

IBM LICENSE, WARRANTY, AND SUPPORT TERMS

The following sections of the IBM GSA Schedule No. GS-35F-110DA terms and conditions are applicable to this Schedule Contract:

- Chapter 1, General Information
 - Section 1.39, "Third Party Products"
 - Section 1.40, "Resale to Third Parties"
 - Section 1.41, "Patent and Copyright Indemnity"
 - Section 1.45, "Other Responsibilities"
 - Section 1.46, "Definition of Terms"
- Chapter 5, Software
 - Section 5.1, "Inspection/Acceptance"
 - Section 5.2, "Guarantee/Warranty"
 - Section 5.3, "Technical Services"
 - Section 5.4, "Software Maintenance"
 - Section 5.5, "Utilization Limitations"
 - Section 5.8, "General Information"
 - Section 5.10, "Risk of Loss"
 - Section 5.11, "Compliance Verification"
 - Section 5.12, "Charges, Invoices, and Payments"
 - Section 5.14, "License Agreement for ICA Programs"
 - Section 5.15, "IBM Program License Agreement (IPLA)"
 - Section 5.16, "IBM Software Support via U.S. Citizens"
 - Section 5.17, "Software Pricing Options"
- Chapter 9, Electronic Commerce
 - All Sections
- Appendix S, Passport Advantage
 - All Sections
- Appendix T, Cloud Services Agreement for IBM Federal Data Centers
 - All Sections

IBM SOFTLAYER SUPPLEMENTAL TERMS

The following terms apply to Four Inc.'s SoftLayer offerings.

THIS END USER SOFTLAYER AGREEMENT ("End User Agreement") is made effective and entered into as of the _day of _ 20__ ("Effective Date"), by and between IBM Corporation ("Provider") and _____, with its primary office at _____ (hereinafter "End User"). Provider and End User may be referred to herein individually as "Party" or collectively as "Parties".

WHEREAS, this End User SoftLayer Agreement sets forth basic terms and conditions under which Provider will resell cloud services to the End User. SoftLayer and Arrow will be third party beneficiaries to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

DEFINITIONS:

"Agreement" means the written terms between Arrow and Provider applicable to Provider's purchase of the Services from Arrow.

“Arrow” means Arrow Enterprise Computing Solutions, Inc. which is the distributor of the Services purchased by Provider for resale to the End User”

“AUP” means SoftLayer’s Acceptable Use Policy, which is contained in the Cloud Services Agreement for IBM Federal Data Centers provided in Attachment A affixed at the end of this document.

“Content” means SoftLayer data, software and information provided by SoftLayer in the provisioning of the Services.

“Customer Content” means all data, software and information, including without limitation, data text, software, scripts, video, sound, music, graphic and images that are created, uploaded or transferred in connection with the Services by Provider or End Customer.

“Fees” means the amount invoiced by Provider for the Services.

“MSRP” means SoftLayer suggested retail price for the Services.

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

“Order” means End User’s purchase order issued to Provider.

“Private Network” means the term as defined in the AUP

“Prohibited Content” means End User content that is illegal or unauthorized, including but not limited to violations of the AUP.

“Public Network” means the term as defined in the AUP.

“Services” means SoftLayer computer infrastructure and related services purchased by End User pursuant to the terms of this End User Agreement.

“SoftLayer Portal” means the SoftLayer web portal.

BUSINESS TERMS.

General Overview. SoftLayer has authorized that Provider as an authorized Provider of the Services. End User agrees to purchase the Services from Provider for End User’s internal use. The terms of the Provider Agreement between the Arrow and Provider require that End User agree to certain flow down terms as set forth in the Agreement and that Provider enter into this End User Agreement with each End User before any Services can be purchased.

Prices for Services. Price for the Services will be those as quoted by Provider to End User.

Orders.

Orders received by Provider from End User must include the following information:

- End User by name and address
- quantity, part number and description of the Service bill-to address
- requested Service delivery dates contact name and telephone number

Orders must include all of the above plus a reference to this End User Agreement as controlling for terms of the purchase and no additional terms or conditions will be added to this End User Agreement or will be applicable to any Order unless specifically negotiated by the parties. No Product or Service substitutions or cancellations to the Order or are permitted without Provider’s approval.

Payment and Invoices. Payment terms of Provider invoices are Net 30 days from date of invoice unless the parties have agreed otherwise upon initial account set up. Services shall be invoiced upon shipment. Services shall be invoiced upon delivery. Payment terms of the Provider’s invoice to End Users shall be that as agreed to by those parties.

Service Delivery. Service is software related and will be downloaded from the SoftLayer Portal.

RESPONSIBILITIES OF END USER. End User represents and warrants that it shall during the term of this End User Agreement:

- a) Conduct its business so as to maintain the goodwill and reputation of SoftLayer and Provider at all times. End User shall not engage in any unfair or deceptive business practices with respect to the Services or otherwise; and agrees to; (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 when due; (iii) use reasonable security precautions for providing access to the Services by its employees and any other individuals or companies to whom End User provides access; (iv) cooperate with SoftLayer's or Provider's investigation of outages, security problems, use of Prohibited Content and any suspected breach of the terms of this End User Agreement; (v) comply with all applicable license terms or terms of use for any software, content, service or website (including Customer Content) which End User uses or accesses when using or providing access to the Services; (vi) give Provider true, accurate, current, and complete account information; (vii) keep End User's account information up to date; ; (x) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and immediately notify SoftLayer and Provider of any known or suspected unauthorized use of End User's account and End User's account, Services or any other breach of security. End User may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, End User may not use, or permit any other person to use, the 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.

- b) Give Provider prompt written notice (unless precluded by law or regulation) of any change or anticipated change in End User's financial condition, business structure, or operating environment (for example, a material change in equity ownership or management or any substantive change to information End User provided to Provider).

1. **LIMITS OF AUTHORITY.** End User shall not, without in each case the express prior written approval from an authorized representative of SoftLayer and Provider, take any of the following actions:
 - a) Make any representations, warranties or commitments on behalf of SoftLayer or Provider;
 - b) Make any representations or warranties in respect of the Services except as approved by SoftLayer and provided in this End User Agreement or alter, remove, modify or obfuscate any confidentiality legends or proprietary notices placed on or contained within the Services; or
 - c) Delegate or subcontract any of its activities or obligations under this End User Agreement.
2. **SELECTION AND MODIFICATION OF THE SERVICES.** For downgrades or cancellation of Services, End User must provide Provider or if directed by Provider to do so, 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 Service renewal date. The failure to provide the required 24 hours written notice will result in the downgrade or discontinuance of Services (and any corresponding change in Fees) being effective on the following renewal date. Any Services cancelled prior to such 24-hour period will remain accessible to Provider and End User until the automated process reclaims the server on the renewal date, at which time the Services will cease to be accessible by Provider or End User.
3. **DATA CENTER SELECTION. PRIVACY LAWS.** If applicable, during its selection of Services, End User may select the data center from which the Services provided will be hosted. End User understands and acknowledges the sensitivity and confidentiality of PII which may be stored on or transmitted to and from the data center, and that such information may be obtained from End User 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 ("**Privacy Laws**"). End User 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 it in the performance of its obligations under this End User Agreement.

4. **CUSTOMER SUPPORT.** Unless otherwise agreed, End User shall be responsible for its own technical and other support at its own cost and expense.
5. **AUDIT.** Upon Provider's written request, End User shall certify in writing that End User's use of the Services and all other activities under this End User Agreement are in compliance with the terms of the Agreement. With prior notice of at least ten (10) days and during regular business hours and subject to applicable Government security requirements, Provider may audit End User's compliance with the terms of this End User Agreement. If, upon performing the audit, it is determined that End User has underpaid Provider, Provider shall invoice End User for the additional amount due.
6. **CONFIDENTIALITY.** The Parties agree to maintain strict confidentiality of transactions and all trade secret and business confidential information ("Confidential Information") of the other Party acquired or received under this End User Agreement, including any information, which, if publicly disclosed, could harm the non-disclosing Party. The Parties further agree not to use any confidential information of the other Party, except in performance of this End User Agreement and solely for the purpose(s) provided. Moreover, the Parties agree not to disclose Confidential Information to third parties for any purpose whatsoever without the express written consent of the non-disclosing Party. This limitation does not apply to the disclosure of Confidential Information that is needed to perform or administer work under this End User Agreement, such as the disclosure of Confidential Information to attorneys, accountants and Board Members, so long as the individual(s) receiving Confidential Information agree to abide by the confidentiality provisions herein. For purposes of this End User Agreement, Confidential Information shall not include any information that: (i) is now or becomes in the public domain through no breach of this End User Agreement; (ii) is in the possession of the receiving Party as of the date of execution hereof; (iii) is independently learned by the receiving Party from a third party without breach of this End User Agreement; or (iv) is required by law, including, but not limited to the Freedom of Information Act, 5 U.S.C. § 552, or order of a court, administrative agency or other governmental body to be disclosed by the receiving Party. The Parties agree that the provisions of this Section shall survive the termination, for any reason, of this End User Agreement.

7. **SUSPENSION.**

SoftLayer and/or Provider may suspend provision of Services to End Users immediately in the event that:

- a) SoftLayer and/or Provider determines that there is an emergency situation, including, but not limited to breach of security or
- b) suspension is required by law, statute, regulation, rule or court order. SoftLayer will give End User reasonable advance notice of a suspension under this paragraph 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.

7.2 Responsibility upon Suspension.

If SoftLayer or Provider suspends End User's right to access or use any portion or all of the Service:

- (a) End User remains responsible for all Fees and charges End User has incurred through the date of suspension;
- (b) End User remains responsible for any applicable Fees and charges for any Services to which End User 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) End User will not be entitled to any SLA Credits under any Service Level Agreement accrued during any period of suspension with respect to any such suspended services; and
- (d) SoftLayer or Provider may terminate End Users' access to the relevant Customer Content stored in the Services during a suspension, and neither SoftLayer nor Provider shall be liable to End User, or any third party for any damages or losses Provider, End User, or any third party may incur as a result of such suspension.

8. **ALLEGED MATERIAL BREACH.** Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.
9. **TERM AND TERMINATION.**
 - a) This End User Agreement will become effective on the Effective Date, continue for one (1) year.
 - b) Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.
 - c) Any termination will be without prejudice to any other right or remedy afforded to the Parties and will not affect any rights or obligations, which have occurred prior to such termination. Thus, any Orders with open commitments shall be completed with the terms and conditions of this End User Agreement governing each Order until the commitment has been completed.
10. **CONTROLLING AGREEMENTS.** Terms that apply to this agreement, listed in their order of precedence, are: (i) Cloud Services Agreement for IBM Federal Data Centers, which includes the AUP, and (ii) End User SoftLayer Agreement.
11. **WARRANTY DISCLAIMER.** THE SERVICES ARE FURNISHED BY SOFTLAYER, ARROW AND PROVIDER "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS, STATUTORY OR OTHERWISE, OF ANY KIND. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED, SOFTLAYER AND PROVIDER: (A) EXPRESSLY DISCLAIM 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 SERVICES WILL MEET 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 SERVICES IN TERMS OF THEIR ACCURACY, RELIABILITY, TIMELINESS, COMPLETENESS, OR OTHERWISE. END USER ASSUMES TOTAL RESPONSIBILITY FOR THE USE OF THE SERVICES BY END USER. NOTWITHSTANDING THE FOREGOING, SOFTLAYER SHALL PROVIDE FOR THE REPAIR OR REPLACEMENT OF DEFECTIVE ITEMS DISCOVERED WITHIN A REASONABLE PERIOD OF TIME AFTER ACCEPTANCE.
12. **LIMITATION OF LIABILITY.** EXCEPT FOR LIABILITY ARISING FROM THE INDEMNIFICATION OBLIGATIONS HEREIN, OR AS OTHERWISE REQUIRED BY LAW, SOFTLAYER'S, ARROW'S AND PROVIDER'S TOTAL CUMULATIVE LIABILITY AND END USER'S SOLE REMEDY FOR ALL CLAIMS SHALL IN NO EVENT EXCEED THE GREATER OF THE AMOUNT OF FEES ACTUALLY PAID BY END USER TO PROVIDER FOR THE TWELVE MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO THE LIABILITY OR \$100,000 U.S. End User's exclusive remedy for any and all damages under the agreement, including, but not limited to, consequential, indirect, or special damages, is against Provider. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.
13. **U.S. GOVERNMENT CUSTOMERS AND U.S. GOVERNMENT RIGHTS.** Services are provided 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 Services include only those rights customarily provided to the public. 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 End User 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.

14. **EXPORT MATTERS.** The Parties will comply with laws applicable to either Party generally as a provider of information technology services and products. Neither Party is performing the other Party's regulatory or management obligations and is not responsible for determining the requirements of laws applicable to either Party's business, including those related to Services sold hereunder. Regardless of where located when accessing the Services, the Parties 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. The Parties represent that Customer Content will not, in whole or part, be controlled under the U.S. International Traffic in Arms Regulation (ITAR). The Parties are prohibited from exporting, re-exporting, diverting transfer, disclosing or permitting access to any portion of the Services, enabling software, Content, or related technical information, directly or indirectly, in violation of such export and import laws and regulations. The Parties are also responsible for complying with all other laws, rules, and regulations that may be applicable to their use of the Services.

End User acknowledges that SoftLayer and Provider use global resources (non-permanent residents used locally and personnel in locations worldwide) to remotely support the delivery of Services. End User represents that no Content accessible to SoftLayer for the Services will require an export license or is restricted from export to any SoftLayer global resource or personnel under applicable export control laws. At the time of this End User Agreement, the following countries' laws and regulations are in scope: Germany, Hong Kong, Japan, the Netherlands, Singapore, the United Kingdom and the United States and other countries will be assumed covered under this paragraph as they become applicable.

End User represents 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. End User agrees to notify Provider immediately if End User becomes subject to any such order.

15. **MISCELLANEOUS**

- a) This End User Agreement, together with the underlying GSA Schedule Contract, Schedule Price List, and applicable Customer Purchase Order(s), constitutes the entire understanding and agreement between the Parties hereto with respect to the matters herein, and supersedes all prior or contemporaneous representations or agreements, written or oral, with respect to the matters covered herein.
- b) Nothing in this End User Agreement is intended to create, or shall be construed as creating, a joint venture, or agency, or taxable entity between the Parties, or any right to pledge the other's credit; it being understood that Provider and End User are independent contractors and shall not be deemed to be employed by, or an employee of, the other.

- c) This End User Agreement may not be altered, modified, amended or waived, in whole or in part, in any way, except by an instrument in writing signed by duly authorized officers of Provider and End User.
- d) Performance of any obligation required of a Party hereunder may be waived only by a written waiver signed by a duly authorized officer of the Party for whose benefit such obligation was to be performed. Any waiver shall in no way be construed as a waiver of any subsequent breach of this End User Agreement by the other Party.
- e) If any provision of this End User Agreement is found void, invalid or unenforceable, it shall not affect the validity of the balance of this End User Agreement, which shall remain valid and enforceable according to its terms.
- f) Excusable delays shall be governed by FAR 52.212-4(f).
- g) The Parties shall comply with provisions of all applicable federal, state, county and local laws, ordinances, regulations and codes (including procurement of required permits or certificates in its performance in connection with this End User Agreement).
- h) The headings of the Sections are inserted for convenience only and are not intended to affect the meaning or interpretation of this End User Agreement.
- i) The obligations set forth in this End User Agreement shall survive any termination of this End User Agreement, particularly the provisions relating to the protection of Confidential Information.
- j) All notices, requests, authorizations, consents, waivers, and other communications under this End User Agreement must be in writing and will be deemed to have been duly given when: (i) delivered by hand (with written confirmation of receipt); or (ii) when delivered, if sent by a nationally recognized overnight delivery service to the address first written above (or to such other addresses as a Party may designate by written notice to the other Party).
- k) End User may not assign this End User Agreement without Provider's written consent. End User must also notify Provider in writing of any name change to the present company name.
- l) End User warrants and represents it complies with Provider's Business Code of Conduct on Provider's web site or has implemented and abides by a code of conduct that is substantially similar thereto (in such case, Provider shall provide a copy to End User for review upon Provider's request).
- m) To the extent not exempt, the Parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60- 300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.
- n) This End User Agreement will in all respects be governed by and construed in accordance with the Federal laws of the United States, excluding that body of laws known as conflict of laws. Venue and jurisdiction are mandated by applicable United States Federal law. The application of the UN Agreement pertaining to contracts of international purchase of goods dated January 1, 1989 (UNCISG) BGBI 96/1988 and all its relevant and valid amendments shall expressly be excluded.

IN WITNESS WHEREOF, the parties have executed this End User Agreement as of the Effective Date.

PROVIDER

Name: _____

Signature: _____

Title: _____

Date: _____

END USER

Name: _____

Signature: _____

Title: _____

Date: _____