

SOFTLAYER RESELLER AGREEMENT
(FINAL US Version 2015-5-19)

PLEASE READ CAREFULLY: THIS SOFTLAYER RESELLER AGREEMENT (this “Agreement”) is between SoftLayer Technologies, Inc., an IBM Company (“SoftLayer”), and the individual or entity identified below or in the Account Information (as defined below) provided to SoftLayer (“Reseller”) and provides the terms under which Reseller may resell certain SoftLayer Services (as defined below) to Reseller’s Customers (as defined below).

Reseller hereby represents that Reseller is an individual domiciled in, or a corporate entity (whether partnership, corporation or limited liability company) formed in, the United States (if Reseller is not such person or entity, then a different agreement is applicable and must be used.)

BY CLICKING OR CHECKING THE BOX PRESENTED WITH THIS AGREEMENT OR ORDERING THE SERVICES, OR BY EXECUTING THIS AGREEMENT,, SOFTLAYER AND RESELLER (COLLECTIVELY, THE “Parties” AND EACH A “Party”) HERETO AGREE THAT (1) THE PARTIES HAVE ACCEPTED THIS AGREEMENT IN ITS ENTIRETY AND AGREE TO BE BOUND BY IT, (2) THE INDIVIDUAL WHO AGREES TO THIS AGREEMENT REPRESENTS AND WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO BIND RESELLER, AND (3) THIS AGREEMENT CONSTITUTES A BINDING AND ENFORCEABLE OBLIGATION BETWEEN THE PARTIES.

1. DEFINITIONS.

1.1 “**Actionable Breach**” means a party’s violation or breach of this Agreement (including the AUP and the Trademark Terms), any Customer’s breach of its applicable Customer Agreement, Customer End User Agreement, or the AUP.

1.2 “**Account Information**” means Reseller’s or Customer’s billing information, contact information, payment information and such other information defined as “Account Information” in the SoftLayer Portal.

1.3 “**Affiliate**” means any legal entity that an entity controls, that controls an entity, or that is under common control with an entity. For purposes of this definition, “**control**” shall mean beneficial ownership of the securities entitled to vote in the election of directors (or, in the case of an entity that is not a corporation, the election of the corresponding management authority) in the entity of (i) more than fifty percent (50%) of the securities or (ii) such lesser percentage of securities as is the maximum ownership permitted in the country where the entity exists.

1.4 “**AUP**” means the SoftLayer Acceptable Use Policy, the current version of which is located at www.softlayer.com/about/legal (or such other location as SoftLayer may designate from time to time).

1.5 “**Confidential Information**” means all of SoftLayer’s, Reseller’s or Customer’s non-public information, whether written or otherwise, disclosed to a party under this Agreement that the receiving party knows or reasonably should know is considered confidential.

1.6 “**Customer**” means either a Remarketer or an End User, including without limitation any city, county, state, federal or tribal governmental authority, to whom Reseller has resold one or more SoftLayer Services, and has entered into a Customer Agreement with the Reseller.

1.7 “**Customer Agreement**” means the required written terms of service between Reseller and its Customers for SoftLayer Services that: (i) is at least as restrictive and protective of SoftLayer’s rights as this Agreement; (ii) makes no representations or warranties on SoftLayer’s behalf; (iii) does not grant any rights in or to the SoftLayer Services to Customer beyond the scope of those contained in this Agreement;



(iv) limits SoftLayer's liability to at least the same extent as this Agreement; (v) specifies that SoftLayer shall be a third-party beneficiary of the Customer Agreement with the authority to enforce its terms and conditions; (vi) requires Customers to agree to comply with the terms of the AUP; and (vii) requires any Customer that wants to use the Trademarks in Promotional Materials to enter into a SoftLayer Trademark License Agreement with SoftLayer and submit all proposed uses of the Trademark in Promotional Materials to Reseller for SoftLayer's review and approval prior to any use.

1.8 **"Customer Content"** means all data, software and information, including, without limitation, data text, software, scripts, video, sound, music, graphics and images that are created, uploaded or transferred in connection with the SoftLayer Services by Resellers, Customers, or Customer End Users.

1.9 **"Customer End User"** means a third party which acquires SoftLayer Services from a Remarketer for its own use and not for resale and which may be an End User of a Customer Offering or a Reseller Offering, and has entered into a Customer End User Agreement with the Remarketer.

1.10 **"Customer End User Agreement"** means the required written terms of service between Customer and Customer End User that: (i) is at least as restrictive and protective of SoftLayer's rights as this Agreement; (ii) makes no representations or warranties on SoftLayer's behalf; (iii) does not grant any rights in or to the SoftLayer Services to Customer End Users beyond the scope of those contained in this Agreement; (iv) limits SoftLayer's liability to at least the same extent as the this Agreement; (v) specifies that SoftLayer shall be a third-party beneficiary of the Customer End User Agreement with the authority to enforce its terms and conditions; (vi) requires Customer End User to agree to comply with the terms of the AUP and any addenda to this Agreement; and (vii) requires any Customer End User that wants to use the Trademarks in Promotional Materials to enter into a SoftLayer Trademark License Agreement with SoftLayer and submit all proposed uses of the Trademark in Promotional Materials to Reseller (or via the Customer End User's Remarketer, where applicable) for SoftLayer's review and approval prior to any use.

1.11 **"Customer Information"** means any data or information in the care, custody or control of SoftLayer or a third party acting on SoftLayer's behalf: (a) provided to SoftLayer by Customer, Customer End User, or Reseller on behalf of Customer or Customer End User; or (b) created, stored, processed or transmitted as a result of the SoftLayer Services pursuant to this Agreement, including without limitation, PII (hereinafter defined). Customer Information may also include proprietary information, intellectual property and/or trade secrets, and metadata related thereto, including Customer Content and Confidential Information of Customer or Customer End User provided by Reseller.

1.12 **"Customer Offering"** means services created by Customer based in whole or in part on the SoftLayer Services.

1.13 **"End User"** means a third party which acquires SoftLayer Services for its own use and not for resale and which may be an End User of a Reseller Offering.

1.14 **"Feedback"** means any and all suggestions, comments, improvements, or other feedback about the SoftLayer Services that Reseller or Customers provide to SoftLayer either directly or indirectly.

1.15 **"Fees"** means the fees payable by Reseller to SoftLayer under this Agreement, as further described in Section 5 below.

1.16 **"Flow-Through Provisions"** mean the terms of agreements for services provided by certain third parties who require that certain terms are included in the Customer Agreement and Customer End User Agreement. The Flow-Through Provisions apply only to the relevant services provided by those certain third parties. Such services provided by third parties are part of the SoftLayer Services and are subject to the terms of the Customer Agreement and Customer End User Agreement, as well as the Flow-Through Provisions.



1.17 “**Initial Term**” means the period commencing on the Effective Date and continuing until the first Reseller Renewal Date, unless terminated as provided in Section 16.

1.18 “**Order**” means Reseller’s selection of the SoftLayer Services which may include a new order for a SoftLayer Service or an upgrade or a downgrade of a SoftLayer Service for a Customer or a Customer End User. Each Order must be placed through the SoftLayer Portal or such other method designated by SoftLayer from time to time.

1.19 “**PII**” means any personally identifiable information relating to any individual that accesses and/or uses the SoftLayer Services.

1.20 “**Privacy Agreement**” means the terms governing the use of PII, the current version of which is located at www.softlayer.com/about/legal (or such other location as SoftLayer may designate from time to time).

1.21 “**Private Network**” means the term as described in the AUP.

1.22 “**Prohibited Content**” means Customer Content that is illegal or unauthorized, including but not limited to violations of the AUP.

1.23 “**Promotional Materials**” means the term as defined in the Trademark Terms.

1.24 “**Public Network**” means the term as described in the AUP.

1.25 “**Remarketer**” means a business entity that acquires the SoftLayer Services from Reseller for the purpose of marketing to Customer End Users.

1.26 “**Renewal Term**” means the period commencing after the last day of the Initial Term or the Renewal Term and extending until the next Reseller Renewal Date unless terminated as provided in Section 16.

1.27 “**Reseller Offering**” means services created by Reseller based in whole or in part on the SoftLayer Services.

1.28 “**Reseller Renewal Date**” means the date of the month of the Effective Date except as provided in this definition. For example, if the Effective Date is May 20, 2012, then the Reseller Renewal Date is the 20th of each calendar month. If the Reseller Renewal Date is a date in a calendar month which does not exist in each calendar month, then the Reseller Renewal Date shall be the last date of such month (i.e., if the Reseller Renewal Date is the 30th, then in February, the Reseller Renewal Date shall be either February 28 or 29, depending on the year).

1.29 “**Service Level Agreement**” means the Service Level Agreement, the current version of which is located at www.softlayer.com/about/legal (or such other location as SoftLayer may designate from time to time).

1.30 “**Site**” means www.softlayer.com (or such other location as SoftLayer may designate from time to time).

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

1.32 “**SoftLayer Portal**” means SoftLayer’s web portal at <https://control.softlayer.com/> (or such other location as SoftLayer may designate from time to time) or the “**SoftLayer Application Programming Interface**”.



1.33 “**SoftLayer Services**” means computer infrastructure and related services selected by Reseller pursuant to Section 4.5 that SoftLayer makes available to its customers from time to time.

1.34 “**Term**” means the Initial Term and all Renewal Terms.

1.35 “**Third Party Services**” means services which are provided by third parties directly to Customers. The definition of SoftLayer Services does not include Third Party Services.

1.36 “**Time-Based Services**” means the SoftLayer Services that SoftLayer offers in increments based upon the amount of time the Services are to be used.

1.37 “**TPS Agreements**” means agreements for Third Party Services which are directly between the Customer and the provider of the Third Party Services. These agreements are separate and independent from this Agreement, and the Customer Agreement. SoftLayer is not a party to these agreements.

1.38 “**Trademarks**” means the SoftLayer trademarks identified in the Trademark Terms.

1.39 “**Trademark Terms**” mean the SoftLayer Trademark License Agreement, the current version of which is attached to this Agreement as Exhibit A.

2. SOFTLAYER OBLIGATIONS.

2.1 **Responsibilities of SoftLayer.** SoftLayer represents and warrants that, during the Term, SoftLayer will: (1) implement and maintain commercially reasonable security measures consistent with all applicable privacy and data security laws and regulations and relevant industry standards subject to and in accordance with Section 3.2 hereof; (2) immediately notify Reseller if SoftLayer becomes aware of any actual or reasonably suspected unauthorized use of or access to SoftLayer’s systems or access or theft of Customer Information, an inability to access such systems or information due to a malicious use, attack or intrusion, unauthorized use of information by a third party for purposes of theft, fraud or identity theft, unauthorized disclosure or alteration of information, and/or transmission of malicious code (collectively, “**Security Breach**”); (3) in the event that SoftLayer becomes aware of a Security Breach, conduct an investigation of the reasons for and circumstances surrounding the breach, use best efforts and take necessary actions to prevent, contain, and mitigate the impact of the breach, provide immediate (within 24 hours) written notice to Reseller after discovery of a breach, collect and preserve all evidence concerning the discovery, cause, vulnerability, exploit, remedial actions and impact related to the breach, document the incident response and remedial actions taken, and provide specific detail of what information may have been compromised; and (4) not use any Customer Information provided by Customer or Reseller for purposes other than to provide SoftLayer Services.

2.2 **Provision of Services.** Contingent on SoftLayer’s acceptance of an Order and subject to Reseller’s compliance with the terms of this Agreement, and Reseller’s Customer’s compliance with the terms of the applicable Customer Agreement and the AUP, and Customer End Users’ compliance with applicable Customer End User Agreements and the AUP, SoftLayer agrees to use reasonable commercial efforts to provide the SoftLayer Services consistent with the terms of the Service Level Agreement. SoftLayer retains the right to reject a request for SoftLayer Services by any individual or entity in its sole discretion. SoftLayer may change, withdraw, add, modify, re-price or remove features or functionality from the SoftLayer Services upon 90 days’ notice to Reseller provided through the SoftLayer Portal. If SoftLayer withdraws SoftLayer Services which Customer has ordered, SoftLayer will continue to provide such SoftLayer Services for the remainder of the Term or for 12 months from the effective date of withdrawal, whichever is earlier. However no withdrawn SoftLayer Services may be ordered after the effective date of withdrawal. It is the Reseller’s responsibility to review the SoftLayer Portal for such notices on a frequent basis. If Customer or Customer End User continues to use the SoftLayer Services following any such modification, such use will be deemed acceptance of such modification by Reseller and its Customer and Customer End



User. The Third Party Services are provided by the relevant third parties and SoftLayer is not responsible for the provision of Third Party Services.

3. PRIVACY AND SECURITY.

3.1 Collection of PII. SoftLayer's collection and use of Reseller's PII is governed by the Privacy Agreement. Reseller acknowledges that SoftLayer does not collect PII of Customers or Customer End Users and that any such collection (and any liability connected with such collection) is the sole responsibility of Reseller. Reseller authorizes SoftLayer and International Business Machines Corporation ("IBM") and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Reseller's contact information and any of Reseller's Customers' or Customer End Users' business contact information that Reseller provides to SoftLayer wherever they do business, in connection with the SoftLayer Services or in furtherance of SoftLayer's business relationship with Reseller. If information Reseller provides to SoftLayer includes personal data, Reseller will obtain any consents needed so that SoftLayer can use the information for the intended purpose.

3.2 Security. SoftLayer agrees to maintain reasonable and appropriate measures related to physical security and network security to protect Customer Content. SoftLayer's security controls meet industry standards and include logical and physical mechanisms that restrict access between virtual local access networks ("VLANs") (VLAN-hopping) and access between the production environment and corporate environment.

Reseller, Customer, and/or Customer End User shall be responsible for the security and integrity of the Customer Content – both at rest and in transit – including data maintenance, integrity, retention, security, and backup of the Customer Content. If Reseller, Customer, or Customer End User transfers or is otherwise involved in the transfer of any Customer Content over the Public Network or Private Networks, then Reseller, Customer, and/or Customer End User (as applicable) are solely responsible for compliance with any applicable laws, rules and regulations in any and all applicable regions or countries regarding the security, privacy, legality and/or safe handling of such Customer Content.

4. APPOINTMENT AND RESPONSIBILITIES OF RESELLER.

4.1 Appointment of Reseller. Subject to Reseller's compliance with the terms and conditions set forth in this Agreement, SoftLayer hereby appoints Reseller as its reseller, with the non-exclusive right to resell, offer to resell and support the SoftLayer Services to Customers who enter into a Customer Agreement and Customer End Users who enter into a Customer End User Agreement. Reseller hereby accepts such appointment. Reseller shall be responsible for all billing to and collection of fees from Customers and Customer End Users, and Reseller payments to SoftLayer are not dependent on Reseller's receipt of payment by Customer or Customer End User. For the purposes of this Section 4.1, Reseller shall include Reseller's public sector Affiliate(s) for sales to public sector Customers.

4.2 Responsibilities of Reseller. Reseller represents and warrants that it shall during the Term:

- A. Enter into a Customer Agreement for each Customer and, if applicable, inform Customers of their obligation to enter into Customer End User Agreements for each Customer End User in accordance with Sections 1.7, 1.10, and 8.1.1;
- B. Use its reasonable efforts to establish, promote and maximize sales of the SoftLayer Services;
- C. Maintain, at its own expense, an adequate place or places of business and sufficiently trained and qualified personnel: (i) for presentation and promotion of the SoftLayer Services to Customers and Customer End Users for the purpose of promoting sales of the SoftLayer Services; (ii) for training



Customers and Customer End Users in the use of the SoftLayer Services; and (iii) to otherwise meet its obligations hereunder;

D. Conduct its business so as to maintain the goodwill and reputation of SoftLayer and to reflect favorably on SoftLayer, the Trademarks and the SoftLayer Services at all times. Reseller shall not engage in any unfair or deceptive business practices with respect to the SoftLayer Services or otherwise;

E. (i) comply with all applicable laws, rules and regulations, including, without limitation, the Foreign Corrupt Practices Act and related international anti-corruption laws and the Digital Millennium Copyright Act and related copyright laws; (ii) pay the Fees for the SoftLayer Services when due; (iii) use reasonable security precautions for providing access to the SoftLayer Services by its employees, Customers, Customer End Users, and individuals to whom Reseller provides access; (iv) cooperate with SoftLayer's investigation of outages, security problems, and any suspected Actionable Breach; (v) comply with all applicable license terms or terms of use for any software, content, service or website (including Customer Content) which Reseller uses or accesses when using or providing access to the SoftLayer Services; (vi) give SoftLayer true, accurate, current, and complete Account Information; (vii) keep Reseller's Account Information up to date; (viii) be responsible for the use of the SoftLayer Services by Customer and Customer End Users; (ix) comply with any applicable TPS Agreements and ensure compliance by Customers and Customer End Users; and (x) use commercially reasonable efforts to prevent unauthorized access to or use of the SoftLayer Services and immediately notify SoftLayer of any known or suspected unauthorized use of Reseller's account, Customer's account and Customer End User's account, the SoftLayer Services or any other breach of security. Customer and Customer End User may not use the SoftLayer Services in any situation where failure or fault of the SoftLayer Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, Customers and Customer End Users may not use, or permit any other person to use, the SoftLayer Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or Class III medical devices under the Federal Food, Drug and Cosmetic Act;

F. Respond to all SoftLayer, Customer, Customer End User, or third party reports that any Prohibited Content is being stored or hosted on the SoftLayer Services that Reseller provides to Customers. Reseller agrees to immediately take down, delete or modify any Prohibited Content (which shall include Customer Content that SoftLayer, in its sole discretion, determines to be Prohibited Content) that is brought to its attention, including pursuant to a take-down, deletion or modification request from SoftLayer. In the event that Reseller does not immediately comply with a request from SoftLayer to take down, delete or modify Prohibited Content, SoftLayer reserves the right to suspend and/or terminate public and/or Reseller access to the SoftLayer Services on which the Prohibited Content resides. SoftLayer reserves the right, at any time in its sole discretion, to suspend or terminate access to SoftLayer Services on which Prohibited Content resides based upon a determination by SoftLayer that Customer Content constitutes Prohibited Content. Reseller acknowledges that SoftLayer has no obligation to monitor access to or use of the SoftLayer Services or to review, remove or edit any Customer Content;

G. Reseller acknowledges that SoftLayer is a subsidiary of IBM and accordingly Reseller agrees to comply with the IBM Code of Conduct ("**Code of Conduct**"), a current version of which is available at the Internet website: http://www.ibm.com/partnerworld/pwhome.nsf/weblook/pub_join_memctr_agreement_code.html. IBM may change the Code of Conduct at any time by posting a revised Code of Conduct on the above website or by providing Reseller with notice as otherwise provided in this Agreement. Reseller represents that it has read the Code of Conduct and agrees to monitor the website regularly for changes to the Code of Conduct. Such changes are effective immediately when they are posted to the website. Further, Reseller agrees to require its Customers who are Remarketers to comply with the Code of Conduct; and



H. Reseller agrees to give SoftLayer prompt written notice (unless precluded by law or regulation) of any material, adverse change or anticipated change in Reseller's financial condition, business structure, or operating environment. Upon notification of such change (or if Reseller fails to give notice of such change), SoftLayer may, in its sole discretion, terminate this Agreement immediately by written notice to Reseller effective the day specified in such notice.

4.3 Reseller Relationship. Reseller is currently in the business of providing various products and services to third parties who might also use SoftLayer Services. This is a non-exclusive Agreement with no territorial rights. Neither party is a legal representative or legal agent of the other, nor legally a partner of the other (for example, neither party is responsible for debts incurred by the other), and neither party is an employee or franchisee of the other, nor does this Agreement create a joint venture between the parties. Both parties further agree that this Agreement does not establish an agency, or create any relationship of master and servant or principal and agent or sales representative between the parties. The parties shall not use the terms "franchise," "agent", "sales agency", "sales representative", "joint venturer", "co-venturer", or "partnership" to describe the relationship between the parties under this Agreement. Each party is responsible for its own expenses regarding fulfillment of its responsibilities and obligations under the terms of this Agreement. Neither party will assume or create any obligations on behalf of the other or make any representations or warranties about the other, other than those authorized. Each party is an independent contractor under this Agreement and acknowledges that it does not have any authority to act for or in the name of the other party in any manner whatsoever. SoftLayer reserves the right to sell directly to any third party or end user and SoftLayer may have other resellers, distributors or other parties that operate in the same or similar capacity in SoftLayer's discretion. SoftLayer makes no promises or representations whatsoever as to the amount of business Reseller can expect at any time under this Agreement.

4.4 Limits of Authority. Reseller shall not, without in each case the express prior written approval from an authorized representative of SoftLayer obtained as set forth in Section 18.2 below, take any of the following actions:

- A. Make any representations, warranties or commitments on behalf of SoftLayer;
- B. Make any representations or warranties in respect of the SoftLayer Services, except as approved by SoftLayer and provided in the Customer Agreement, or alter, remove, modify or obfuscate any confidentiality legends or proprietary notices placed on or contained within the SoftLayer Services; or
- C. Delegate or subcontract any of its activities or obligations under this Agreement.



4.5 Use, Resale, Selection and Modification of the SoftLayer Services. Subject to the terms and conditions of this Agreement (including the Term), SoftLayer grants Reseller a non-exclusive, non-transferable, non-sublicenseable (except to the extent required to exercise rights under Section 4.5(b), (c) and (d)), revocable right in the SoftLayer Services to:

- (a) use and access the SoftLayer Services for internal purposes;
- (b) use the SoftLayer Services to create, offer and provide Reseller Offerings;
- (c) permit Reseller's Customer's to use and access the SoftLayer Services for internal purposes; and
- (d) permit Reseller's Customer's to use the SoftLayer Services to create, offer and provide Customer Offerings.

Accordingly, Reseller may resell to Customers and select on any such Customer's behalf (and in coordination with Remarketers on behalf of a Remarketer's Customer End Users) the SoftLayer Services through the SoftLayer Portal or through such other process designated by SoftLayer, including the SoftLayer webpages www.agent.softlayer.com and www.agent.usgov.softlayer.com when and if activated (or such other location(s) as SoftLayer may designate from time to time). SoftLayer may accept such Orders in its discretion and shall give notice to Reseller of acceptance of such Orders through the SoftLayer Portal.

For downgrades or cancellation of SoftLayer Services, Reseller must provide SoftLayer with a written cancellation notice (via cancellation ticket in accordance with the procedures in the SoftLayer Portal) a minimum of 24 hours prior to 00:00:01 CST (GMT-6) on the Reseller Renewal Date. The failure to provide the required 24 hours' written notice will result in the downgrade or discontinuance of SoftLayer Services (and any corresponding change in Fees) being effective on the following Reseller Renewal Date. Any SoftLayer Services cancelled prior to such 24 hour period will remain accessible to Reseller until the automated process reclaims the server on the Reseller Renewal Date, at which time the SoftLayer Services will cease to be accessible by Reseller (or, if applicable, Reseller's Customers).

4.6 Data Center Selection, Privacy Laws. During its selection of SoftLayer Services, Reseller may select the data center from which the SoftLayer Services will be hosted. Reseller understands and acknowledges the sensitivity and confidentiality of PII which may be stored on or transmitted to and from the selected data center, and that such information may be obtained from Customers, Customer End Users or third parties who are subject to the Gramm-Leach-Bliley Act, the Healthcare Insurance Portability and Accountability Act, EU Member States' laws promulgated in accordance with the European Data Protection Directive, other individual country laws governing the collection, processing, storage, and transmittal of PII, and/or other applicable data protection and privacy laws, regulations and guidelines (collectively, "**Privacy Laws**"). Reseller acknowledges the protections afforded by Privacy Laws to PII and agrees to comply with all legal and contractual requirements relating to the privacy and confidentiality of PII applicable to Reseller in the performance of its obligations under this Agreement, and to require its Customers and Customer End Users to do the same.

4.7 Special Terms for Third Party Services. To the extent Reseller selects Third Party Services under TPS Agreements for use or resale with the SoftLayer Services, SoftLayer is not responsible for such Third Party Services and the provider of the Third Party Service is solely responsible for providing such Third Party Services. Reseller, and its Customers, and its Remarketers' Customer End Users, if applicable, are responsible for complying with all terms of such TPS Agreements. However, Reseller also agrees that the following terms of this Agreement apply to such Third Party Services: Sections 8, 9.3, 11, 12, 15 and 16.

4.8 Customer Support. Unless otherwise agreed, Reseller shall be responsible for providing all technical and other support to its Customers and Customer End Users at its own cost and expense. Unless otherwise agreed, SoftLayer will provide support only to Reseller, not to Customer, Customer End User, or



to any other third party to whom Reseller resells or otherwise allows access to or use of the SoftLayer Services.

5. PAYMENT AND DISCOUNTS

5.1 Fees. All Fees (except as provided below in Section 5.2 “Additional Service Fees/Time-Based Service Fees/One Time Fees”) are due in advance of the first day of the Initial Term or Renewal Term, as applicable. The amount due may be adjusted by addition of SoftLayer Services, upgrades of SoftLayer Services, discontinuance of SoftLayer Services or downgrade of SoftLayer Services and through the use of SLA Credits. Fees for additional or upgraded SoftLayer Services which are added on the Reseller Renewal Date will be due on the Reseller Renewal Date. Fees for additional or upgraded SoftLayer Services for which the Order is accepted after a Reseller Renewal Date will be pro-rated on a calendar day basis to the next Reseller Renewal Date and billed as a one-time pro-rata charge on the next Reseller Renewal Date.

5.2 Additional Service Fees/Time-Based Service Fees/One Time Fees. For fees for additional services such as CDN-overages (“CDN” meaning content delivery network), bandwidth use overages, backup overages and VM-ware (“VM” meaning virtual machine) (including archive storage), payment shall be due on the next Reseller Renewal Date. For time-based services, Reseller shall specify the period of time for which the time-based services are requested in the applicable minimum increments of one hour and payment shall be due on the next Reseller Renewal Date. One time fees, such as setup fees, bandwidth, storage, administrative fees and late fees, are due and payable when invoiced, and/or as agreed by SoftLayer through the SoftLayer Portal.

5.3 Payment Methods. Payments shall be made via Reseller’s credit card maintained on file with SoftLayer, automatic file transfer or such other method as approved by SoftLayer. For methods such as credit card, the payment of fees shall be automatic on the due date. All payments under this Agreement shall be in United States Dollars. Payments based on sales in other currencies shall be converted to U.S. Dollars according to the official rate of exchange for that currency, as published in The Wall Street Journal (Western Edition) on the last day of the calendar quarter in which the payment accrued (or, if not published on that day, the last publication day for The Wall Street Journal during that calendar quarter).

5.4 Taxes. All Fees invoiced pursuant to this Agreement are exclusive of any tax, including withholding, sales, use, value added, levies, import and custom duties, excise or other similar or equivalent taxes imposed on the supply of or payment for SoftLayer Services. Any such taxes shall be paid by Reseller. Neither party shall be liable for the other party’s taxes based on income. If SoftLayer has the legal obligation to pay or collect taxes for which Reseller is responsible, such amount shall be charged to and paid by Reseller, unless Reseller provides SoftLayer with a valid tax exemption certificate. If withholding tax applies to any payments for the SoftLayer Services, Reseller may pay such taxes to the appropriate tax authority, provided Reseller provides SoftLayer with a valid tax receipt and pays SoftLayer the full invoiced amount. The parties undertake to cooperate, where practicable, to minimize the amount of withholding tax due.

5.5 SLA Credits. SLA Credits shall be issued as provided in Exhibit B. SLA Credits may not be sold, converted to cash or transferred to third parties. SLA Credits shall expire on the termination or expiration of this Agreement. Reseller agrees that SoftLayer may suspend the provision of the SoftLayer Services to a Customer who makes false claims for SLA Credits.

5.6 Additional Fees. Reseller’s failure to pay any fees on the due date shall result in a late fee of US \$20. If SoftLayer has suspended Reseller’s access to the SoftLayer Services over the Public Network as provided in this Agreement, Reseller shall incur a US \$50 reconnection fee. Such fees shall be due upon Reseller’s receipt of notice thereof, and SoftLayer will not reinstate Reseller’s access to any SoftLayer Services until SoftLayer has received full payment of such fees.



5.7 Refunds & Disputes. Except as otherwise provided, all Fees are non-refundable. If Reseller believes that any charges are in error, Reseller's sole and exclusive remedy is to seek SLA Credits through the SoftLayer Portal by opening an accounting ticket to give notice to SoftLayer within 30 days of the receipt of the disputed bill. Any invoice not disputed by Reseller in accordance with this Section 5.7 within 30 days of receipt of the invoice shall be conclusively accepted by Reseller as correct. Reseller shall not chargeback any credit card payments to SoftLayer and any such chargeback will result in an additional payment to SoftLayer of up to \$500 which is a reasonable estimate of SoftLayer's additional administrative costs. Reseller is responsible for any fees and costs (including, but not limited to, reasonable attorneys' fees, court costs and collection agency fees) incurred by SoftLayer in enforcing collection of fees.

5.8 Audit. Upon SoftLayer's written request, Reseller shall certify in a signed writing that Reseller's use of the SoftLayer Services, the Trademarks and its other activities pursuant to this Agreement are in full compliance with the terms of this Agreement. With prior reasonable written notice to Reseller of at least ten (10) days, SoftLayer may audit Reseller to verify compliance with the terms of this Agreement during the Term and for one year after expiration or termination of this Agreement; provided such audit is conducted during regular business hours.

Reseller or its agent may obtain one copy per year of SoftLayer's most recently completed SoftLayer "Service Organizational Control ("SOC") Type II Report" in accordance with SSAE (Statements on Standards for Attestation Engagements) No. 16), to verify compliance with the terms of this Agreement during the Term and for one year after expiration or termination of this Agreement.

5.9 Discount. The discount, if SoftLayer specifies one, for the SoftLayer Services will be made available in a communication which SoftLayer provides to Reseller at http://cdn.softlayer.com/SoftLayer_Reseller.pdf (or such other location as SoftLayer may designate from time to time). SoftLayer may increase discounts at any time. SoftLayer may decrease discounts on one month's written notice.

6. OWNERSHIP AND PUBLICITY

6.1 Ownership.

(a) Reseller hereby acknowledges and agrees that SoftLayer (or its licensors) own all legal right, title and interest in and to the Site and the SoftLayer Services, including, without limitation, any intellectual property or other proprietary rights which subsist in the Site and SoftLayer Services (whether such rights are registered or unregistered, and wherever in the world those rights may exist). All right, title and interest in and to any and all modifications, derivative works, configurations and adaptations thereof, including without limitation, all patent rights, copyrights, trade secret rights and trademark rights (including, without limitation, the Trademarks) and other intellectual property rights pertaining thereto will remain vested in SoftLayer and/or its licensors.

(b) Reseller shall not (and shall not induce any third party to) modify, create derivative works, configurations or adaptations of, distribute, transfer, reverse engineer, decompile or disassemble the software used to provide the SoftLayer Services.

(c) SoftLayer reserves all rights not expressly granted to Reseller hereunder; there are no implied rights.

(d) Reseller acknowledges that the SoftLayer Services are offered as online, hosted solutions, and that Reseller has no right to obtain a copy of any software or other technology used to provide the SoftLayer Services.

6.2 Publicity. Subject to Reseller's prior written approval of the form of use proposed by SoftLayer and subject to strict conformity with the applicable laws, rules and regulations which govern the use of the



trademarks, logos and trade names (collectively, “**Reseller’s Marks**”), Reseller hereby grants to SoftLayer a non-exclusive, license during the Term to use Reseller’s Marks in connection with SoftLayer’s provision of SoftLayer Services (including support of SoftLayer Services) to Reseller and agrees to be listed as a reseller of the SoftLayer Services by SoftLayer or its designees. SoftLayer shall not use the Reseller’s Marks in any manner that would damage Reseller’s reputation or image, or otherwise jeopardize the goodwill associated with the Reseller Marks. In addition, SoftLayer shall not assert any rights in any of the Reseller’s Marks.

7. CONFIDENTIALITY

7.1 Confidentiality. Each party receiving Confidential Information (“**Receiving Party**”) agrees to maintain in confidence all Confidential Information disclosed by the other party (“**Disclosing Party**”), for a period of two years following the initial date of disclosure. Confidential Information includes, without limitation, the terms and conditions of this Agreement and all invoices and Fee-related reports delivered or generated pursuant to this Agreement. Receiving Party agrees that it shall not use the Confidential Information, and shall take all reasonable steps to prevent the unauthorized disclosure or use of the Confidential Information and to prevent it from falling into the public domain or into the possession of unauthorized persons. Receiving Party shall not disclose Confidential Information to any person or entity other than its employees and consultants who need access to such Confidential Information in order to effect the intent of this Agreement and who have entered into written confidentiality agreements with the Receiving Party under terms sufficient to enable such party to comply with its confidentiality obligations under this Agreement. The Receiving Party shall immediately give notice to the Disclosing Party of any unauthorized use or disclosure of the Confidential Information. The Receiving Party agrees to assist the Disclosing Party in remedying such unauthorized use or disclosure of the Confidential Information, at the Receiving Party’s expense.

7.2 Exclusions. Confidential Information shall not include any information that is: (a) already known to Receiving Party at the time of the disclosure; (b) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the Receiving Party; (c) subsequently disclosed to the Receiving Party on a non-confidential basis by a third party who rightfully acquired such information without any confidentiality obligation; or (d) is independently developed by the Receiving Party without reference to, or use of, the Confidential Information, which independent development the Receiving Party shall have the burden of proving. A disclosure of Confidential Information that is legally compelled to be disclosed pursuant to a subpoena, summons, order or other judicial or governmental process shall not be considered a breach of this Agreement; provided the Receiving Party provides prompt written notice of any such subpoena, order, or the like to the other party prior to disclosure, so that the Disclosing Party shall have the opportunity to obtain a protective order or otherwise oppose the disclosure or seek protective treatment.

7.3 Permitted Disclosures. Either party may disclose information concerning this Agreement and the transactions contemplated hereby, including providing a copy of this Agreement, to any or all of the following: (a) potential acquirers, merger partners, investors and their personnel, attorneys, auditors and investment bankers, solely in connection with the due diligence review of such party by persons, and provided that such disclosures are made in confidence and such disclosure is not being made to a direct competitor of the other party to this Agreement; (b) the party’s outside accounting firm; or (c) the party’s outside legal counsel. Upon the termination of this Agreement for any reason, the Receiving Party shall promptly return to the Disclosing Party (or if requested by the Disclosing Party, destroy and provide certification of such destruction in a form reasonably requested by the Disclosing Party) all copies of the Confidential Information in the Receiving Party’s possession or control.



7.4 **Injunctive Relief.** Monetary damages will not be an adequate remedy for breach of the obligations set forth herein. In addition to all other remedies, each party will have the right to apply to a court of competent jurisdiction for a temporary restraining order, preliminary injunction or other equitable relief.

8. INDEMNIFICATION

8.1 **Reseller's Indemnification Obligation.** Reseller hereby agrees to indemnify, defend and hold harmless SoftLayer and its parents, Affiliates, licensors and providers of Third Party Services, and their respective directors, officers, employees, contractors, agents, successors, and assigns (collectively, the "**SoftLayer Parties**") (SoftLayer and each of the SoftLayer Parties is an "**Indemnified SoftLayer Party**"), from and against any and all liability (including, without limitation, attorneys' fees and costs and defense costs) incurred by the Indemnified SoftLayer Parties in connection with any third party claim ("**Claim**") arising out of: (a) the unlawful or expressly prohibited use of the SoftLayer Services and Third Party Services by Reseller, Reseller's Customers, and/or Customer End Users; (b) a breach under Section 4.2(e) and (f); (c) Reseller's failure to execute or otherwise agree to a legally binding Customer Agreement with any Customer prior to use of the SoftLayer Services by such Customer and Customer's failure to execute or otherwise agree to a legally binding Customer End User Agreement with any Customer End User prior to the use of the SoftLayer Services by such Customer End User; (d) a negligent or willful act or omission of Reseller, Customers, and/or Customer End Users in connection with the use of the SoftLayer Services or Site, including, without limitation, any actual or alleged infringement or misappropriation of a third party's intellectual property, including copyright, trade secret, patent, trademark, privacy, publication or other proprietary right; (e) any damage caused by Reseller, Customer, and/or Customer End User to the Site or SoftLayer Services; (f) any actual disclosure of confidential information by Reseller or any Customer, Customer End User or any third party; or (g) any actual violation or non-compliance by Reseller, Customer, or Customer End User with any applicable law, court order, rule or regulation in any jurisdiction. Reseller shall not in any event agree to any judgment, settlement, attachment, or lien, or any other act adverse to the interests of SoftLayer or any SoftLayer Party without the prior written consent of SoftLayer and/or the applicable SoftLayer Party(s), which consent shall not be unreasonably withheld. Reseller and Reseller's counsel will cooperate as fully as reasonably required, and provide such information as reasonably requested, by SoftLayer or the SoftLayer Parties in the defense or settlement of any such matter.

8.1.1 Reseller will include the following statement in its Customer Agreement: *<Customer's name> exclusive remedy for any and all damages under the agreement, including, but not limited to, consequential, indirect, or special damages, is against < Reseller's name >.* Reseller will also require its Customers who are Remarketers to include this statement in their Customer End User Agreement: *<Customer End User's name> exclusive remedy for any and all damages under the agreement, including, but not limited to, consequential, indirect, or special damages, is against < Customer's name >, or any language reaching the same objective, in line with local legislation as deemed appropriate by Reseller.*

8.2 **SoftLayer's Indemnification Obligation.** SoftLayer hereby agrees to indemnify, defend and hold harmless Reseller and its parents, Affiliates and licensors, and their respective directors, officers, employees, contractors, agents, successors, and assigns (collectively, the "**Reseller Parties**") (Reseller and each of the Reseller Parties is an "**Indemnified Reseller Party**"), from and against any and all liability (including, without limitation, attorneys' fees and costs and defense costs) incurred by the Indemnified Reseller Parties in connection with any Claim that the SoftLayer Services infringe any third party's patent or copyright, provided that Reseller (a) promptly notifies SoftLayer of the claim, and (b) allows SoftLayer to control, and cooperates with SoftLayer in the defense and/or settlement of the claim. SoftLayer does not have any indemnification obligation hereunder for claims based on Customer Content, Customer Offering, or any other manner of use of the SoftLayer Services by Reseller, any Customer or any other third party.



8.3 **Procedures.** In the event that any claim is made or suit is commenced against an indemnified party under Section 8.1 or 8.2 above, the indemnified party shall: (i) give prompt written notice of such claim or suit to the indemnifying party; and (ii) provide reasonable assistance and cooperation in the defense and settlement of any claim. Notwithstanding the foregoing, if the indemnifying party fails to assume its obligation to defend, the indemnified party may do so to protect its interests and seek reimbursement from the indemnifying party. Neither party will make public the terms or existence of any settlement arising under this Section 8.

9. WARRANTIES

9.1 **SoftLayer Warranties.** SoftLayer represents and warrants to Reseller that as of the Effective Date: (a) it has all right, power and authority to execute, deliver and perform this Agreement and to grant the rights and consummate the transactions contemplated hereby; (b) this Agreement has been duly authorized, executed and delivered by SoftLayer; (c) SoftLayer Services will substantially conform to the descriptions, specifications, service levels, instructions and documentation provided or otherwise published by SoftLayer in connection with the SoftLayer Services and (d) it has not granted any rights which are inconsistent with the terms of this Agreement.

9.2 **Reseller Warranties.** Reseller represents and warrants to SoftLayer that as of the Effective Date: (a) it has all right, power and authority to execute, deliver and perform this Agreement and to grant the rights and consummate the transactions contemplated hereby; and (b) this Agreement has been duly authorized, executed and delivered by Reseller.

9.3 **Warranty Disclaimer.** THE SITE AND SERVICES ARE FURNISHED BY SOFTLAYER “AS IS” AND WITHOUT WARRANTIES OR CONDITIONS, STATUTORY OR OTHERWISE, OF ANY KIND. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED, SOFTLAYER: (A) EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE; (B) DOES NOT WARRANT THAT THE SOFTLAYER SERVICES WILL MEET RESELLER’S, CUSTOMERS’ OR CUSTOMER END USERS’ REQUIREMENTS, OR THAT THEIR OPERATION WILL BE TIMELY, UNINTERRUPTED, SECURE, OR ERROR-FREE OR THAT ANY DEFECTS WILL BE CORRECTED; AND (C) DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS OR CONDITIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTLAYER SERVICES IN TERMS OF THEIR ACCURACY, RELIABILITY, TIMELINESS, COMPLETENESS, OR OTHERWISE. RESELLER ASSUMES TOTAL RESPONSIBILITY FOR THE USE OF THE SOFTLAYER SERVICES BY ITS CUSTOMERS AND CUSTOMER END USERS.

10. DISCLAIMER OF CONSEQUENTIAL DAMAGES.

IN NO EVENT WILL SOFTLAYER BE LIABLE TO RESELLER, CUSTOMERS, CUSTOMER END USERS, OR ANY THIRD PARTY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, COMPENSATION, REIMBURSEMENT OR DAMAGES IN CONNECTION WITH, ARISING OUT OF, OR RELATING TO, THE USE, OR LOSS OF USE OF, THE SOFTLAYER SERVICES, LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF, OR DAMAGE TO, DATA OR CONTENT, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, SUBSEQUENT OR OTHER COMMERCIAL LOSS, OR FOR ANY OTHER REASON OF ANY KIND, WHETHER BASED ON CONTRACT OR TORT (INCLUDING,



WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. LIMITATION OF LIABILITY.

EXCEPT FOR LIABILITY ARISING FROM THE INDEMNIFICATION OBLIGATIONS HEREIN, OR AS OTHERWISE REQUIRED BY LAW, SOFTLAYER'S TOTAL CUMULATIVE LIABILITY FOR ALL CLAIMS SHALL IN NO EVENT EXCEED THE GREATER OF THE AMOUNT OF FEES ACTUALLY PAID BY RESELLER TO SOFTLAYER FOR THE TWELVE MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO THE LIABILITY OR \$100,000 U.S.

12. ALLOCATION OF LIABILITY.

THE PARTIES ACKNOWLEDGE THAT THE DISCLAIMER OF WARRANTIES, DISCLAIMER OF CONSEQUENTIAL DAMAGES AND LIMITATIONS OF LIABILITY IN THIS AGREEMENT AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH SOFTLAYER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT. SOFTLAYER'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THESE LIMITATIONS

12.1 Failure of Remedy. The parties agree that the limitations specified in Sections 11 and 12 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

12.2 Third Party Claims. Reseller will indemnify SoftLayer from all claims arising from: (i) Reseller's failure to comply with the provisions of this Agreement; or (ii) Reseller's failure to require, in writing, its Customers to comply with applicable export and import laws, regulations, orders or policies, as specified under Sections 18.3 and 18.4 of this Agreement and to further require its Remarketers to place a similar written requirement on their Customer End Users to ensure they are required to comply with the provisions of this Agreement and applicable export and import laws, regulations, orders or policies, as specified under Sections 18.3 and 18.4 of this Agreement.

13. DISPUTE RESOLUTION

Each party will allow the other a reasonable opportunity to comply before it claims the other has not met its obligations under this Agreement, unless otherwise specified in this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose, and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

14. TRADEMARKS

14.1 Trademark License. Reseller is licensed to use the Trademarks identified in the Trademark Terms in Promotional Materials in accordance with the Trademark Terms.

14.2 Approval of Reseller's Promotional Materials. All Promotional Materials used by Reseller must be approved in advance by SoftLayer in accordance with the Trademark Terms.

14.3 Approval of End Users' Promotional Materials. Any use of the Trademarks in any Promotional Materials by Customers or Customer End Users will be made in accordance with the Trademark Terms, and all such Promotional Materials must be approved in advance by SoftLayer. Reseller agrees to obtain



from each of Reseller's Customers and Customer End Users any Promotional Materials for SoftLayer's review and approval prior to any use.

15. SUSPENSION

15.1 **Suspension.** SoftLayer may suspend provision of SoftLayer Services to Reseller, Customers, and Customer End Users:

- (i) upon 30 days' notice if SoftLayer determines:
 - (a) that the use by Reseller, Customer, or Customer End User of the SoftLayer Services has resulted in an Actionable Breach; or
 - (b) a payment for the SoftLayer Services is overdue by more than 10 days (and in addition, SoftLayer may, in SoftLayer's sole discretion, continue to make the SoftLayer Services available through the Public Network and may suspend such access to the Private Network if the fees are not paid within 15 days of the due date); and
- (ii) immediately in the event that:
 - (a) Reseller does not reasonably cooperate with SoftLayer's request for assistance in the investigation of any suspected violation of this Agreement or any applicable law, court order, rule or regulation in any jurisdiction, or a Customer or Customer End User does not cooperate with SoftLayer's investigation of any suspected violation of the AUP, the Trademark Terms or any applicable law, court order, rule or regulation in any jurisdiction;
 - (b) SoftLayer reasonably believes that the SoftLayer Services have been accessed or manipulated by a third party without Reseller's, Customer's, or Customer End User's consent;
 - (c) SoftLayer reasonably believes that suspension of the SoftLayer Services is necessary to protect SoftLayer's network or other SoftLayer customers;
 - (d) the continued use of the SoftLayer Services by Reseller, Customer, or Customer End User may adversely impact the SoftLayer Services or the systems or content of any other SoftLayer customer;
 - (e) SoftLayer reasonably believes that the use of the SoftLayer Services by Reseller, Customer, or Customer End User may subject SoftLayer, its Affiliates, or any third party to liability; or
 - (f) suspension is required by law, statute, regulation, rule or court order. SoftLayer will give Reseller reasonable advance notice of a suspension under this subparagraph (f) and a chance to cure the grounds on which the suspension is based, unless SoftLayer determines, in SoftLayer's reasonable commercial judgment, that a suspension on shorter or contemporaneous notice is necessary to protect SoftLayer or its other customers from operational, security, or other risk or the suspension is ordered by a court or other judicial body.

In the event of a suspension under 15.1(ii), SoftLayer will only suspend the SoftLayer Services that gave rise to the basis for suspension.

If SoftLayer suspends all or some portion of the SoftLayer Services:

- A. Reseller remains responsible for all fees and charges Reseller has incurred through the date of suspension;



B. Reseller remains responsible for any applicable fees and charges for any SoftLayer Services to which Reseller has continued to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension;

C. Reseller will not be entitled to any SLA Credits under the Service Level Agreement accrued during any period of suspension with respect to any such suspended services; and

D. SoftLayer may terminate Reseller's access to the relevant Customer Content stored in the SoftLayer Services during a suspension, and SoftLayer shall not be liable to Reseller, Customer, Customer End User, or any third party for any damages or losses as a result of such suspension.

16. TERM AND TERMINATION

16.1 Term. Except as otherwise agreed by the parties in writing, the Term shall commence on the Effective Date and the Initial Term or the Renewal Term, as applicable, shall be automatically renewed for a Renewal Term at each Reseller Renewal Date until terminated as provided below.

16.2 Termination for Convenience. Reseller may terminate this Agreement for convenience at any time through the SoftLayer Portal. If Reseller terminates this Agreement for convenience, Reseller shall pay SoftLayer all amounts that would be due within thirty (30) days after such termination. SoftLayer may terminate this Agreement for convenience upon providing Reseller with thirty (30) calendar days' prior written notice.

16.3 Material Breach. SoftLayer may terminate this Agreement if: (i) SoftLayer discovers that the information Reseller provided to SoftLayer about Reseller's proposed use of the SoftLayer Services or Account Information was materially inaccurate or incomplete; (ii) the individual accepting this Agreement on behalf of Reseller did not have the legal right or authority to enter into this Agreement on behalf of Reseller; (iii) Reseller's payment of any invoiced amount is overdue, and Reseller does not pay the undisputed overdue amount within thirty (30) days of the due date; (iv) Reseller's, Customer's or Customer End User's use of the SoftLayer Services violates this Agreement and such violation is not remedied within thirty (30) days of receipt of SoftLayer's written notice thereof to Reseller; (v) Reseller, Customer, or Customer End User violates the AUP or the Trademark Terms; (vi) Reseller's account has been suspended for 30 days or more; (vii) Reseller commits multiple Actionable Breaches; or (viii) Reseller fails to comply with any other provision of this Agreement and does not remedy the failure within thirty (30) days of receipt of SoftLayer's notice to Reseller describing the failure. SoftLayer will give Reseller thirty (30) days' prior written notice of termination under this paragraph unless a termination on shorter or contemporaneous notice is necessary to protect SoftLayer or its other customers from operational, security, or other risks. A breach of the Flow-Through Provisions shall be deemed to be a breach of this Agreement.

16.4 Access to Customer Content In the event that this Agreement is terminated by SoftLayer for convenience (except when this is not allowed by applicable law and accordingly per the contractual terms entered into between Reseller and one of its End User or a Remarketer and one of its Customer End Users, notably if the End User or Customer End User is a non-US government owned entity), for a period not to exceed sixty (60) days after the effective date of termination (the "**Transition Period**") SoftLayer will allow the SoftLayer Services to continue without interruption or adverse effect and will facilitate the orderly transfer of the SoftLayer Services to Reseller. However, where the United States Federal Government is the End User or Customer End User, the period will not exceed twelve (12) months after the effective date of termination. SoftLayer will use commercially reasonable efforts to provide the SoftLayer Services during the Transition Period in the same manner as such SoftLayer Services were provided prior to the



Transition Period. SoftLayer's obligations under this Section 16.4 shall be conditioned upon Reseller's compliance with the terms of this Agreement during the Transition Period, including the payment terms.

16.5 Effect of Termination. Upon any termination of this Agreement: (a) the rights granted to Reseller under this Agreement shall immediately terminate; (b) Reseller shall cease reselling the SoftLayer Services and shall cease all use of the Promotional Materials and Trademarks and any license, including the Trademark License, provided to Reseller is hereby terminated simultaneous with this Agreement; (c) SoftLayer shall cease all use of Reseller's Marks; and (d) each party shall promptly destroy all copies of property and materials, including Promotional Materials (with respect to SoftLayer) and Confidential Information, in its possession or under its control. SoftLayer will cease providing the SoftLayer Services to Reseller.

16.6 Survival. All terms which by their nature are intended to survive the termination of this Agreement, shall survive such termination, including without limitation, the following terms: Sections 3, 5.8, 6.1, 7, 8, 9.3, 10, 11, 12, 13, 14.6, 16.4, 16.5, 16.6, 16.7, 16.8, 17, and 18.

16.7 No Compensation. Reseller is not entitled to any compensation, damages or payments in respect of goodwill that has been established or for any damages on account of prospective or anticipated profits, nor is Reseller entitled to reimbursement in any amount for any training, advertising, marketing, development, investments, leases or other costs that may be expended by Reseller before the termination of this Agreement. Reseller hereby waives its rights under applicable laws for such compensation.

16.8 Notice of Claims. Unless otherwise provided by law, each party must give written notice to the other of any claims against such party arising under or in any way relating to this Agreement or the selling representation created hereby within 2 years after the effective termination date of this Agreement; the failure to do so shall be deemed a waiver of those claims.

17. U.S. GOVERNMENT CUSTOMERS AND U.S. GOVERNMENT RIGHTS.

SoftLayer provides the SoftLayer Services for ultimate federal government end use solely in accordance with the following license rights to use, modify, reproduce, release, perform, display, or disclose: Government technical data and software rights related to the SoftLayer Services include only those rights customarily provided to the public. Resellers shall ensure that these provisions are included in any agreement for use of the SoftLayer Services by a Customer or Customer End User who is an agency or other part of the Federal Government. This customary commercial license is provided in accordance with the Federal Acquisition Regulation ("FAR") at 48 C.F.R. 12.211 (Technical Data) and FAR 12.212 (Software) for civilian agencies of the federal government, and, for Department of Defense transactions, the Defense Federal Acquisition Regulation Supplement ("DFARS") at 48 C.F.R. 252.227-7015 (Technical Data – Commercial Items), 48 C.F.R. 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). This U.S. Government Rights clause, consistent with 48 C.F.R. 12.211, 48 C.F.R. 27.212 (federal civilian agencies) or 48 C.F.R. 227.7202-4 (DoD agencies) is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses U.S. Government rights in computer software, computer software documentation or technical data related to the SoftLayer Commercial Computer Software and Commercial Computer Software Documentation that is the subject of this Agreement or in any contract or subcontract under which this SoftLayer Commercial Computer Software and Commercial Computer Software Documentation is acquired or licensed. If a government agency has a need for rights not conveyed under these terms, it must negotiate with SoftLayer to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum



specifically conveying such rights must be included in writing and agreed to by SoftLayer in any applicable contract or agreement.

18. MISCELLANEOUS

18.1 Agreement Changes. SoftLayer may modify the terms and conditions of this Agreement, the SLA, the AUP, the Trademark Terms, and the Privacy Agreement. SoftLayer will promptly notify Reseller through the SoftLayer Portal of any such modifications, and all modifications shall be effective upon such notice and their posting on the SoftLayer Portal. It is Reseller's responsibility to review the SoftLayer Portal for such modifications on a frequent basis and to revise its Customer Agreement and to inform Customers of the obligation to revise the Customer End User Agreement to reflect any such changes. If Reseller continues to use or resell the SoftLayer Services following any such modification such activities will be deemed acceptance of such modification by Reseller. Except as otherwise provided above, for a change to the Agreement to be valid, both Parties must sign it. Unless otherwise agreed by the parties, additional or different terms in any written communication from Reseller (such as an order) are void.

18.2 Notices. Reseller communications regarding the SoftLayer Services or this Agreement should be sent through the SoftLayer Portal except for the following types of notices: any proposed use of the Trademarks and any Promotional Materials should be sent to the SoftLayer Marketing Dept. via the online submission tool located at www.softlayer.com/trademarks/ (or such other location as SoftLayer may designate from time to time), and for breach, indemnification, or other non-routine legal matters, Reseller should send notice by electronic mail and first-class United States mail to:

If to SoftLayer:
SoftLayer Technologies, Inc.
C/O Legal Department
Stanford Corporate Center
14001 North Dallas Parkway, Suite M100
Dallas, TX 75240
Email: legal@softlayer.com

SoftLayer's communications regarding the SoftLayer Services and legal notices will be sent through the SoftLayer Portal. Notices are deemed received as of the time delivered. Notices must be given in the English language.

18.3 Export Matters. SoftLayer will comply with laws applicable to SoftLayer generally as a provider of information technology services. SoftLayer is not performing Reseller's, Customers' or the Customer End Users' regulatory or management obligations and is not responsible for determining the requirements of laws applicable to Reseller's, Customers' or Customer End Users' business, including those related to the SoftLayer Services.

Reseller agrees to inform Customers of the obligation to comply with applicable terms of this Section 18.3.

Regardless of where located when accessing the SoftLayer Services, Reseller, Customers and Customer End Users agree to comply with all applicable export and import laws and regulations, including those of the United States regarding embargo and sanctions regulations and prohibitions on export for certain end uses or by any prohibited end users. Resellers, Customers and Customer End Users represent that Customer Content will not, in whole or part, be controlled under the U.S. International Traffic in Arms Regulation (ITAR). Resellers, Customers and Customer End Users are prohibited from exporting, re-exporting, diverting transfer, disclosing or permitting access to any portion of the SoftLayer Services, Enabling Software, Content, or related technical information, directly or indirectly, in violation of such export and import laws and regulations. Resellers, Customers and Customer End Users are also responsible for



complying with all other laws, rules, and regulations that may be applicable to Reseller's, Customers' and Customer End Users' use of the SoftLayer Services.

Resellers, Customers, and Customer End Users acknowledge that SoftLayer uses global resources (non-permanent residents used locally and personnel in locations worldwide) to remotely support the delivery of SoftLayer Services. Resellers, Customers, and Customer End Users represent that no Content accessible to SoftLayer for the SoftLayer Services will require an export license or is restricted from export to any SoftLayer global resource or personnel under applicable export control laws. The laws and regulations of those countries where SoftLayer has data center operations or other points of presence are in scope (a current list of such locations can be found on the following webpage: <http://www.softlayer.com/data-centers> (or such other location as SoftLayer may designate from time to time). As SoftLayer expands operations, please review this webpage to determine if any additional countries' laws or regulations are in scope).

Reseller, Customers, and Customer End Users represent that they are not subject, either directly or indirectly (by affiliation or any other connection with another party), to any order issued by any agency of the United States Government revoking or denying in whole or in part, their United States export privileges. Reseller, Customers, and Customer End Users agree to notify SoftLayer immediately if they become subject to any such order.

Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate applicable law.

18.4 Export Restrictions. Reseller, Customer, and Customer End User may not resell SoftLayer Services alone (i.e., not in combination with one or more Reseller Offerings) to the following Latin American countries—Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Nicaragua and Panama. However, if Reseller or Customer integrates one or more Reseller Offerings with the SoftLayer Services and provides such integrated solution under its own name or brand, Reseller or Customer may provide such integrated solution to Customers or Customer End Users in the Latin American countries identified in the preceding sentence.

18.5 Assignment/Subcontractors. Reseller may not assign Reseller's rights and/or delegate Reseller's obligations under this Agreement without SoftLayer's prior written consent, which consent shall not be unreasonably withheld. Any assignment or transfer of this Agreement by Reseller in violation of this section will be void. Either party may assign its rights and/or delegate its obligations under this Agreement to (i) its Affiliates and (ii) any entity as a result of a merger or sale of all or substantially all of its assets to such entity and such entity agrees in writing to be bound by the terms of the Agreement. This Agreement will be binding on and inure to the benefit of Reseller's and SoftLayer's respective permitted successors and permitted assigns. However, SoftLayer may use third parties or Affiliates to provide all or part of the SoftLayer Services. This provision does not apply to the Third Party Services which are governed by separate agreements.

In addition to the foregoing, Reseller's rights under this Agreement are not property rights and, therefore, Reseller cannot transfer them to another party or encumber them in any way. For example, Reseller cannot sell its approval to market SoftLayer Services or Reseller's rights to use SoftLayer's Trademarks.

18.6 Force Majeure. Except for its rights in Sections 15 or 16, neither SoftLayer nor Reseller will be in violation of this Agreement if the failure to perform the obligation is due to an event beyond either party's control (a "**Force Majeure Event**"), such as significant failure of a part of the power grid, sabotage, denial of service attack, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are



not generally taken in the hosted Internet infrastructure industry; provided however if the Force Majeure Event continues beyond thirty (30) days, the performing party may terminate this Agreement.

18.7 Feedback. SoftLayer shall own all right, title and interest in and to Feedback. Upon providing the Feedback, Reseller hereby irrevocably assigns to SoftLayer all right, title, and interest in and to the intellectual property rights in the Feedback and agrees to provide SoftLayer with any assistance SoftLayer may require to document, perfect, and maintain SoftLayer's rights in the Feedback

18.8 Jurisdiction, Choice of Law. Both parties agree to the application of the laws of New York to govern, interpret, and enforce all of your and SoftLayer's respective rights, duties and obligations arising from, or relating, in any manner to, the subject matter of this Agreement, without regard to conflict of law principles. The "United Nations Convention on Contracts for the International Sale of Goods" does not apply.

18.9 Non-Solicitation of Employees. During the Term and for a period of one (1) year thereafter, neither Party shall (directly or indirectly) solicit, induce, or attempt to solicit or induce, any of the employees of the other Party involved in the performance of this Agreement to terminate their employment, or hire or attempt to hire any of those employees; provided however, that such prohibition shall not apply to any person who independently, and without any inducement, approaches a hiring Party to solicit employment. The term "**solicit**" shall not be deemed to include advertising in newspapers, websites, other digital media or trade publications available to the public.

18.10 No Waiver. A Party's delay or failure to exercise or delay in exercising any of its rights under this Agreement will not constitute a waiver, forfeiture, or modification of such rights. A Party's waiver of any right under this Agreement will not constitute a waiver of any other right under this Agreement or of the same right on another occasion. Each party's waiver of any right under this Agreement must be in writing.

18.11 Severability. If any part of this Agreement is found unenforceable by a court or other tribunal, the rest of the Agreement will nonetheless continue in effect, and the parties agree that any court or other tribunal may reform the unenforceable part if it is possible to do so consistent with the material economic incentives of the parties resulting in this Agreement.

18.12 Attorneys' Fees. In the event that any action or proceeding is brought in connection with this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees.

18.13 Counterparts. This Agreement may be signed in any number of counterparts, each of which when so executed shall be an original, but all counterparts shall together constitute one and the same document.

18.14 No Third Party Beneficiaries. Except to the extent otherwise expressly set forth in Section 8.1 above, there are no third party beneficiaries of this Agreement.

18.15 Controlling Language. The official language of this Agreement shall be the English language and no translation into any other language may be used in its interpretation. All services, support, notices, designations, specifications, and communications will be provided in the English language.

18.16 Entire Agreement and Integration. This Agreement constitutes the final and entire agreement between the parties. It is the exclusive expression of the parties' agreement on the matters contained in this Agreement. All earlier and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

The Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the last date indicated in connection with the Parties' signatures below (or if agreed to by Reseller online by checking



a box or clicking an acknowledgement button, then on the date of such action).

SoftLayer: **SoftLayer Technologies, Inc.**

By: _____

Name: _____

Title: _____

Date: _____

Reseller: _____ **(insert full legal name)**

By: _____

Name: _____

Title: _____

Date: _____

Reseller's legal entity type *(corporation, limited liability company, partnership, or individual)*: _____

Reseller's legal entity's state/province/country of formation: _____

Reseller's principal business address: _____

Reseller's Street Address for notices (if different from above): _____

Reseller's City/Town/Village for notices (if different from above): _____

Reseller's State/Province for notices (if different from above): _____

Reseller's Country for notices (if different from above): _____

Reseller's Mail/zip code for notices (if different from above): _____

Attn.: _____

Title: _____

Reseller's Phone: _____

Reseller's Email: _____



Exhibit A Trademark Terms

SoftLayer Trademark License Agreement (for SoftLayer Customers and Resellers) Version 2014-7-17

This SoftLayer Trademark License Agreement (this "**Agreement**") is made between **SoftLayer Technologies, Inc.**, an IBM Company ("**SoftLayer**"), and the individual or entity identified below ("**Licensee**") (Licensee and SoftLayer are collectively referred to as the "**parties**" and individually may be referred to as a "**party**") effective as of the earlier of (the applicable date is the "**Effective Date**") (1) the same day as the parties' (a) SoftLayer Reseller Agreement, if Licensee is a SoftLayer Reseller, or (b) Master Services Agreement or Master Services Agreement – Managed Hosting, as applicable (the "**Associated Agreement**"), or (2) the date that Licensee separately accepts the terms of this Agreement.

Section 1. DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

- 1 "**Promotional Materials**" shall have the meaning set forth in Exhibit 1.
- 2 "**SoftLayer Portal**" means SoftLayer's web portal at <https://control.softlayer.com/> (or such other location as SoftLayer may designate from time to time) or the "SoftLayer Application Programming Interface".
- 3 "**Trademark**" means the SoftLayer trademark identified in Exhibit 2.
- 4 "**Trademark Usage Guidelines**" means the guidelines established by SoftLayer, as SoftLayer may modify from time to time upon reasonable notice to the SoftLayer Portal, providing for the use and display of the Trademark, the current version of which are set forth in Exhibit 3.
- 5 "**Website**" shall mean the Licensee's website located at the website address specified under the Licensee's signature.

Section 2. LICENSE GRANT

SoftLayer grants Licensee a worldwide, non-exclusive, non-transferable, right and license to use the Trademark on Promotional Materials and on the Website in strict accordance with the terms of this Agreement to promote SoftLayer's business relationship with Licensee.

Section 3. USE OF THE TRADEMARK

- 3.1 Licensee agrees to display and use the Trademark solely in the form, manner and style required by the Trademark Usage Guidelines.
- 3.2 Licensee agrees to use the Trademark only on communications developed as a result of a joint collaboration between SoftLayer and Licensee in accordance with the terms of the Associated Agreement.
- 3.3 Licensee shall be solely responsible for the cost of producing and copying any Promotional Materials.

Section 4. OWNERSHIP OF THE TRADEMARK

- 4.1 All ownership rights in the Trademark belong exclusively to SoftLayer and its parent company, International Business Machines Corporation ("**IBM**"). Licensee has no ownership rights in the Trademark and shall acquire no ownership rights in the Trademark as a result of its performance (or breach) of this Agreement. All use and goodwill resulting from the use of the Trademark or variations thereon shall inure solely to the benefit of SoftLayer and IBM. Upon termination of this Agreement, all rights of Licensee to use the Trademark shall terminate immediately except as otherwise provided herein.
- 4.2 Licensee agrees:
 1. not to take any action which will interfere with any of SoftLayer's or IBM's rights in and to the Trademark;
 2. not to challenge SoftLayer's or IBM's right, title or interest in and to the Trademark or the benefits therefrom;
 3. not to make any claim or take any action adverse to SoftLayer's or IBM's ownership of the Trademark;
 4. not to register or apply for registrations, anywhere, for the Trademark or any other mark which is confusingly similar to the Trademark or which incorporates the Trademark; and
 5. not to use any mark, anywhere, which is confusingly similar to the Trademark.

Section 5. QUALITY CONTROL

- 5.1 Licensee agrees that it is of fundamental importance that Licensee's Promotional Materials and Website bearing the Trademark be of the highest quality and integrity and that the Trademark be properly used and displayed. For that reason, Licensee shall present its proposed use of the Trademark, on its Promotional Materials or Website, including any significant variations to any previously approved use, to SoftLayer for approval no less than thirty (30) days prior to its proposed use, and shall not implement such proposed use until written approval is received from SoftLayer.
- 5.2 Failure to meet the quality standards set forth in this Agreement shall be deemed to be a breach thereof for which this Agreement may be terminated by SoftLayer in accordance with Section 9.3.



Section 6. PROTECTION OF THE TRADEMARK

6.1 If Licensee becomes aware of any of the following, Licensee agrees to notify SoftLayer within twenty (20) business days:

1. any uses of, or any application or registration for, a trademark, service mark or trade name that conflicts with or is confusingly similar to the Trademark;
2. any acts of infringement or unfair competition involving the Trademark; or
3. any allegations or claims, whether or not made in a lawsuit, that the use of the Trademark by SoftLayer or Licensee infringes the trademark or service mark or other rights of any other entity.

6.2 SoftLayer or IBM may, but shall not be required to, take whatever action in its sole discretion, deems necessary or desirable to protect the validity and strength of the Trademark at SoftLayer's sole expense. Licensee agrees to comply with all reasonable requests from SoftLayer or IBM for assistance in connection with any action with respect to the Trademark that SoftLayer or IBM may choose to take.

6.3 Licensee shall not institute or settle any claims or litigation affecting any rights in and to the Trademark without SoftLayer's prior written approval.

Section 7. INDEMNITY AND LIMITATION OF LIABILITY

7.1 SoftLayer shall settle or defend all claims made by third parties against Licensee and shall thereby indemnify and hold Licensee, its officers, agents and employees, harmless from any and all claims made against Licensee for infringement or unfair competition arising from Licensee's use of the Trademark in strict accordance with the terms of this Agreement. Following notice of an infringement claim or at any time SoftLayer deems appropriate, SoftLayer may provide Licensee with a substitute trademark for use under the terms and conditions of this Agreement.

7.2 Licensee shall defend, indemnify and hold harmless SoftLayer, IBM, and their respective officers, agents and employees from and against any and all claims (including those for infringement), damages, liabilities, suits, actions, judgments, penalties and taxes, civil and criminal, and all costs and expenses (including without limitation reasonable attorneys' fees) incurred in connection therewith, arising out of or related to:

1. Licensee's manufacture, sale and/or distribution of, or any third party's use or possession of, the Licensee's products and/or services which are associated with or featured in the Promotional Materials or on the Website; or
2. Licensee's distribution, promotion, marketing and content of, or a third party's access to or use of, the Licensee's Promotional Materials and the Website.

7.3 Notwithstanding the above, SoftLayer or IBM shall not be liable for any incidental, indirect, special, exemplary or consequential damages, lost or prospective profits, or lost business opportunities even if advised of the possibility of the same.

7.4 Notwithstanding the above, to qualify for indemnification under this Section 7, Licensee must notify SoftLayer in writing of any such claim within ten (10) business days after Licensee's receipt of such claim, and allow SoftLayer or its parent company IBM to control and fully cooperate with SoftLayer or its parent company IBM in the defense of and all settlement negotiations related to such claim.

Section 8. WARRANTY

SoftLayer represents and warrants that it is the owner of the Trademark and any corresponding trademark registrations and/or applications related thereto, provided that Licensee acknowledges and agrees that IBM is the owner of any "IBM-related" trademarks and any corresponding trademark registrations and/or applications related thereto. SoftLayer makes no other warranties of any kind, either expressed or implied, with respect to the Trademark.

Section 9. DURATION AND TERMINATION

9.1 This Agreement shall be in effect from the Effective Date to the termination or expiration of the Associated Agreement, unless this Agreement is earlier terminated in accordance with its terms.

9.2 Section 9.1 notwithstanding, either SoftLayer or Licensee shall have the right to terminate this Agreement and the license granted in Section 2 without cause at any time on thirty (30) days' prior written notice to the other party.

9.3 Section 9.1 notwithstanding, if Licensee breaches this Agreement (including without limitation violation of the terms of this Agreement as applied to any of IBM's IBM-related trademarks), SoftLayer may terminate this Agreement and the license granted in Section 2 in its entirety. If SoftLayer elects to terminate because of breach of this Agreement, SoftLayer will provide written notice to Licensee of the breach and SoftLayer's decision to terminate. If Licensee has not cured such breach within five (5) business days after the receipt of such notice, this Agreement and the license granted in Section 2 shall be terminated effective immediately upon a second written notice to Licensee.

9.4 In the event that the license granted under this Agreement is terminated by either SoftLayer or Licensee under Sections 9.2 or 9.3, Licensee shall remove the Trademark from its Website prior to the expiration of the thirty (30) day period in Section 9.2 or within two (2) days after termination for breach per Section 9.3. Furthermore, Licensee shall have one (1) month after the date on which termination is effective to dispose of all Promotional Materials in its inventory if this Agreement is terminated under Section 9.2 or within two (2) business days after termination for breach under Section 9.3. Licensee shall provide SoftLayer with proof of the destruction of all existing Promotional Materials which bear the Trademark.

9.5 Any terms of this Agreement, including but not limited to those relating to, warranty, limitation of liability, ownership of intellectual property or confidentiality, which by their nature are intended to extend beyond the termination of this Agreement will remain in effect until fulfilled.



Section 10. NOTICES

10.1 SoftLayer may modify the terms and conditions of this Agreement and its attached Exhibits, and the Associated Agreement. SoftLayer will notify Licensee through the SoftLayer Portal of any such modifications, and all modifications shall be effective upon such notice and their posting on the SoftLayer Portal. If Licensee objects to any such modifications, Licensee may terminate this Agreement as provided in Section 9.2 and shall automatically terminate the Associated Agreement effective immediately. If Licensee does not object to any such modification within five (5) business days after posting, then Licensee will be deemed to have accepted any such modifications.

10.2 Except for Agreement Changes per Section 10.1, all notices and other communications under this Agreement shall be in writing and shall be sent by certified mail with return receipt requested to the other party's then current designee, at their respective addresses as set forth below. Notification of a change of address must be given in writing. All such mailed notices shall be deemed given and received on the date indicated on the certified mail receipt.

If to SoftLayer :

SoftLayer Technologies, Inc.
C/O Legal Department
Stanford Corporate Center
14001 North Dallas Parkway, Suite M100
Dallas, TX 75240
Email: legal@softlayer.com

If to Licensee:

See below signature block.

Section 11. TRANSFER OF RIGHTS

Licensee may not, either directly or indirectly, sublicense, assign, or in any way encumber this Agreement or the license granted herein. Any attempt to do so shall be void and shall result in termination of the license of Section 2 effective immediately upon receipt of a notice so stating.

Section 12. MISCELLANEOUS

12.1 The failure by SoftLayer or IBM to insist upon strict adherence to any provision of this Agreement, in whole or in part, on one or more occasions, shall not constitute a waiver of its right to insist upon the strict performance of that or any other provision or part thereof in the future.

12.2 This Agreement shall be governed by the substantive laws of the State of New York, without regard to its conflicts of laws principles.

12.3 This Agreement and its attached Exhibits and the Associated Agreement sets forth the entire agreement between the parties, and fully supersedes any and all prior agreements or understandings between the parties pertaining to the licensing of the Trademark by SoftLayer to Licensee. Except for agreement changes made pursuant to Section 10.1, this Agreement may not be amended or modified, in whole or in part, except by a written instrument duly executed by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

SoftLayer:

SoftLayer Technologies, Inc.

By: _____
Name: _____
Title: _____
Date: _____

Licensee:

_____ (insert full legal name)

By: _____
Name: _____
Title: _____
Date: _____



Licensee's legal entity type (*corporation, limited liability company, partnership, or individual*): [REDACTED]
Licensee's legal entity's state/province/country of formation: [REDACTED]
Licensee's principal business address: [REDACTED]
Licensee's Street Address for notices (if different from above): [REDACTED]
Licensee's City/Town/Village for notices (if different from above): [REDACTED]
Licensee's State/Province for notices (if different from above): [REDACTED]
Licensee's Country for notices (if different from above): [REDACTED]
Licensee's Mail/zip code for notices (if different from above): [REDACTED]
Attn.: [REDACTED]
Title: [REDACTED]
Licensee's Phone: [REDACTED]
Licensee's Email: [REDACTED]
Licensee's Website: www. [REDACTED]

Exhibits to the SoftLayer Trademark License Agreement follow.



Exhibit 1
PROMOTIONAL MATERIALS

“Promotional Materials” shall mean the advertising, promotional and marketing materials (including all webpages, hard-copy advertising, and displays), whether in print or electronic format, that include or refer to the Trademark and/or any SoftLayer products or services, and all display and presentations that include the Trademark and all documents created for advertising, marketing or promotional purposes in connection with the parties’ SoftLayer Trademark License Agreement (for Customers and Resellers) (the **“Agreement”**). Except as may be specifically approved by SoftLayer in writing prior to usage in accordance with the terms of the Agreement, Promotional Materials shall not include products, product packaging, or promotional items (such as clothing, bags, glassware and writing instruments).

***** End of Exhibit 1 *****



EXHIBIT 2 SOFTLAYER TRADEMARK

A. Standard



B. Reversed



Note: The black background shown above is not part of the SoftLayer Trademark and is for demonstration purposes only.

*** End of Exhibit 2 ***



EXHIBIT 3 SOFTLAYER TRADEMARK USAGE GUIDELINES

These SoftLayer Trademark Usage Guidelines (these “**Guidelines**”) set forth standards and requirements for the use of the Trademark on Promotional Materials and Websites bearing the Trademark and the logo, trademark, or trade name of Licensee or any another company. Compliance with these Guidelines is required. In the event of a conflict between the terms and conditions of the parties’ SoftLayer Trademark License Agreement (for Customers and Resellers) (the “**Agreement**”) and these Guidelines, these Guidelines shall prevail.

Guidelines as to the Nature and Content of the Promotional Materials and Websites.

1. Use of the Trademark may occur only on Promotional Materials and Websites which clearly and explicitly communicate:
 - a. the scope and nature of the relationship between the parties; and
 - b. the responsibilities of each of the parties.
2. The Trademark may not be used in such a way as to attribute to SoftLayer a product or service not actually originating from SoftLayer.
3. Promotional Materials may not contain any statements, imagery or other material which may, in the judgment of SoftLayer, be in bad taste or inconsistent with SoftLayer’s or its parent company IBM’s public image, or tend to bring disparagement, ridicule or scorn upon SoftLayer.

Correct Usage of the Trademark within Promotional Materials and on the Website.

1. The Trademark may not be placed, or applied in a manner which may cause confusion as to the source, or origin of the offering or communication.
2. The Trademark should always remain distinct and separate. The Trademark may not be combined with any other trademark or logo owned by Licensee or another company nor may it be combined with any text, graphics, imagery or product identifiers. The Trademark may not be contained within the text of a sentence, except the phrase constituting the Trademark itself.
3. When used in proximity to one or more Licensee or third party identifiers, the Trademark should be placed and sized to match the visual weight and emphasis of all the entities’ trademarks and logos.
4. The use of the Trademark must clearly communicate the context or relationship SoftLayer has with Licensee, event or offering. This may be done by the addition of "relationship text" in the headline, body copy and/or in association with the trademark and logo signatures of a communication and on the Website.
5. The following trademark attribution statement should be applied on the Webpage on which the Trademark is being used or in the legal attribution segment of the Promotional Materials and on the Website:

The trademark “SOFTLAYER” is a registered trademark of SoftLayer Technologies, Inc., an IBM Company (“SoftLayer”), in the United States and other countries and used under license. The trademark “IBM” is a registered trademark of International Business Machines Corporation (“IBM”), in the United States and other countries and used under license. SoftLayer responsibility is limited to SoftLayer products and services and is governed solely by the agreements under which such products and services are provided.

Correct Appearance of the Trademark

1. Do not create your own version of the Trademark
2. Do not change the color or proportion of the artwork provided by SoftLayer
3. "The Trademark, as shown in Exhibit 2, indicates the minimum size at which you may display it to ensure that the type and trademark notations are legible. The minimum size for the “Built On SoftLayer, an IBM Company” Trademark shall be:
Inches: w 2.413” x h 0.6” Pixels: 173.684 × 43.2 px, or Millimeters: 61.27 x 15.24 mm
4. Always allow a "safe space" around the logotype that is equal to or greater than the height of the Trademark in use
5. Do not place the Trademark on active backgrounds that may reduce legibility
6. Always use the approved SoftLayer color scheme for the Trademark, as follows:

Color Specifications

Pantone equivalent:

- PMS Black
- PMS 1807 (7620 uncoated paper)

BLACK

- Process equivalent: Cyan 0%, Magenta 0%, Yellow 0%, Black 100%
- RGB equivalent: Red 35, Green 31, Blue 32
- HEX# 231F20

SOFTLAYER RED

- Process equivalent: Cyan 18%, Magenta 95%, Yellow 95%, Black 8%
- RGB equivalent: Red 148, Green 48, Blue 46
- HEX # 94302E

*** End of Exhibit 3 ***



Exhibit B
SLA Credit Procedures

SLA Credit Process. To claim SLA Credits, Reseller's SoftLayer Portal master administrative user must open an SLA ticket located inside the SoftLayer Portal within seven (7) days of the claimed outage. The ticket must include service type, IP Address, contact information, and full description of the service interruption including logs, if applicable. The SLA Credit claim will be researched by the appropriate SoftLayer department manager and any SLA Credit will be issued to SoftLayer's Accounting Dept. and the ticket will be updated. SLA Credits are issued to Reseller as credits on future billing cycles. SLA Credit may not be bartered or traded by Reseller. Reseller should allow up to fourteen (14) days for the processing of awarded SLA Credits. Reseller acknowledges that the maximum amount of SLA Credits that may be used for any particular month cannot exceed the total monthly service fee amount for such month.

Reseller may elect to not provide SLA Credits to Customers (a) which are currently in arrears for payment of the SoftLayer Services resold to them by Reseller (b) which have been in payment arrears three (3) or more times in the previous twelve (12) months, or (c) which have violated the terms of the Customer Agreement or the AUP.

The remedies in this Section are the sole and exclusive remedies for Reseller for failure to meet the Service Level Agreement.

Reseller agrees that SoftLayer may suspend or terminate the provision of the SoftLayer Services if SoftLayer determines that Reseller has made a false claim for SLA Credits.

***** End of Exhibit B *****



Exhibit C
Contracting Party Addendum
(Applies to Any Non-U.S. Based Reseller)

This Contracting Party Addendum (this “**CP Addendum**”) is entered into by and among SoftLayer, **SoftLayer Dutch Holdings B.V.**, a company incorporated under the laws of The Netherlands, with Company Registration Number 52461041 (“**SoftLayer Dutch Holdings B.V.**”), and Reseller. All capitalized terms used in this CP Addendum that are not defined in this CP Addendum shall have the meanings ascribed to such terms in the Reseller Agreement.

SoftLayer and Reseller are parties to the Reseller Agreement;

Reseller used a non-U.S. billing address to order products and services under the Reseller Agreement (Non-U.S. Based Reseller as defined and further described below); and

The parties now intend to amend the Reseller Agreement as provided in this CP Addendum.

NOW THEREFORE, in consideration of the mutual premises contained in this CP Addendum, the parties agree as follows:

1. Reseller represents and warrants that in connection with ordering products and services under the Reseller Agreement, it provided a billing address outside of the United States and any territory of the United States (“**Non-U.S. Based Reseller**”) and it is a corporate entity (whether partnership, corporation or limited liability company) and is a not an entity formed under any state or territorial law applicable within the United States.
2. Each party acknowledges and agrees that SoftLayer Dutch Holdings B.V. will be the counterparty to any Reseller Agreement with a Non-U.S. Based Reseller. Given that Reseller is a Non-U.S. Based Reseller, each party further acknowledges and agrees (a) any reference to “SoftLayer Technologies, Inc., an IBM Company” and/or “SoftLayer” shall be replaced to refer to “SoftLayer Dutch Holdings B.V., a company incorporated in Amsterdam, Registration Number 52461041” and (b) any address that refers to “Stanford Corporate Centre, 14001 North Dallas Parkway, Suite M100, Dallas, TX 75240” shall be replaced to refer to “SoftLayer Dutch Holdings, B.V., Paul van Vlissingenstraat 16, 1096BK Amsterdam, The Netherlands”.
3. This CP Addendum shall be effective as of the effective date of the Reseller Agreement.
4. In the event of any conflict between the terms of this CP Addendum and the Reseller Agreement, the terms of this CP Addendum shall control.
5. Except as expressly amended in this CP Addendum, all other terms and conditions of the Reseller Agreement shall continue in full force and effect in accordance with the provisions of the Reseller Agreement.

*** **End of Exhibit C** ***