

Privacy Agreement (“PA”)

SoftLayer utilizes great care in keeping the information of the users of the “Site” (meaning www.softlayer.com (or such other location as SoftLayer may designate) (including clients) (“Users” or “Clients”) private and secure.

This Privacy Agreement (“PA”) demonstrates SoftLayer’s firm commitment to maintaining the privacy of all data collected, and describes the account data SoftLayer collects; how SoftLayer uses, discloses, and shares that information; and how SoftLayer protects the information.

A SoftLayer Client (a party to the SoftLayer Cloud Services Agreement and its applicable Attachments and Transaction Documents (collectively, the “SL CSA”), including the SoftLayer Services Description (“SL SD”)) may request that SoftLayer enter into additional agreements required by law for the protection of personal data included in client content, such as the standard unmodified EU Model Clauses agreement (if the Client is based in the European Union (“EU”)) pursuant to EC Decision 2010/87/EU with optional clauses removed (an “EUMC Agreement”). The parties to the SL CSA agree (and will procure that their respective affiliates to agree), that such additional data protection agreements will be subject to the terms of the SL CSA. Note that SoftLayer also adheres to the “Safe Harbor Principles” agreed and set forth by the United States Department of Commerce and the EU found at <http://export.gov/safeharbor/>.

This PA applies only to SoftLayer or IBM delivered Cloud Services and does not apply to Third Party Services, which are governed by their own privacy policies.

For clients located in Germany, Client and SoftLayer further agree to the German Contract Data Processing Addendum (the “GCDPA”), which is located at <http://www.softlayer.com/legal/>. This GCDPA also applies to a SoftLayer “Reseller” who is a party to a SoftLayer “Reseller Agreement”, in which case references in this PA to “Client” mean “Reseller” and “CSA” mean the parties’ “Reseller Agreement”.

Capitalized terms not defined in this PA are defined in the SL CSA or the SL SD.

As used in this PA, “affiliate” means any legal entity that a party controls, that controls a party, or that is under common control with a party.

Types of Data Collected

SoftLayer collects data related to Users through the following methods:

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

The data collected may include information about the User from forms, registrations and transactions (such as name, title, address, company, phone number and e-mail address), financial/transaction information (such as credit card, card verification value, and payment information), information about use of the Site (such as electronic communications protocols, web pages visited, and cookies) and User preferences and privileges. To the extent that this information is transferred to a country outside the EU or another country deemed “adequate” by the European Commission (“EC”), SoftLayer will comply with both any data protection laws of the country to which the information is transferred, as well as the data protection provisions of the EU.

Privacy Agreement (“PA”)

“PII” when used in this PA refers to Client’s account information provided by Client to SoftLayer to maintain the relationship described in the SL CSA and SL SD or applicable IBM Cloud Services’ Service Description (“IBM SD”) for any IBM Cloud Services ordered from SoftLayer under the SL CSA terms. PII does not include client content in any form.

Electronic Communications Protocols and Cookies

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

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

Cookies on the Site may collect the following information: a unique identifier, User preferences and profile information used to personalize the content that is shown, and User information to access SoftLayer's user forums. Some cookies used by www.softlayer.com may remain on the User's computer after the User leaves the Site, with the majority set to expire within 30 to 365 days, although some cookies may be of longer duration. Cookies may also be of benefit to Client by creating a more streamlined login process, keeping track of shopping cart additions or preserving order information between sessions. In the future, as SoftLayer enables further customization of the Site, cookies will help in ensuring that information provided to Client will be the most relevant to Client’s needs.

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

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

SoftLayer may also engage third parties to track and analyze non-personally and personally identifiable website data and to serve advertisements. To do so, SoftLayer may permit third parties to place cookies

Privacy Agreement (“PA”)

on devices of Users of the Site, where permitted by law, and subject to Client’s right to opt out through the Site. We use the data collected to help SoftLayer administer and improve the quality of the Site and to analyze Site usage. Such third parties may combine the information that SoftLayer provides about Client with other information that they have collected. These third parties are required to use Client’s information in accordance with this PA. SoftLayer will record all such disclosures, and will use reasonable efforts to ensure that such third parties do not use Client’s PII for any purpose that is not expressly provided for herein.

Client is solely responsible for any processing or international transfer of all PII in the Client’s content, including in any Third Party Services, and Client agrees to comply with all applicable rules, laws and regulations in any and all applicable regions or countries related to the transfer of such PII. To the extent PII is subject to rules, laws, regulations or the like implementing EU Data Protection Directive 95/46/EC, SoftLayer will be considered a "data processor" and will, as such, act on Client’s instructions and implement security measures in accordance with the SL CSA and SL SD (IBM will do the same for any IBM provided IBM Cloud Service in accordance with the applicable IBM SD). For clients located outside the U.S. or U.S. territories, SoftLayer Dutch Holdings B.V., with a principal office in Amsterdam, The Netherlands (“SoftLayer Dutch”), may utilize SoftLayer Technologies, Inc., with a principal office in Dallas, Texas, U.S.A. (“SoftLayer US”), to further process PII, and Client agrees that SoftLayer US may act as a sub-processor.

The Data We Collect and How We Use It

Client acknowledges and agrees that SoftLayer may collect information from Client for the following purposes:

- To engage in transactions for the Cloud Services. Name, address, email, purchase details, and credit card/payment information (last 4 digits and expiration date only) may be collected and stored as part of the transaction history. The majority of the data collected under this category is Client contact data. SoftLayer may need to share some of this Client account data (address, payment) with credit card clearing houses, banking institutions, and other similarly situated agents, who may require the information in order to complete the transaction on behalf of SoftLayer. SoftLayer will not transfer PII to any of its agents unless SoftLayer first enters into a written agreement requiring such agent to maintain at least the level of protection of personal data as is required of SoftLayer and in no event than is required by law.
- To provide future service and support. Information collected for this purpose is both account data and information related to products and service/support requested. This information is also used to provide notices regarding updates to the Services.
- To help create and select Site content and to optimize navigation so that it is relevant and user friendly. This includes data collected as a result of site navigation, as well as data provided in forms.
- To respond to user inquiries and requests for information. This data includes registrations for online newsletters, opt-in mailing lists and specific requests for further information.
- To respond to law enforcement organizations, government officials and third parties when compelled by subpoena, court order, or applicable law, or to report or prevent suspected fraudulent or illegal activity in the use of the Cloud Services. SoftLayer will notify Client of the information request or submission if allowed.

Privacy Agreement (“PA”)

- To share with SoftLayer’s contractors who provide services or perform functions on SoftLayer’s behalf in connection with delivery of the Cloud Services.
- To share with SoftLayer’s affiliates for their delivery of SoftLayer’s Cloud Services, or share with IBM affiliates for their delivery of other IBM Cloud Offerings. Client’s PII will be processed by SoftLayer affiliates subject to this PA and by IBM affiliates subject to the IBM Online Privacy Statement at: www.ibm.com/privacy/details/us/en/ (or such other location designated by IBM). Note that SoftLayer affiliates located in the EEA provide SoftLayer US and/or SoftLayer Dutch with personal information about their prospective clients, prospective vendors, prospective employees; and clients, participants in SoftLayer’s channel partner program, client referral program, vendors and employees. SoftLayer uses this information to assist SoftLayer affiliates in providing services to those clients, and to assist SoftLayer affiliates with vendor relations and contract management, human resources management, and their internal financial and other operations. Client understands that this personal data will be used by SoftLayer US, SoftLayer Dutch, and other SoftLayer affiliates for the purposes identified in this PA section (The Data We Collect and How We Use It) and that this personal data may be transferred outside of the EEA to jurisdictions which may not provide the same level of legal protection as in the EEA. Client hereby authorizes such transfers and confirms that it has all necessary consents in place to give such authorization.
- To provide various SoftLayer communities, such as resellers, with relevant product alerts and updates. These updates are related to product releases, prices, terms, special offers and associated campaigns. This data is sent when the program member signs up for the relevant program or online account.
- To better tailor marketing to User needs. SoftLayer may use information from Client purchases and Client-specified requirements to provide Client with timely and pertinent notices of SoftLayer product releases and service developments that address Client’s needs and specified requirements and/or which are similar to products and services previously purchased by Client from SoftLayer.
- To better respond to requests for service or quotes for product purchases. SoftLayer will pass contact information to the appropriate SoftLayer sales person, or reseller for follow-up related to SoftLayer products or services.
- To use in connection with the SoftLayer referral "tell a friend" function. If a User elects to use SoftLayer’s referral service for informing a friend about SoftLayer’s Site, SoftLayer asks them for the friend's name and email address. SoftLayer will automatically send the friend a one-time email inviting them to visit the Site and send a copy of said e-mail to the User. The e-mail(s) sent will clearly identify the sender of the email(s). SoftLayer uses this data for the sole purpose of sending this one-time email. Such email sent to a friend at User’s request will not be stored for additional processing.
- To use in connection with a User’s participation in interactive discussions and public forums. There are parts of the Site that permit a User to participate in interactive discussions. Some of these are moderated; all are subject to access for technical reasons. SoftLayer does not control the content that Users post and some may serve as public discussion forums. As in any interactive forum open to many Users, Users should carefully consider whether a User wishes to submit data and should tailor any other content submitted accordingly.

Privacy Agreement (“PA”)

Client Content

On occasion, employees of SoftLayer US located in the U.S. may have temporary access to client content in connection with providing maintenance or support services to Client. This access will only be accomplished by way of Client’s explicit permission and instructions (as the data controller of the applicable content) and only for so long as the employee is providing services to Client. As a data processor, SoftLayer will not access the content for any purpose beyond providing Client with support as described above, and will not disclose it to any person or entity. Client agrees that employees of SoftLayer US may access client content in the manner described above.

Client Portal, Customization, Preferences and Opt-Out

New clients are automatically registered for access at <https://control.softlayer.com>. The Portal allows Client the ability to create users, add/delete users, add/delete user privileges and opt in (or out) of Cloud Services and mailing lists. The Portal provides Client with control over preferences for electronic information delivery. The Portal is operated and maintained in the United States and Client’s account data is stored on the Portal in the United States, and Client agrees that SoftLayer may do so.

SoftLayer has also provided Client’s master user the ability to manage Client’s account data. To change this data, Client must be a current client, log in with a user ID and password, and follow the prompts to "update my profile" on the Portal. SoftLayer continues to expand the profile of Services and information that Client may access and update.

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

If an individual’s PII is to be (a) disclosed to a third party who is not an agent of SoftLayer, or (b) used for a purpose that is incompatible with the purpose(s) for which it was originally collected or subsequently authorized by the individual, then the individual will be notified prior to such disclosure and may opt out of having the PII disclosed by responding to the email and/or author of the notification, where such information shall be clearly set forth. Any such disclosures will be documented, recorded, and retained as required by retention policies or applicable laws.

Where SoftLayer Acts as a Data Processor for EU/EEA Clients

When providing IaaS Cloud Services, SoftLayer US may process personal data controlled by its clients or clients of SoftLayer entities located in the EU/EEA. SoftLayer does not determine or have knowledge of the types of data stored by clients and/or how that data is accessed, exchanged, processed or the classification of that data. SoftLayer clients are the data controllers of such personal data and are responsible for compliance with applicable data protection principles. SoftLayer processes data as a data processor at the direction of its clients in accordance with the terms of the SL CSA and SL SD (IBM will do the same for any IBM provided IBM Cloud Service in accordance with the applicable IBM SD).

Privacy Agreement (“PA”)

SoftLayer has in place a data processing agreement with each of its entities located in the EU (in accordance with the standards of the EU Data Protection Directive and if and where applicable the Safe Harbor Principles).

The provision of IaaS Cloud Services may, at the direction of the Client, include the transfer by the Client of its personal data outside of the EEA to jurisdictions which may not provide the same level of legal protection as in the EEA. Client is responsible for ensuring that Client has all necessary consents and agreements in place with data subjects for international transfers of personal data that Client directs as part of Client’s receipt of IaaS Cloud Services.

The terms “process,” “data controller,” “data processor,” and “data subject” have the meanings given to them in the EU Data Protection Directive.

Security

SoftLayer is concerned with the security of the data SoftLayer has collected and utilizes reasonable measures to prevent unauthorized access to that information. These measures include policies, procedures, employee training, physical access and technical elements relating to data access controls. In addition, SoftLayer uses standard security protocols and mechanisms to facilitate the exchange and the transmission of sensitive data, such as credit card details. SoftLayer does not process PII in a way that is incompatible with the purposes for which it has been collected or subsequently authorized by the individual. In the event that PII is acquired, or is reasonably believed to have been acquired, by an unauthorized person and applicable law requires notification, SoftLayer will notify the affected Client of the breach by email or ticket on the Portal or, if SoftLayer is unable to contact the Client by such means, then by regular mail. Notice will be given promptly, consistent with the legitimate needs of law enforcement and any measures necessary for SoftLayer or law enforcement to determine the scope of the breach and to ensure or restore the integrity of the data system. SoftLayer may delay notification if SoftLayer or a law enforcement agency determines that the notification will impede a criminal investigation, and in such case, notification will not be provided unless and until SoftLayer or the agency determines that notification will not compromise the investigation. SoftLayer will cooperate with Client in the investigation and/or remediation of any security breach.

Enforcement

SoftLayer has established internal mechanisms to verify SoftLayer’s ongoing adherence with this PA, including SoftLayer’s written agreements with Clients and agents as required by law for the protection of personal data, such as an EUMC Agreement, and if and where applicable the Safe Harbor Principles. SoftLayer also encourages individuals covered by this PA to raise any concerns about SoftLayer’s processing of PII by contacting SoftLayer at the address below. SoftLayer will seek to resolve any concerns. SoftLayer has also agreed to participate in the dispute resolution program provided by the European Data Protection Authorities.

Policy Updates

If SoftLayer is going to use Client’s PII in a manner different from that stated at the time of collection, SoftLayer will notify Client via email or Portal. In addition, if SoftLayer makes any material changes in

Privacy Agreement (“PA”)

SoftLayer’s privacy practices that do not affect the PII already stored in SoftLayer’s database, SoftLayer will notify Client by email or post a prominent notice on the Portal notifying users of the change. In some cases, when SoftLayer posts the notice, SoftLayer will also email users who have opted to receive communications from SoftLayer, notifying them of the changes in SoftLayer’s privacy practices. SoftLayer may update this PA from time to time to describe how new site features affect SoftLayer’s use of Client’s PII and to let Client know of new control and preference features that SoftLayer provides.

Contact Information and Inspection Rights

Client has the right to access and correct Client’s PII, and to refuse for legitimate reason to allow SoftLayer to process Client’s PII. Questions, concerns or comments about this PA should be addressed to:

SoftLayer Technologies, Inc., an IBM Company
ATTN: Legal Department
Stanford Corporate Center
14001 North Dallas Parkway, Suite M100
Dallas, Texas 75240
Email: legal@softlayer.com
Phone: 1 (214) 442-0600

If at any time Client decides that Client no longer desires that SoftLayer hold, use, correct or supplement any of Client’s PII or receive information regarding any PII processed in relation to Client, or Client wishes to change the manner in which Client’s PII may be used, please let SoftLayer know by contacting SoftLayer as set forth above.

Country specific Attachments (identified as “Addendums”) regarding data protection are available at <http://www.softlayer.com/csa>, including the GCDPA.