

# IBM Cloud Services Agreement

---

## Appendix E to DIR Contract No. DIR-TSO-3012

This Agreement is subject to the terms of the DIR Contract, DIR-TSO-3012. In the event of conflict between the terms of this Agreement and DIR Contract No. DIR-TSO-3012, the DIR's contract terms shall control. This IBM Cloud Services Agreement governs your acquisition and use of IBM Cloud Services. You may order Cloud Services either on-line or through an Order Document IBM provides. The Order Document you submit to IBM will specify the Cloud Services and quantities selected, IBM charges and other details of your order. The DIR Contract, DIR-TSO-3012 and all of the appendices, the Order Document, the Service Description(s) for the selected Cloud Service(s) and this Agreement will constitute the complete agreement for the Cloud Services and will supersede any prior discussions or representations regarding the Cloud Services. Any reproduction of this Agreement made by reliable means is considered an original.

### Service Performance and Commitments

When IBM accepts your Order Document for a Cloud Service, IBM will provide you the entitlements specified in the Order Document. You may access the Cloud Service from any location via a network connection. Cloud Services are designed to be available 24/7 subject to maintenance. You will be notified of scheduled maintenance. Service Level commitments, if applicable, are specified in the Service Description. In addition, some Cloud Services include entitlement to use enabling software on your machines. If applicable, descriptions and details of the software and permitted use granted by IBM or third parties will be included in the Service Description.

You may access and use each Cloud Service that you order only to the extent of entitlements acquired by you. You are responsible for use of Cloud Services by any party who accesses the Service with your account credentials.

IBM does not authorize use of any Cloud Service for any unlawful or inappropriate purposes, such as gambling, obscenity, pornography, violence, misappropriation, unauthorized access or interference, viruses or harmful code, harassment, unsolicited or deceptive messages, or evading filters. Any such use is prohibited. Unless expressly provided in this Agreement, you are not authorized to use the Cloud Services to provide hosting or timesharing services to any third party.

### Integration, Configuration and Custom Services

IBM may offer additional standard customization and configuration Services. Such Services are detailed in an additional Service Description and may be ordered pursuant to the Order Document. At your request, IBM may perform additional custom services, as specified in a mutually agreed Statement of Work. Pricing for all Services shall be in accordance with Appendix C of DIR Contract No. DIR-TSO-3012.

### Confidentiality and Data Protection

Each Cloud Service is designed to protect the proprietary content that you input into the Cloud

Service and to provide for access and use of such content only in accordance with the provision of the Cloud Service. Except as otherwise specified in a Service Description, Cloud Services limit access and use of your proprietary content to IBM employees and contractors as needed to deliver the Cloud Service. IBM will not disclose your proprietary content, and will return or destroy your content upon the expiration or cancellation of the Cloud Service, or earlier upon your request. IBM reserves the right to charge for certain activities performed at your request or direction (such as delivering content in a specific format). Any such charges shall be in accordance with the DIR Contract DIR-TSO-3012

The Service Description for each Cloud Service describes the security functions and features applicable to the Cloud Service. IBM Cloud Services are EU Safe Harbor certified, unless otherwise specified in the Service Description. IBM agrees to provide you notice of any unauthorized third party access to your content of which we become aware and remediate identified security vulnerabilities. If your content is lost or damaged, IBM will assist you in restoring the content to the Cloud Service from your last available back up copy in compatible format.

Some of your content or other data may be subject to governmental regulation or otherwise may require security measures beyond those specified by IBM for the Cloud Service. You agree not to input such content in the Cloud Services or to otherwise provide such data in conjunction with other Services unless we have first agreed in writing to provide additional required security measures. You are responsible for all necessary permissions to include the content in the Cloud Service and you grant IBM permission to use, store and process the content in the delivery of the Cloud Services.

### Charges, Payments & Taxes

You agree to pay all applicable charges for a Service as set forth in the Agreement and any charges for use in excess of entitlements. Payment shall be in accordance with Section 7.C. of Appendix A of the DIR Contract No. DIR-TSO-3012.

## **Changes**

IBM may modify the computing environment used to provide a Cloud Service, provided that such change does not degrade the functionality or the security features of the Cloud Service. If any such change materially or adversely affects Customer's legitimate use of services, Customer may terminate the affected service without incurring any further liability, beyond the charges incurred prior to such termination. Other changes to the Service Description made by IBM will not apply until any agreed renewal or extension.

## **Term, Termination, Suspension**

The term of a Cloud Service is described in the Service Description or Order Document. The maximum term for a single order shall be thirty-six (36) months. All such orders for a set period of time exceeding one (1) month shall be processed utilizing Attachment A – Order Document for SoftLayer Services and shall indicate that the maximum allowable term is thirty-six (36) months. Any renewal terms for a Cloud Service will be as otherwise specified in the Service Description or Order Document. IBM may withdraw a Cloud Service on 12 months' notice, or as specified in the Service Description, and IBM will either continue to provide the Cloud Service for the remainder of your unexpired term or work with you to migrate to another IBM Service or other third party service provider. IBM may suspend, revoke or limit use of a Cloud Service upon notification to the Customer if in IBM's sole discretion there is a breach of security, breach of your obligations under the Agreement or violation of law. You will not be charged or liable for any period during which the Cloud Services for which you contracted are not fully available to you, if such unavailability is not the result of an action or inaction on your part. If the cause of the suspension is reasonably capable of being remedied, IBM will provide you notice of what actions you must take to reinstate the Cloud Service. If you fail to take such actions within a reasonable time, IBM may terminate the Cloud Service.

## **Liability and Indemnity**

Limitation of Liability shall be in accordance with Section 9.K. of Appendix A of the DIR Contract No. DIR-TSO-3012.

**Indemnification shall be in accordance with Section 9.A. of Appendix A of DIR Contract No. DIR-TSO-3012.**

## **Warranties and Disclaimers**

IBM warrants it will provide the Cloud Service using care and skill in accordance with the Services Description. The warranty period is the term of the Service.

**IBM DOES NOT WARRANT UNINTERRUPTED OR ERROR- FREE OPERATION OF A CLOUD SERVICE. THESE WARRANTIES ARE THE EXCLUSIVE WARRANTIES FROM IBM. THEY REPLACE ALL OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.**

## **Compliance with Laws**

Each party remains responsible for complying with laws, rules and regulations applicable to its business, use of a Cloud Service, and content, including applicable export and import laws. A Cloud Service is delivered in, and the choice of forum and law (without regard to conflict of laws) is the country and state in which you ordered the Cloud Services.

## **General**

IBM may use global resources (personnel and resources in locations worldwide) and third party suppliers to support the delivery of Cloud Services; however, data will never leave the continental US and any offshore resources, should they be used, will never have access to customers' data. Texas requires all customer data to remain within the continental United States. DIR eligible customers should comply with this requirement and maintain all data within US regions. . All such resources and suppliers must be EU Safe Harbor certified where applicable. Assignment of this Agreement and the rights and obligations under it, including entitlements to the Cloud Service, is not permitted except to a subsidiary or to a successor organization by merger or acquisition. Assignment by IBM in conjunction with the sale of the portion of IBM's business that includes the Cloud Service is not restricted and shall be handled in accordance with Section 4.D. of Appendix A of the DIR Contract No. DIR-TSO-3012.

## Service Description

### SoftLayer Services

Upon IBM's acceptance of your Order, via an Order Document you signed or submitted on-line to IBM, IBM will enable your SoftLayer Services account. You can order and manage Infrastructure-as-a-Service (IaaS) SoftLayer Services using the on-line SoftLayer Customer Portal, mobile app, or APIs (SL Portal).

#### 1. Portal Access

The SL Portal, information regarding your use of the SoftLayer Services, Account information, and support are provided and processed on-line and may be presented only in English. Even if presented during the order process, the terms of SoftLayer's agreements will not apply unless specifically set forth in this Service Description.

#### 2. Service Description

##### 2.1 SoftLayer Services Enablement

IBM will provide administrative rights to your specified master administrative user for your account. Such administrative user uses the SL Portal to perform account administration, enable users and authorizations, monitor use of the SoftLayer Services by users, monitor support ticketing, submit SLA claims, and such activities regarding your use of the SoftLayer Services. All support for the SoftLayer Services and communications regarding such are provided by SoftLayer using the SL Portal ticketing and support system.

##### 2.2 Use and Access to the SoftLayer Services

SoftLayer Services may be ordered by you using standard SoftLayer procedures as described in the SL Portal. SoftLayer Services are self-managed Cloud Services, including configuration and management (such as security, backup, failover, restore, and monitoring) of the computing resources and available Cloud Services as you determine necessary to meet your requirements and any applicable laws.

"Third Party Services" may be available to Customer through the SL Portal. Such Third Party Services may be governed by separate terms and conditions from the third party and are provided directly to you from a third party other than SoftLayer and IBM. Neither IBM nor SoftLayer is a party to these agreements even if IBM invoices charges for such Third Party Services.

You may use a SoftLayer Service to create a "Solution" you make available to your third party Solution end users which is based in whole or in part on a SoftLayer Service. You may not however, under this Agreement, resell direct access to SoftLayer Services to any third party without specific written approval from IBM. You are responsible to have appropriate agreements in place with such Solution end user and are responsible for their use of your Solution, including content they provide. You are solely responsible for any liability for damages or losses your Solution end users may incur as a result of using your Solution.

##### 2.3 SoftLayer Service Order

The "Effective Date" for an order for new SoftLayer Services or any upgrade is when the order is accepted by SoftLayer. You will receive notice of acceptance through the SL Portal. Upon submittal of an order, the SL Portal ticketing system will initiate or change SoftLayer Services based upon your selected criteria. The User submitting an order will receive status notification in the SL Portal and may begin using the SoftLayer Services, including creating or uploading content. You are responsible for saving, maintaining, and protecting all access keys generated for each SoftLayer Service. These are not maintained by IBM or SoftLayer.

For each SoftLayer Service ordered, the "Initial Term" is the period commencing on the Effective Date until the end of the current month. The "Anniversary Billing Date" will be the first of each month. "Renewal Term" is a calendar month commencing on an Anniversary Billing Date unless terminated as provided herein. All SoftLayer Services automatically renew month to month in accordance with and until the maximum term for a single order expires or until cancelled by you or upon termination as described in Appendix A, Section 11.B. of the DIR Contract No. DIR-TSO-3012. For SoftLayer Services you order on an hourly basis, such SoftLayer Services will be provided until you submit a cancellation ticket.

For an order to downgrade or cancel a SoftLayer Service you must submit a notice to cancel using a cancellation ticket through the SL Portal in accordance with SoftLayer specified procedures, with a minimum of 24 hours prior to 00:00:01 CST (GMT-6) of the Anniversary Billing Date. Failure to provide the required 24 hours written notice will result in the downgrade or discontinuance of SoftLayer Services being effective on the following Anniversary Billing Date and you will be charged for the SoftLayer Services during the relevant Renewal Term. Any Services cancelled prior to such 24 hour period will remain accessible to Customer until the automated process reclaims the Services on the Anniversary Billing Date. You are responsible to monitor status of any order to cancel or downgrade SoftLayer Services to ensure it was successful. The deletion of your content is automatic upon cancellation of a SoftLayer Service. Upon cancellation of a SoftLayer Service you relinquish use of the IP addresses and server names assigned to you and you agree to discontinue use of such SoftLayer Service, including pointing the DNS for your domain name(s) away from the SoftLayer Service.

## 2.4 Network Access

For each SoftLayer Service device you order, it will be connected to SoftLayer's Private Network, SoftLayer's Public Network (except for those SoftLayer Services which are not exposed to the Internet), and SoftLayer's internal administrative network. You have the option to disable Public Network access to your ordered devices. SoftLayer's Private Network enables your administrative virtual private network (VPN) connection to access your devices for your administrative access, intra-application communications, communications from one SoftLayer point of delivery data center to another SoftLayer point of delivery data center and for access to SoftLayer shared services. The administrative virtual private network (VPN) will enable you to administer and manage the devices you order and to upload, download, and manage content. Your SoftLayer Service device(s) will be assigned to your own dedicated private virtual local area network (VLAN)

IP addresses are assigned on a per VLAN, per server basis during the provisioning of the ordered SoftLayer Service. All IP addresses assigned to you are owned and managed by SoftLayer. You retain no ownership or transfer rights to such IP address. You may not use any unallocated SoftLayer IP address or any IP address or VLANs not assigned to you. [SoftLayer IP Address Policy](#) provides the policy governing use and provisioning of IP Addresses, including IP addresses you provide.

If a SoftLayer Service is suspended, your SoftLayer Public Network access port may be disabled until resolution of the violation. Temporary access using the Private VLAN to remedy a violation in accordance with the notice provided may be available.

### IP Address Ownership

All IP addresses assigned to customers by SoftLayer remain sole and permanent property of SoftLayer, and are to be used exclusively on equipment located in the SoftLayer datacenters and connected to the SoftLayer network. If a customer cancels their services, they may not take the IPs that they used with them, rather they will be reclaimed and re-issued to other customers in the future.

### Customer-Provided IP Addresses

Customers may provide their own RIR-issued IP addresses, subjected to certain technical limitations and verification of ownership that will be assessed by the networking department at time of request. IP prefixes owned by customers must be specified on a Letter of Authority (LOA) presented to SoftLayer, and once approved will be announced via BGP on the customer's behalf and routed to the customer's servers. They remain the property of the customer at all times. At the customer's request, or should the customer cancel their services, SoftLayer will cease to announce and route those IPs. While SoftLayer will make reasonable efforts to ensure BGP prefixes are accepted by all upstream ISPs, we cannot guarantee global reachability for customer-owned IPs.]

## 2.5 Data Protection

SoftLayer Services are not designed to any specific security requirements other than the physical security of the computing resources containing your content. You are responsible for the management, including specific security enablement, of any computing resources you order. Upon cancellation of a SoftLayer Service, all content will be deleted. EU Safe Harbor does not apply to the SoftLayer Services themselves. SoftLayer, however does adhere to the U.S.-Swiss Safe harbor Framework as well as the Safe Harbor Principles as set forth by the United States Department of Commerce and the European Union regarding data collected by SoftLayer when ordering and using a SoftLayer Service as set forth in the [SoftLayer's Privacy Agreement](#) available from the SL Portal. SoftLayer's privacy agreement may be amended

periodically. While it is not the intention of the parties that such amendment would diminish the customer's rights and protections, should the customer, in its opinion, determine that this has occurred, the customer may promptly terminate its order with no further liability.

Neither IBM nor SoftLayer will access your Content except i) when you expressly authorize in connection with requested support ii) as specifically described in this Service Description or a mutually agreed to addendum; or iii) to the extent required by law or as necessary to comply with the valid orders of a court or investigative or regulatory body order from a court of competent jurisdiction. In the event of any such valid order and to the extent allowed by law IBM will provide notice to Customer if allowed, to enable Customer an opportunity to obtain a protective order.

## **2.6 Service Level Agreements**

The Service Level Agreement (SLA) for availability of SoftLayer Services is set forth in the SL portal (<http://www.softlayer.com/about/service-level-agreement>). In the event of any change set forth in the SLA during the term of the Customers use of SoftLayer Services, the Customer may terminate the affected Service under the termination provisions of DIR Contract No. DIR-TSO-3012, with no further liability. To claim a SLA credit you must follow the Approved Procedure as set forth in such SLA within seven (7) days of the end of the Claimed Outage. The claim will be reviewed by SoftLayer, any credit for Verified Outages ("SLA Credits") shall be issued by IBM for use for future payments due for the renewal of the particular SoftLayer Service or failure of other obligations (such as hardware) for which the Service Credits was issued. If an SLA Credit is exercised, it is your remedy for failure of a specified service level for Claimed Outages. SLA Credits may not be sold or transferred to other parties. The making of false or duplicative claims by an individual customer for Claimed Outages may result in the imposition of a one-time charge of \$50 per incident for such claims.

## **2.7 Charges**

Charges for each SoftLayer Service you order will be measured from the Effective Date of the Initial Term and each Renewal Term until you submit a cancellation ticket for such SoftLayer Service as described in section 2.3 (SoftLayer Service Order) or upon any termination as set forth in section 2.8 (Term, Termination, and Suspension). IBM will invoice you applicable Charges for each SoftLayer Service based upon your selected configuration and options you order in the SoftLayer Portal and Order Document or as may be mutually agreed in an addendum to this Service Description.

If you require specific funding authorization for IBM to invoice charges, such as a purchase order, you are responsible to provide and keep such authorization timely and current with sufficient funding authorization to cover Initial Term and all Renewal Terms for all orders submitted for your account so as not to interrupt SoftLayer Services.

## **2.8 Term, Termination and Suspension**

### **2.8.1 Suspension and Termination by IBM**

Any particular SoftLayer Service may be withdrawn or terminated for convenience by providing you notice of non-renewal at least 10 days prior to the expiration of the Initial Term or a Renewal Term, or at the end of the next billing period for hourly services.

IBM may close your account and terminate this Agreement if no SoftLayer Services are ordered or remain active within any six month period. IBM may terminate this Agreement for multiple violations of its terms.

## **2.9 Apple Licensed Applications**

The following terms apply to any download or use of any SoftLayer applications that run on the Apple Inc. ("Apple") operating system ("iOS") ("Licensed Application") to enable use of mobile app access to the SoftLayer Services, such as with the iPhone, iPod touch, iPad or other related device using such iOS::

- a. The terms regarding use of any Licensed Application are set forth in this agreement between you and IBM and not with Apple, and IBM or its subsidiary SoftLayer are solely responsible for the Licensed Application and the content thereof. These terms for use of the Licensed Application are not less restrictive than the Usage Rules set forth in the App Store terms of service (<http://www.apple.com/legal/itunes/appstore/dev/stddeula/>) (the "Usage Rules").
- b. These terms of use of the Licensed Application are not in conflict with the App Store terms of service as of the effective date of the order, which you have had the opportunity to review.

- c. The license granted to you for the Licensed Application is limited to a non-transferable license to use the Licensed Application on any iOS that you own or control and as permitted by the Usage Rules.
- d. Apple has no obligation to furnish any maintenance and support services with respect to the Licensed Application. Any available maintenance and support will be provided by SoftLayer.
- e. In the event of any failure of the Licensed Application to conform to any applicable warranty, You may notify Apple, and Apple will refund any purchase price for the Licensed Application to you; and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Licensed Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be IBM's or SoftLayer's sole responsibility, whether express or implied by law, to the extent not otherwise disclaimed.
- f. IBM or SoftLayer, not Apple, are responsible for addressing any claims you or any third party may have relating to the Licensed Application or your possession and/or use of that Licensed Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- g. In the event of any third party claim that the Licensed Application or your possession and use of that Licensed Application infringes that third party's intellectual property rights, IBM, SoftLayer, or you, (as responsible), not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.
- h. Any questions, complaints or claims with respect to the Licensed Application should be directed to:
  - i. SoftLayer Technologies, Inc., an IBM Company  
4849 Alpha Road  
Dallas, TX 75244  
Phone: 214-442-0600  
Email: [sales@softlayer.com](mailto:sales@softlayer.com)
- j. Apple, and Apple's subsidiaries, are third party beneficiaries of the terms pertaining to the Licensed Application, and upon your acceptance of these terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these terms solely with regard to the Licensed Application against you as a third party beneficiary thereof.

---

**Order Document for SoftLayer Services****Client Information**

Company Name:

Company Address:

Company Contact Person:

Contact Email:

Master Administrative User Name:

Master Administrative Email

**Invoicing Information**

Company Name:

Invoicing Address:

Invoice Contact Person:

Invoice Contact Email:

Contract/Order Number:

By signing below, Client is ordering activation of a SoftLayer account to use SoftLayer Services as set forth in the applicable IBM Service Description and the Cloud Service Agreement. IBM will invoice you charges for SoftLayer Services you select and order from the SL Portal as described below.

**1. Charges**

The charge for each selected SoftLayer Service will be based on the rates quoted in the SL Portal when you confirm and place your order. For API orders, charges will be the same as if ordered through the SL Portal process. Monthly charges for the Initial Term will be prorated to the end of the current month. Monthly charges for each Renewal Terms will be billed in advance.

Charges may be displayed in US dollars and other currencies. Only US dollar charges apply. Charge amounts in other currencies are approximations and are for information only.

All rates and pricing shall be in accordance with Appendix C Pricing Index of the DIR Contract No. DIR-TSO-3012.]

**2. Billing**

All invoicing and payments shall be in accordance with Section 7. of Appendix A of the DIR Contract No. DIR-TSO-3012.

**3. Configuration**

To be determined by Customer at time of Order.

Agreed to: <b>{Customer Name}</b>	Agreed to: <b>International Business Machines Corporation</b>
By _____ Authorized signature	By _____ Authorized signature
Title:	Title:

Name (type or print):

Date:

Customer number:

Name (type or print):

Date:

Agreement number:

Please sign and return to IBM to place your order for SoftLayer Services. IBM accepts your order upon enablement of your SoftLayer Services account or if requested by you or as required by law by signing above.

## Sample Service Level Agreement (“SLA”)

The SLA is incorporated into the MSA and applicable to all Services delivered to Customers. This SLA does not apply to the availability of Third Party Services which are subject to the TPS Agreements. The SLA is binding only on the Customer and SoftLayer and does not apply to any Third Parties, including Customer End Users. **The issuance of SLA Credits (defined below) is the sole and exclusive remedy of Customer and SoftLayer’s sole and exclusive obligation, for any failure by SoftLayer to satisfy the requirements set forth in the SLA.**

### SLA Credit Claim

To claim a credit the Customer shall follow the Approved Procedure within seven (7) days of the end of the Claimed Outage. The claim will be reviewed by SoftLayer, any credit for Verified Outages (“SLA Credits”) shall be issued as provided below.

“**Claimed Outage**” means the period (measured in minutes) during which Customer claims a Loss of Service during a Measurement Period as reported using the Approved Procedure.

“**Excluded Minutes**” means the period of any outage measured in minutes due to the exclusions set forth in the SLA Credit Exclusion in the Measurement Period.

“**Measurement Period**” means the relevant Initial Term or Renewal Term.

“**Qualifying Outage Minutes**” mean the aggregate of all minutes of a Verified Outage during a Measurement Period, minus any Excluded Minutes in that Measurement Period.

“**Services**” means the services ordered by Customer and accepted by SoftLayer as provided in the MSA.

“**Loss of Services**” means the Customer’s inability to connect to the SoftLayer data centers providing the Services to access either (i) the Customer Portal or (ii) a Service. If Customer can connect to one of the SoftLayer data centers to access either the Customer Portal or any of the Services, there is no Loss of Services, whether or not Customer can use the Customer Content.

“**Verified Outage**” means a Claimed Outage for a particular Service that has been verified by SoftLayer using its monitoring logs of accessibility of the SoftLayer data centers or any of the Services.

### Services Commitments

**Public Network:** SoftLayer will use reasonable efforts to provide a service level of 100% for the Public Network.

**Private Network:** SoftLayer will use reasonable efforts to meet the service level of 100% for the Private Network.

**Customer Portal:** SoftLayer will use reasonable efforts to meet the service level of 100% for access to the Customer Portal.

**Redundant Infrastructure:** SoftLayer will use reasonable efforts to meet the service level of 100% for access to the power and HVAC services provided to Customers.

### SLA Credits

For each 30 continuous minute period of Qualifying Outage Minutes for a Service in a Measurement Period, SoftLayer shall provide a SLA Credit of 5% of the fees for the relevant Service which was subject to the Loss of Service during the Measurement Period. Any period of Qualifying Outage Minutes for a Service which is less than 30 continuous minutes shall not be eligible for an award of SLA Credits. The Customer cannot combine alleged Claimed Outages for different Services (such as Public Network and Private Network) to meet this calculation. The calculation of SLA Credits for failure of hardware replacement or hardware upgrade shall be as set forth respectively, in Table A and Table B.

### Approved Procedure

Customer is eligible to receive SLA Credit, subject to the following process:

1. The Customer's identified master administrative user will report a Claimed Outage by opening a ticket on the Customer Portal. The ticket must include Service type, IP Address, dates and times, error messages received (if any), contact information, and full description of the interruption of Service including logs, if applicable.
2. In order to receive a SLA Credit, Customer must submit a report of Claimed Outage to the Customer Portal within seven (7) days of the end of the Claimed Outage after the technical issues have been resolved.
3. SoftLayer will review Claimed Outages against Verified Outages.
4. SoftLayer's determination of SLA Credits is final.
5. Customer agrees to pay all invoices in full while a Claimed Outage is being reviewed or SLA Credit is being determined.
6. SoftLayer will communicate the SLA Credits to Customer through SoftLayer accounting and the ticket will be updated, provided that, the SLA Credit may not be used to reduce the payments due in a Renewal Term below zero. SoftLayer will apply the SLA Credits to the Customer's future invoices for the relevant Services subject to SoftLayer's standard policies.

### **Ineligible Customers**

Customers who at the time of the report of the Claimed Outage are not current on their payment of the fees for the Services do not qualify for SLA Credits for such Claimed Outages. In addition, Customers who have not paid their fees when due for the Services three or more times in the previous twelve calendar months do not qualify for SLA Credits.

### **Use of SLA Credits**

SLA Credits may be used solely for future payments due for the particular Service or failure of other obligations (such as hardware) for which the Service Credits are issued. The SLA Credits may not be sold or transferred to other parties. SLA Credits may not be used until any Customer violations of the MSA are resolved to SoftLayer's reasonable satisfaction. Any Customer making false or duplicative claims for Claimed Outages will incur a one-time charge of \$50 per incident for such claims. False or duplicative claims are also a violation of the MSA and may, in SoftLayer's sole discretion, result in a suspension of Services. SLA Credits shall expire on the termination or expiration of the MSA.

### **SLA Credit Exclusion**

Service Level Credits do not apply for periods during which the Services are not available for the following reasons:

- SoftLayer or its third party service providers performing system upgrades, enhancements and routine maintenance activities which are announced on the Customer Portal upon two days advance notice or for maintenance determined by SoftLayer to be an emergency upon notice provided through the Customer Portal ("Scheduled Maintenance");
- Customer use of the Services or any Customer End User's use of the Customer Offering in violation of the MSA;
- Issues relating to Customer Content;
- Problems with Customer's access to Internet;
- System administration, commands, file transfers performed by Customer representatives;
- Events described in the Force Majeure provision;
- Suspension of Customer's access to the Services as provided in the MSA;
- Violation of the AUP;
- Problems caused by Customer's use of the Services or any Customer End User's use of the Customer Offering after SoftLayer advised Customer or any Customer End User to modify such use, if Customer or any Customer End User did not modify its use as advised;

- Problems arising from Customer or any Third Party's software, hardware, or other technology or equipment.

### Special Obligations relating to Hardware Replacement and Hardware Upgrades

**Hardware Replacement:** SoftLayer will use reasonable efforts to replace failed hardware and hardware components located within our data centers at a service level of two hours after SoftLayer verification of Customer's notification in the Customer Portal ticketing system of a hardware failure. This response period does not include time required to reload the operating system or applications. If the installation does not meet this service level, Customer shall be eligible for SLA Credits as provided in Table A below for the future fees directly related to the hardware if the Customer follows the Approved Procedure.

**Hardware Upgrades:** SoftLayer will use reasonable efforts to ensure that all planned hardware upgrades will commence and be completed at a service level within two hours of hardware upgrade maintenance periods that have been scheduled and confirmed in advance through the online ticketing system in the Customer Portal. This response period does not include time required to reload the operating system or applications. If the installation does not meet this service level, Customer shall be eligible for SLA Credits as provided in Table B below for the future fees directly related to the hardware upgrade if the Customer follows the Approved Procedure.

**Table A: Hardware Replacement**

**Table B: Hardware Upgrade**

Response Period	SLA Credit	Response Period	SLA Credit
2 hours or less	N/A	2 hours or less	N/A
2.1 to 6 hours	Twenty Percent ("20%")	2.1 to 6 hours	Twenty Percent ("20%")
6.1 to 10 hours	Forty Percent ("40%")	6.1 to 10 hours	Forty Percent ("40%")
10.1 to 14 hours	Sixty Percent ("60%")	10.1 to 14 hours	Sixty Percent ("60%")
14.1 to 18 hours	Eighty Percent ("80%")	14.1 to 18 hours	Eighty Percent ("80%")
18 hours +	One Hundred Percent ("100%")	18 hours +	One Hundred Percent ("100%")