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**GERMAN CONTRACT DATA PROCESSING ADDENDUM  
(APPLIES TO CLIENTS AND RESELLERS BASED IN GERMANY AND/OR CLIENTS AND RESELLERS LOCATED OUTSIDE THE EUROPEAN UNION WHO  
ORDER PRODUCTS AND SERVICES FROM A SOFTLAYER DATACENTER IN GERMANY)**

This German Contract Data Processing Addendum ("GCDPA") is entered into by and among SoftLayer Dutch Holdings B.V., a company organized and existing under the laws of the Netherlands, with its principal business address in Amsterdam, Registration Number 5246104 ("SoftLayer Dutch"), and Client ("You"). All capitalized terms used in this DDPA shall have the meanings ascribed to them in the SoftLayer Cloud Services Agreement and its applicable Attachments and Transaction Documents (collectively, the "CSA") and/or the German Federal Data Protection Act (a/k/a Bundesdatenschutzgesetz hereinafter "BDSG"). This GCDPA also applies to a SoftLayer "Reseller" who is a party to a SoftLayer "Reseller Agreement", in which case references in this CPDA to "You" mean "Reseller" and "CSA" mean the parties' "Reseller Agreement". All disputes or liability arising under this GCDPA will be treated as if the dispute or liability arose between You and SoftLayer Dutch under the terms of the CSA.

The CSA between the parties is amended as follows:

### Scope

If You include personal data in the client content ("Client Personal Data" or "PII"), then, as between You and SoftLayer Dutch, You are considered the sole controller of the Client Personal Data (Data Controller) and You appoint SoftLayer Dutch as processor to process such Client Personal Data on Your behalf (Data Processor). This GCDPA is an integral part of Your CSA and applies when and to the extent SoftLayer Dutch processes Your Personal Data on Your behalf in performing the agreed Cloud Services. The parties acknowledge and agree that with regard to the collection, processing and use of Client Personal Data, You, as Data Controller, determine the purposes and means of the processing of Client Personal Data.

In particular, You shall be solely responsible for complying with the statutory data privacy and protection regulations, including but not limited to, the lawfulness of the transmission to SoftLayer Dutch and the lawfulness of the collection, processing and use. SoftLayer Dutch will comply with all data protection laws and regulations in respect of the Cloud Services applicable to data processors. SoftLayer Dutch is not responsible for determining the requirements of laws applicable to Your business or that SoftLayer Dutch's provision of the Cloud Services meets the requirements of such laws. You will not use the Cloud Services in conjunction with personal data to the extent that doing so would violate applicable data protection laws. The scope, extent and nature of such collection, processing and use of PII shall be as defined in the CSA. PII may not be collected, processed and used for any other purpose without Your prior written consent.

This GCDPA and the CSA contain Your complete and final instructions to SoftLayer Dutch for the collection, processing and use of PII. Any additional or alternate instructions must be agreed upon separately in writing (including via the SoftLayer Portal) by the parties.

### Term

Except where this GCDPA expressly stipulates any surviving obligation, the term of this GCDPA shall follow the term of the CSA.

### Technical and Organizational Measures

SoftLayer Dutch shall take the technical and organizational measures to adequately protect Your PII against misuse and loss in accordance with the requirements of Section 9 of the BDSG and its Annex, as follows:

- a. **Physical access control:** To prevent unauthorized persons from gaining access to data processing systems with which Client Personal Data is processed or used as follows: Access to office areas of buildings is controlled by the use of a card access system. Access to the controlled areas, such as the data center floor, requires card plus an additional biometric verification. Closed Circuit Television (CCTV) cameras are installed throughout sites and monitored by security personnel. Security staff are present on a 24/7/365 schedule and monitor physical activity at the site;
- b. **Logical access control:** To prevent data processing systems from being used without authorization as follows: Logical access to systems and network devices is based upon a documented, approved request process. Logical access to all platform servers and management systems requires two-factor authentication. A periodic verification is performed to determine that the owner of a user ID is still employed and assigned to the appropriate role. Access is further restricted by system permissions using a least privilege methodology and all permissions require documented business need. Exceptions identified during the verification process are remediated. Business need revalidation is performed on a quarterly basis to determine that access is commensurate with the users job function. Exceptions identified during the revalidation process are remediated. User access is revoked upon termination of employment or change of job role;
- c. **Data access control:** To ensure that persons entitled to use a data processing system only have access to the Client Personal Data to which they have a right of access, and that Client Personal Data cannot be read, copied modified or removed without authorization in the course of processing or use and after storage as follows: SoftLayer staff do not have access to client content or client systems unless such access is granted by the Data Controller. In such cases, SoftLayer will operate only under the instructions of the Data Controller;
- d. **Data transfer control:** To ensure that Client Personal Data cannot be read, copied, modified or removed without authorization during electronic transmission or transport, and that it is possible to check and establish to which bodies the transfer of Client Personal Data by means of data transmission facilities is envisaged as follows: SoftLayer does not provide security of Your content in transit or at rest. SoftLayer clients must ensure appropriate protections are in place as the Data Controller;
- e. **Data entry control:** To ensure that it is possible to check and establish whether and by whom Client Personal Data have been entered into data processing systems, modified or removed as follows: The Data Controller shall be responsible for monitoring activity within their environments. SoftLayer shall monitor its systems and functions to ensure all access is appropriate and in accordance with Your instructions. Log files managed by SoftLayer shall be stored for at least 90 days, except CCTV logs which are stored for at least 30 days;

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- f. **Control of processing instructions:** To ensure that the Client Personal Data is processed strictly in accordance with the instructions of the Data Controller as follows: Data processing will be performed in compliance with the Data Controller's instructions. The details of the Data Controller's instructions will be defined in the CSA. All processing activities performed by SoftLayer will be limited to those necessary to fulfil its obligations under this GCDPA and the CSA and pursuant to Data Controller's instructions;
  - g. **Availability control:** To ensure that Client Personal Data is protected from accidental destruction or loss as follows: Facilities are protected against environmental factors such as fire, water, and heat through fire alarms, fire extinguishers, smoke alarms, and fire suppression and extinguishing systems. Facilities are protected against power disruptions or failures through Uninterruptible Power Supply (UPS) systems and backup generators, which are maintained and tested on a regular basis. Backup functionality is available from geographically redundant data centers, but is configured by the customer; and
  - h. **Separation control:** To ensure that Client Personal Data collected for different purposes can be processed separately as follows: Your environments are separated via dedicated logical networks, which keep client content from different clients in separate segments to ensure client-independent usage; SoftLayer Dutch shall be entitled to modify the security measures agreed upon, provided, however, that no modification shall be permissible if it derogates from the level of protection contractually agreed. SoftLayer Dutch regularly monitors compliance with these measures.

### **Data Secrecy**

SoftLayer Dutch shall ensure that any personnel entrusted with the collection, processing and use of Your PII have undertaken to comply with the principle of data secrecy in accordance with Section 5 BDSG or respectively applicable provisions. The obligation to maintain data secrecy shall survive the termination of the respective employment and the term of this GCDPA.

### **Data Subject Enquiries**

Where, in accordance with the BDSG, You are obliged to answer an Data Subject's enquiry related to the collection, processing or use of such Data Subject's personal data, then SoftLayer Dutch shall support You in providing the required information if and to the extent You do not have access to such information. The foregoing shall apply only where You have so instructed SoftLayer Dutch in writing (email included), and where You reimburse SoftLayer Dutch for the cost and expenses incurred in providing such support. You shall be solely responsible for responding to any such enquiries of Data Subjects.

Where a Data Subject requests SoftLayer Dutch to correct, delete or block data, SoftLayer Dutch shall refer the Data Subject to You.

### **Information Obligation**

SoftLayer Dutch shall inform You without delay in the event of substantial disruption of the Cloud Services or serious interruption of the operations, of any infringements by SoftLayer Dutch or its employees of applicable data protection laws or of this GCDPA, and of any material irregularity in relation to the processing of the PII belonging to You. The parties are aware that Section 42a BDSG may impose a duty to inform in the event of the loss or unlawful disclosure of PII or access to it.

### **Processing Overview**

You are obliged to maintain the overview of processing in accordance with Section 4g para. 2 sentence 2 FDPA.

Upon Your written request, SoftLayer Dutch shall provide all information necessary for compiling the overview defined by Section 4g para. 2 sentence 1 BDSG. You will reimburse SoftLayer Dutch for any reasonable costs arising from assisting in compiling such overview.

### **Audits and Information Requests**

You shall, prior to the commencement of the provision of the Cloud Services, and in regular intervals thereafter, audit the technical and organizational measures taken by SoftLayer Dutch, and shall document the resulting findings. For such purpose, SoftLayer Dutch, makes available to You the ISO 27001 certification as well as the ISO 27018 certification obtained and upheld in relation to the provision of the Cloud Services. Information about these certifications can be found at: <http://www.softlayer.com/compliance>.

Upon Your request, SoftLayer Dutch will provide You with the most recent certifications and/or an audit report(s) concerning the security measures for the Cloud Service or computing environment used to provide the Cloud Service. SoftLayer Dutch will reasonably cooperate with You by providing available additional information to help You better understand such security measures.

If mandatory law requires You to have a right of audit, You will use the information provided pursuant to this Section to satisfy such audit requirements. If additional information is needed, You will inform SoftLayer Dutch accordingly to enable SoftLayer Dutch to provide this additional information or to grant You access to such information. To the extent it is not possible to otherwise satisfy an audit obligation mandated by applicable law, only the legally mandated entity (such as a governmental regulatory agency having oversight of Your operations) may conduct an onsite visit of the facilities used to provide the Cloud Service in a manner that causes minimal disruption to SoftLayer Dutch's business and in accordance with SoftLayer Dutch's security policies to reduce any risk to Softlayer Dutch's other customers.

The parties shall bear their own costs incurred in relation to audits permitted by this GCDPA under this Section.

### **Subcontractors and Subprocessors**

Where SoftLayer Dutch subcontracts Cloud Services that involve the collection, processing or use of PII, in whole or in part, to subcontractors (Subprocessors), SoftLayer Dutch shall oblige such Subprocessors to comply with data protection obligations at least equivalent to those contained in this GCDPA and to provide at least the same level of privacy protection as is required hereunder.

At Your written request, SoftLayer Dutch shall be required to provide to You comprehensive information on the obligations of all such Subprocessors as they relate to data privacy and protection; this information shall, where necessary, include Your right to inspect the relevant contract documents.

You hereby permit SoftLayer Dutch to use SoftLayer Dutch's affiliated legal entities as Subprocessors for the scope of work defined in the CSA, in whole or in part, and to subcontract to such affiliated legal entities the parts of the scope of work enumerated below.

SoftLayer Dutch's affiliated legal entities do not qualify as third party service providers in the meaning of the following paragraph.

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You agree that SoftLayer Dutch, or SoftLayer Dutch's affiliated legal entities respectively may engage third party service providers as Subprocessors that may provide customer support, including collection, processing and use of PII, in connection with the Cloud Services.

SoftLayer Dutch will make available to You on request the current list of Subprocessors (third party service providers and SoftLayer Dutch affiliated legal entities)

#### **Transfers of PII**

When SoftLayer Dutch transfers Your PII to a country outside the European Economic Area, Softlayer Dutch shall only do so if an adequate level of protection pursuant to the BDSG is ensured, such as:

- a. such country offers an adequate level of protection according to the European Union "white list" of countries offering adequate data protection standards;
- b. valid Standard Model Clause agreements, as approved by the European Commission have been concluded between You and such Subprocessors; or
- c. any other valid transfer mechanism is in place.

#### **Deletion of Customer Content**

You maintain all rights in PII and in all copies thereof.

Unless otherwise set forth in this GCDPA, SoftLayer Dutch may only correct, delete or block the PII processed on Your behalf when instructed to do so by You.

During the term of the CSA, You are responsible for management (including retention and deletion) of Your PII. Upon termination or expiration of a Cloud Service, You are responsible for transfer of Your Client Personal Data in accordance with the CSA and the deletion of Your client content (including Your PII).. Additionally, unless legally prohibited, SoftLayer Dutch has the right to delete Your client content (including PII) in its systems upon termination or expiration of the Cloud Service.

#### **Data Protection Officer**

SoftLayer Dutch shall comply with its obligations under Sections 4f and 4g BDSG and, accordingly, shall appoint a data protection official where required by law.

#### **Notification of Mal-Performance**

You shall, without undue delay and in a comprehensive fashion, inform SoftLayer Dutch of any defect You may detect in SoftLayer Dutch's work results and of any irregularity in the implementation of statutory regulations on data privacy.

#### **Duties to Notify**

Where Your PII becomes subject to search and seizure, an attachment order, confiscation during bankruptcy or insolvency proceedings, or similar events or measures by third parties while being processed, SoftLayer Dutch shall inform You through the Portal without undue delay, unless prohibited by law. SoftLayer Dutch shall, without undue delay, notify to all pertinent parties in such action, that any PII affected thereby is in Your sole property and area of responsibility, that PII is at Your sole disposition, and that You are the responsible body in the sense of the BDSG.

SoftLayer Dutch will promptly, without undue delay, provide Portal notice to You if (i) SoftLayer Dutch becomes aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to Your Client Personal Data transmitted, stored, or otherwise Processed by SoftLayer Dutch or a Subprocessor, and (ii) any legally binding request for disclosure of PII by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation. SoftLayer Dutch will subsequently keep You fully informed about any progress of the recovery or other relevant developments with respect to such event and will, upon request, provide all information that You require to meet any mandatory notification obligations You may have, taking into account the nature of the Processing by and the information available to SoftLayer Dutch.

#### **Miscellaneous**

No modification of this GCDPA or any of its components – including SoftLayer Dutch's representations and warranties, if any – shall be valid and binding unless made in writing (email included) and then only if such modification expressly states that such modification applies to the regulations of this GCDPA. The foregoing shall also apply to any waiver or modification of this mandatory written form.

If either party to this GCDPA requests that this GCDPA be made available in writing (electronic form is not included), such party shall send to the other party two copies of this CPDA duly signed by its authorized representatives and the other party's authorized representatives shall countersign the copies and return one of them to the other party.

Any obligations arising from statutory provisions or according to a judicial or regulatory decision shall remain unaffected by this GCDPA.

In case of any conflict, the terms of this GCDPA shall take precedence over the terms of the CSA. Where individual terms of this GCDPA are invalid or unenforceable, the validity and enforceability of the other terms of this GCDPA shall not be affected.

This GCDPA is subject to the laws of the Federal Republic of Germany.