limiting any valid indemnity claim under the "Liability and Indemnity" section of the Agreement, Client is solely responsible for any liability for damages or losses Client's end users incur as a result of using Client's solutions.

## 1.5 Network Access

Infrastructure Services connect to the Bluemix private network, the public network (except for services not normally exposed to the public network), and IBM's internal administrative network, and are assigned to a Client dedicated private VLAN. Client may be able to disable public network access as described in Bluemix documentation (available in the Bluemix UI). The private network enables a VPN connection for administrative access, intra-application communications, communications from different points of delivery/data centers, and for access to shared Infrastructure Service. The administrative VPN enables Client to administer and manage ordered services, and to upload, download, and manage content.

Client has no ownership or transfer rights to any IP address assigned to Client and may not use IP addresses or VLANs not assigned to Client. The IP Address Policy (available at [www.softlayer.com/legal](http://www.softlayer.com/legal)) governs use and provisioning of IP addresses, including IP addresses Client provides. If an Infrastructure Service is suspended, depending on the violation, public network or private network access may be disabled until resolution of the violation. Temporary access using the private network VLAN to remedy a violation may be available. Upon cancellation of the Cloud Services, Client must relinquish use of IP addresses, including pointing the DNS for Client's domain names away from the Cloud Services.

For Bluemix dedicated environments, Client's authorized users may access the environment through a secure VPN. IBM will provide the necessary application side, and Client will be responsible for providing the necessary user side, VPN infrastructure.

## 2. Security Description

### 2.1 Policies

Bluemix follows IBM's data security and privacy principles available at <https://www.ibm.com/cloud/resourcecenter/content/80> and any additional terms provided in this section. Any change to IBM's data security and privacy principles will not degrade the security of the Cloud Service. Client can review available Bluemix certifications at <https://www.ng.bluemix.net/docs/security/index.html> for Platform Services and <http://www.softlayer.com/compliance> for Infrastructure Services. Except for available certifications, the Cloud Service is not designed to any specific security requirements for regulated data, such as personal or sensitive personal information. Client is responsible to determine if the Cloud Services Client selects meet Client's needs with regard to the type of content Client or Client's end users may use in connection with the applicable Cloud Service or any resulting application. Client will not include any regulated content which requires additional IBM commitments to meet regulatory requirements, such as export, privacy, or security without specific agreement from IBM.

### 2.2 Data Collection and Content

IBM will not access Client's or Client's end users' content except and only to extent necessary: i) when Client expressly authorizes it; ii) as specifically described in a Service Description, or a mutually agreed addendum; or iii) as required by law. In the event of a legal or governmental request for access to Client's content, and to the extent reasonably able, IBM will provide notice to Client. For content containing personal information subject to EU Data Privacy regulations, IBM's Data Processing Agreement at [www.softlayer.com/legal](http://www.softlayer.com/legal) applies.

Access to the Bluemix UI may be suspended at any time for unauthorized access or suspected misuse. Client must promptly report any security concerns, lost or stolen account information, or unauthorized access to [security@softlayer.com](mailto:security@softlayer.com).

## 3. Service Level Agreements

IBM provides service level agreements (SLAs) for IBM-branded Bluemix services. Service levels based on downtime do not include time related to exclusions, Bluemix UI unavailability, or time to reload, configure, enable, or access content or include other services indirectly affected by an outage (Downtime).

SLAs are available only if Client is compliant with the Agreement terms and do not apply to any third party including Client's end users. SLAs do not apply to beta, experimental, trial, or no-charge Cloud Services. SLAs are not a warranty and are Client's exclusive remedy for IBM's failure to meet a specified service level.

IBM will validate SLA claims based upon information provided and IBM system records. IBM will provide Bluemix UI or other notice of approved credits. IBM's reasonable determination of a credit is final. Client agrees to continue to make payment in full for Cloud Services while an SLA claim is being reviewed. Credits may not reduce payments due for a service below zero for any billing period.



If an IBM Business Partner sold Client a subscription to the Cloud Service, the monthly charge will be calculated on the then-current list price for the service that causes the SLA claim, discounted by 50%.

### 3.1 Exclusions

No credits will be due for failure to meet an SLA because of: scheduled or announced maintenance; problems with Client or community content, technology, designs, or instructions; non-IBM build-packs; unsupported system configurations and platforms; Client infrastructure failures, including network, hardware, facility, or power; Client system administration actions, commands, or file transfers; Client errors or failures to provide needed information or access to resolve an outage; Client-caused security incidents or Client security testing; or other causes beyond IBM's reasonable control.

For Bluemix local environments, even though the Cloud Service is designed and deployed to survive most network or hardware failures, examples of failures or events that could cause an interruption in the Cloud Service include, but are not limited to: network performance slow down; switch; data center power interruption; and disk/memory. For local environments, outages caused by these failures or events and any recovery time that would be necessary to bring the entire Cloud Service back to full operation are excluded from Downtime.

### 3.2 Availability SLAs

#### 3.2.1 Platform Services

Downtime is the total accrued minutes when Client is unable to connect to any of its instances of a Platform Service and is measured from the time Client reported an outage event until the time at least one of the affected instances is available for use as validated by IBM system records. Availability, expressed as a percentage, is calculated as the total number of minutes in a contracted month minus the total number of minutes of Downtime in that month divided by the total number of minutes in that month.

IBM provides a 99.95% availability SLA for Platform Services: i) configured for high availability and distributed across multiple Bluemix public regions; or ii) provisioned across multiple dedicated or local environments in geographically separated data-centers. In addition, IBM provides a 99.5% availability service level for multiple instances of a Platform Service provisioned within a single dedicated or local environment. Client is eligible for a credit as follows:

High Availability Multiple Public Region or Multiple Dedicated/Local Environments Availability Service Level	Single Dedicated/Local Environment Availability Service Level	Credit
< 99.95%	< 99.5%	10%
< 99.90%	< 99.0%	25%

Client must submit an SLA claim by using the form at <http://ibm.biz/bluemixsupport> within seven days after the end of a contracted month providing sufficient information to identify the affected Platform Service, error messages, and other information necessary to validate the claim, referencing IBM support tickets, as applicable. The credit will be the highest applicable compensation based on the cumulative availability of the affected service during a contracted month and calculated using the monthly charges for such affected service. Credits for Platform Services cannot exceed 25% of such monthly charge.

#### 3.2.2 Infrastructure Services

Downtime is the total accrued minutes a Client-identified Infrastructure Service is unavailable due to a service disruption based on an outage type listed below, as measured from the time of a validated outage affecting the identified service until the time such service is available, as validated by IBM support or system records.

For each 30 continuous minute period of Downtime, Client will receive a credit in the amount of 5% of the charges for the identified services directly impacted by the outage. Any period during which Downtime is less than 30 continuous minutes will not be eligible for credit. Downtime for different services may not be combined to meet this calculation.

Outage Type
Public Network
Private Network
Redundant Infrastructure Power and HVAC

Client's administrative user must submit an SLA claim ticket in the Bluemix UI portal within seven days following the end of the outage event. The ticket must identify the affected service type, IP address, dates and times of the outage period, any error messages received, contact information, and a full description of the service loss, including logs, if applicable.

### 3.3 Infrastructure Hardware Replacement and Upgrade SLA

IBM will use reasonable efforts to minimize Downtime when replacing failed hardware and hardware components or performing a scheduled hardware upgrade. IBM will provide the specified credit:

- for hardware replacement, except as noted below, based on the time to replace, from the time IBM verifies a Client reported hardware failure.
- for planned hardware upgrades, based on the total Downtime of the service receiving the upgrade.

Service level time periods exclude any time required to reload the operating system or applications or time service performance may be degraded.

For failure to meet a specified service level time period, Client will be eligible for a credit based on the monthly charge for the service affected by the hardware replacement or upgrade, as follows:

Service Level Time Period	Credit Percent *
≤ 2 hours	none
> 2 hours	20%
> 6 hours	40%
> 10 hours	60%
> 14 hours	80%
> 18 hours	100%

\* For POWER8 servers, the service level does not apply; IBM will use commercially reasonable efforts to replace a failed server, and there is no credit for failure to meet the above service levels.

#### 4. Technical Support

IBM provides basic level support at no additional charge for the Cloud Services. Advance support is included as part of a Bluemix dedicated or local environment for services executed within those environments. Client can select fee-based technical support offerings that provide Client additional support benefits.

Client may submit a support ticket describing the issue in accordance with the applicable support policy procedures. The support policies for Platform and Infrastructure Services are available in the Bluemix UI and provide details of available support options, as well as information on access, support business hours, severity classification, and support resources and limitations. IBM uses commercially reasonable efforts to respond to support requests; however, there is no specified response time objective for basic level support.

Unless otherwise agreed in writing, support is available only to Client (and its authorized users) and not to any end users of Client's solutions. Client is solely responsible for providing all customer support and services to its end users.

An online support forum is available at no charge at <https://developer.ibm.com/bluemix/> or on Stack Overflow at <http://stackoverflow.com/questions/tagged/bluemix>. IBM's development and support staff monitors both forums.

#### 5. Charges

Cloud Services will be charged on a pay-as-you-go basis unless Client purchases a subscription. Service charges and pricing metrics (the units measured by the service) will be identified in the Bluemix UI or may be defined in a Service Description. The following charging models apply:

- Charges for Platform Services are generally billed in arrears and begin when the service is available for use, or for services that need to be configured by IBM based on Client input, when the service would be available for use if Client provides timely input.
- Charges for Infrastructure Services are generally billed in advance and begin upon acceptance of Client's order.
- Charges for dedicated or local environments are generally billed in advance and will be based on the specified configuration. There are no usage charges for individual services executed within a dedicated or local environment. Components may indicate a specific configured capacity (such as gigabytes or transactions per second). Since actual capacity in practice for any configuration of the Cloud Service varies depending on many factors, the actual capacity in practice may be more or less than the configured capacity.
- Usage and overage charges are based on actual usage of the specified unit of measure, and billed in arrears. Partial usage is rounded up to the next full unit of measure.
- One-time charges for a particular activity will be billed upon acceptance of an order.

##### 5.1 Subscriptions

A Bluemix subscription provides a committed usage level over the selected subscription period for eligible services. Usage charges for services over and above the committed usage level will be billed as overage. To provide usage flexibility, subscription periods are divided into 12 month cycles (or if less than 12 months remain, the remaining number of months are a cycle). Usage credits that are paid in advance or are associated with that cycle can be used any time during that cycle for eligible services. Subscription overages will not be billed until all usage credits that are prepaid or are associated with that cycle are consumed. Usage credits unused at the end of a cycle are forfeit.

##### 5.2 Trial Period

Client's account may be eligible for a 30-day trial period during which charges for certain eligible services are waived. Client will be charged for use of other services Client orders. If Client has administrative authority over an account, Client may upgrade from trial to production at any time. If an account is not upgraded prior to the expiration of the trial period, services in that account will be disabled until the account is upgraded.

##### 5.3 Billing

Client will be billed charges each month by billing Client's credit card or, where available, by invoice for payment due by electronic funds transfer, or by such other method as approved by IBM.

By providing credit card information, including relevant personal data, Client agrees IBM can use such information to process payment of charges. Payment of charges will be automatic on the due date. Client is responsible to keep information current to avoid service disruption and a late payment fee of \$20 (or equivalent in local currency).

If Client believes a charge to be incorrect, Client must submit a support ticket within 30 calendar days from its due date. A credit will be provided upon validation of an incorrect charge. Client accepts billed charges for Cloud Services if not disputed within such period.

If Client requires specific funding authorization for IBM to invoice charges, such as a purchase order, Client is responsible to provide and keep such authorization timely and current with sufficient funding authorization to cover all orders submitted using Client's account credentials to avoid any service disruptions and late payment fee. Late payment fees are as specified in Client's invoice or Transaction Document.

## **6. Ordered Services Renewals**

### **6.1 Subscriptions**

Subscriptions automatically renew for the same term unless i) the order specifies it does not automatically renew or ii) Client provides 90 days' prior notice of its intent not to renew at the end of the subscription term.

### **6.2 Monthly Service Periods and Cancellation of Individual Services**

Monthly service periods begin on: i) for Platform Services, the first of each calendar month; or ii) for Infrastructure Services, the IBM established account billing date, or last day of the month if that date does not exist. For monthly Infrastructure Services, to downgrade or cancel a specific service, Client must cancel using the Bluemix UI at least 24 hours prior to the end of the monthly service period (in time zone GMT-6). A service can continue to be available until the end of such monthly period and no refund or credits are provided for any unused portion. Untimely notice will result in automatic renewal for another monthly service period. Client is responsible to monitor status of any request to cancel or downgrade a service to ensure it was successful.

## **7. Suspension and Termination**

### **7.1 Suspension and Termination of Individual Services**

Bluemix documentation may include usage guidelines or limitations to preserve the performance, responsiveness, or integrity of the Cloud Services. Client agrees to comply with such guidelines and understands that use or applications that violate these guidelines may be suspended automatically or by IBM system administrators.

Cloud Services may be suspended if IBM reasonably determines i) a security breach exists that affects Client or the IBM infrastructure, network, or its customers or ii) Client's use may subject IBM or third party service provider to liability. Client agrees to cooperate in any investigation to resolve a suspension. Suspension will only affect the services that caused or were the basis for the suspension.

IBM will try to give reasonable advance notice of a suspension and an opportunity to remedy the cause of a suspension, unless immediate suspension is necessary to protect IBM, third party service providers, or customers of either from operational, security, or other risk, or is ordered by a court or other judicial body.

For suspended services:

- a. Client remains responsible for all charges incurred through a suspension;
- b. Client is not entitled to any SLA credits for any period of suspension; and
- c. IBM is not liable for any damages or losses Client may incur as a result of loss of access to content during a suspension.

If IBM suspends access to a service due to a material breach of Client's obligations, IBM will not reconnect the services until Client pays a \$50 reconnection fee.

IBM may terminate a Cloud Service if a suspension is not remedied within five business days from the suspension notice (or other reasonable time as may be determined by IBM).

Instances of Platform Services that are unmodified and left running in a non-billable account for 10 or more days may be suspended automatically. Any Platform Service that Client has deployed but has not used for 45 or more days in a non-billable account may be deleted.

### **7.2 Account Termination**

Upon initial account set-up, IBM will continue to process Client's account to validate contact, account, and payment information within the initial 14 days of account activation. During this initial period, IBM may close Client's account for any reason and discontinue access to Cloud Services. IBM may terminate Client's account for multiple violations of the Agreement terms or usage guidelines. IBM may close Client's account if no Cloud Services are ordered or remain active during any six month period.

## **8. General**

### **8.1 Enabling Software**

Enabling software may be provided by IBM to facilitate the use of the Cloud Service. Unless other terms are provided in a Service Description, Client may use the enabling software only in connection with use of the Cloud Service. If the enabling software contains sample code, Client has the additional right to make derivative works of the sample code and use them consistent with the above grant. The enabling software is provided subject to the applicable availability SLA, if any, but is otherwise provided AS IS.

### **8.2 Apple Licensed Applications**

The following terms of use apply to any enabling software that runs, or is acquired from the Apple App store to run on, the Apple operating system (iOS). These terms are between Client and IBM and not with Apple. Apple is not responsible for the enabling software or the content thereof and has no obligation to furnish any maintenance or support services with respect to the enabling software.

These terms include the restrictions set forth in the App Store terms of service (<http://www.apple.com/legal/itunes/appstore/dev/stdeula/>) (Usage Rules).

If the enabling software fails to conform to any applicable warranty, Client may notify Apple, and Apple may refund any purchase price for the enabling software to Client; and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the enabling software.

Apple is not responsible for addressing any claims Client or a third party may have relating to, or Client's possession and/or use of, the enabling software, including, but not limited to: (i) product liability claims; (ii) any claim that the enabling software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

Apple is not responsible for any third party claim that the enabling software or Client's possession and use of the enabling software infringes that third party's intellectual property rights.

Any questions, complaints or claims with respect to the Apple iOS enabling software may be emailed to [sales@softlayer.com](mailto:sales@softlayer.com).

### **8.3 Beta Services**

Cloud Services provided as a beta or experimental service will be identified as such in the Bluemix UI and subject to the following, unless different terms are provided:

- A beta / experimental Cloud Service is provided without warranties of any kind and is provided so that Client may evaluate its functionality.
- A beta service may not be at a level of performance or compatibility of generally available services, is not fully tested, and may not comply with the normal Cloud Service security practices. Such services are not designed for use in a production environment and any such use is at Client's own risk. IBM does not guarantee it will make the beta service or any similar services generally available. If a generally available service is offered, IBM is under no obligation to offer migration capabilities or services.
- Client is responsible to pay any tax, levy, or any other charge associated with Client's use of the beta or experimental service.
- Client may use a beta service for the specified period or until IBM withdraws or terminates it. Client may terminate use of a beta service at any time. Client is responsible to remove content Client wishes to retain prior to expiration or termination of the beta service.
- IBM may suspend, limit use, change, or withdraw a beta service or change these terms without notice and at any time.
- If there are no charges, IBM's entire liability for all claims in the aggregate arising from Client's use of a beta service will not exceed the amount of any actual direct damages up to U.S. \$1,000.00 (or equivalent in local currency).
- If Client provides feedback to IBM or a third party service provider, Client agrees IBM or the third party owns and may use all feedback and suggestions provided.