Carina Test Terms Agreement

This Carina Test Terms Agreement (this "**Agreement**") is between Rackspace US, Inc. ("**we**" or "**Rackspace**") and the customer who uses the Carina service ("**you**" or "**Customer**"), effective as of the date of you sign up online for the services and without signature. You acknowledge that your use of the Carina service is subject to the terms of this Agreement. "Test Service" means the Carina service, and the following terms apply to your use of the Test Service:

1. You acknowledge that the Test Service is a pre-release version and may not work properly.

2. You acknowledge that your use of the Test Service may expose you to unusual risks of operational failures.

3. You should not use the pre-release version of the Test Service in a live production environment. You must not use the Test Service in any hazardous environments, life support, or weapons systems.

4. We may terminate the Test Service at any time, in our sole discretion.

5. The commercially released version of the Test Service may change substantially from the pre-release version, and programs that use or run with the pre-release version may not work with the commercial release or subsequent releases.

6. You are not entitled to any service level credits for downtime or other problems that may result from your testing.

7. During the beta test support will be online community support only, and Rackspace will not provide direct support to you.

8. You agree to provide prompt feedback regarding your experience with the Test Service in a form reasonably requested by us, including information necessary to enable us to duplicate errors or problems you experience. You agree that we may use your feedback for any purpose, including product development purposes. At our request you will provide us with comments that we may use publicly for press materials and marketing collateral. Any intellectual property inherent in your feedback or arising from your testing of the Carina service shall be owned exclusively by Rackspace, provided that Rackspace shall not take ownership of any of your pre-existing intellectual property contained in your feedback. Your feedback and other information regarding your beta test, including your experience with and opinions regarding the Test Service, are not Confidential Information.

9. "Confidential Information" means all information disclosed by one party to the other, whether before or after the effective date of this Agreement, that the recipient should reasonably understand to be confidential, including, unpublished prices and other terms of service, audit and security reports, product development plans, data center designs (including non-graphic information that Customer may observe on a tour of a data center), any Intellectual Property or proprietary information maintained in confidence (such as unpublished source code or inventions), and information that is marked or otherwise conspicuously designated as confidential. Information that is independently developed by one party, without reference to the other's Confidential Information, or that becomes available to one party other than through violation of the Agreement or applicable law, shall not be "Confidential Information" of the other party.

Each party agrees not to use the other's Confidential Information except in connection with the performance or use of the Test Service, as applicable, the exercise of its legal rights under the Agreement, or as may be required by law. Each party agrees not to disclose the other's Confidential Information to any third person except as follows:

(i) to its service providers, agents and representatives, provided that such service providers, agents or representatives agree to confidentiality measures that are at least as stringent as those stated in this Agreement;
(ii) to a law enforcement or government agency if requested, or if the party reasonably believes that the other's conduct may violate applicable criminal law;
(iii) as required by law; or
(iv) in response to a subpoena or other compulsory legal process, provided that the party subject to the process shall give the other written notice of at least seven days prior to disclosing Confidential Information under this subsection (or prompt notice in advance of disclosure, if seven days advance notice is not reasonably feasible), unless the law forbids such notice.

Each party shall use reasonable care to protect the Confidential Information of the other party from unauthorized disclosure.

10. The Test Service is provided "AS IS" with no warranty whatsoever.

11. To the extent permitted by applicable law, Rackspace disclaims any and all warranties with respect to the Test Service including the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

12. Neither of us (nor any of our employees, agents, affiliates, or suppliers) is liable to the other for: (a) any indirect, special, incidental or consequential loss or damages of any kind; (b) any loss of profit; (c) any loss of business; (d) any loss of data; (e) any anticipated savings or revenue; or (f) for any loss that could have been avoided by the damaged party's use of reasonable diligence, even if the party responsible for the damages has been advised or should be aware of the possibility of such damages

13. Notwithstanding anything in the Agreement to the contrary, except for liability based on fraud or fraudulent misrepresentation and liability for death or personal injury resulting from Rackspace's negligence, the maximum aggregate liability of Rackspace and any of its employees, agents, suppliers, or affiliates in connection with the Test Services, the Agreement, and any act or omission related to the Test Services or Agreement, whether occurring before or after the execution of the Agreement, for breach of contract, tort (including negligence) or otherwise shall not exceed one of the following: (i) if you are billed in US Dollars, Five Hundred US Dollars (US$500.00); or, (ii) if you are billed in a currency other than US Dollars, an amount equivalent to Five Hundred US Dollars (US$500.00) in the currency in which you are billed, such equivalent amount to be determined by Rackspace.

14. Rackspace's routine communications regarding the Test Service and legal notices will be sent to the contact information you provide when you sign up online. Notices are deemed received as of the time posted or delivered, or if that time does not fall within a Business Day, as of the beginning of the first Business Day following the time posted or delivered. For purposes of counting days for notice periods, the Business Day on which the notice is deemed received counts as the first day. Notices must be given in the English language.

15. Customer agrees that Rackspace may publicly disclose that it is providing the Test Service to Customer and may use Customer's name and logo to identify Customer in promotional materials, including press releases. Customer may not issue any press release or other publicity regarding the subject matter of this Agreement, or publicly disclose that it is using the Test Service without Rackspace's prior written consent, or use the Rackspace name, logo or other identifying indicia without Rackspace's prior written consent.

16. Neither party may assign the Agreement without the prior written consent of the other party except as part of a bona fide corporate reorganization or a sale of its business. Rackspace may use third party service providers to perform all or any part of the Test Service, but Rackspace remains responsible under this Agreement for work performed by its third party service providers to the same extent as if Rackspace performed the Test Service itself.

17. The Agreement is governed by the laws of the State of Texas, exclusive of any Texas choice of law principle that would require the application of the law of a different jurisdiction, and the laws of the United States of America, as applicable. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. Exclusive venue for all disputes arising out of the Agreement shall be the state or federal courts of Bexar County, Texas, and each party agrees not to bring an action in any other venue.

18. If any part of this Agreement is found unenforceable by a court, the rest of the Agreement will nonetheless continue in effect, and the unenforceable part shall be reformed to the extent possible to make it enforceable but still consistent with the business and financial objectives of the parties underlying the Agreement. Each party may enforce its respective rights under the Agreement even if it has waived the right or failed to enforce the same or other rights in the past. The relationship between the parties is that of independent contractors and not business partners. Neither party is the agent for the other, and neither party has the right to bind the other on any agreement with a third party. The captions in the Agreement are for convenience only and are not part of the Agreement. The use of the word "including" in the Agreement means in each case "including without limitation." Any use in this Agreement of words denoting the singular include the plural and vice versa. The terms of this Agreement may be varied only by a written agreement signed by both parties that expressly refers to this Agreement. The pre-printed terms of your purchase order or other business form will not become part of this Agreement and shall be void and have no effect. The Agreement may be signed in multiple counterparts, which taken together will be considered one original. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures.

19. Country Specific Terms (Services provided from Australia) - Australia Consumer Law If you have purchased Test Services that will be provided in whole or in part from data centers or other Rackspace facilities located in Australia, then this term shall also form part of that Agreement. For the purposes of this clause, "Australia Consumer Law"

means Schedule 2 to the Competition and Consumer Act 2010 (Cth); "Non-excludable Rights" means a condition, warranty, right or guarantee implied by relevant legislation, including the Competition and Consumer Act 2010 (Cth), the exclusion of which from the Agreement would cause part or all of the Agreement to be void. Where Non-Excludable rights apply under Australia Consumer Law, Rackspace's goods come with guarantees that cannot be excluded by Australia Consumer Law. You are entitled to a replacement or refund for a major failure, and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if goods fail to be of acceptable quality and the failure does not amount to a major failure. Any reference to a consumer price index means the All Groups Consumer Price Index as published by the Australian Bureau of Statistics.

The individual entering into this Agreement represents to Rackspace that he or she is authorized to accept the terms on behalf of Customer. This Agreement constitutes the complete and exclusive agreement between the parties regarding the subject matter and supersedes and replaces any prior understanding or communication, written or oral.