RACKSPACE REFERRAL PROGRAM AGREEMENT

Please read this carefully. By clicking "**I ACCEPT**" you are agreeing to the following terms and conditions (this "**Agreement**") governing your participation in the Rackspace Referral Program. This Agreement is between Rackspace and the person or entity agreeing to these terms and conditions ("**you**" or "**Referral Partner**"). Rackspace and Reseller may each be referred to as a "**Party**" and may collectively be referred to as the "**Parties**." If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to this Agreement, (ii) you have read and understand this Agreement, and (iii) you agree, on behalf of the party that you represent, to this Agreement.

1. BACKGROUND. Rackspace provides managed hosting and cloud services to customers. Reseller wishes to promote, advertise, and market the Rackspace Hosting Services to potential Rackspace customers through its website(s) and other marketing channels, and refer potential New Customers to Rackspace in exchange for a Commission. The Parties desire to enter into such a marketing and referral relationship (the "**Referral Program**") pursuant to the terms of this Agreement and the rules of the Referral Program located at https://www.rackspace.com/information/legal/referral-rules (the "**Referral Program Rules and Benefits**").

2. DEFINITIONS.

2.1. "**Affiliate**" means any and all legal entities that a party owns, that owns a party, or that is under its common control. For the purpose of this definition, "control" means an entity, directly or indirectly, holding more than 50% of the issued share capital, or more than 50% of the voting power at general meetings, or which has the power to appoint and to dismiss a majority of the directors or otherwise to direct the activities of such legal entity.

2.2. "**Commission**" means the compensation that Rackspace awards a Referral Partner who has referred a New Customer as provided herein.

2.3. "**Confidential Information**" means all proprietary information disclosed by one of us to the other, whether before or after the Effective Date, that the recipient should reasonably understand to be confidential. Information that is developed by one of us on our own, without use of or reference to the other's Confidential Information, or that becomes available to one of us other than through violation of this Agreement or applicable law, shall not be "Confidential Information" of the other Party.

2.4. "**Effective Date**" means the date that you click "**I ACCEPT**" to accept the terms and conditions of this Agreement.

2.5. "**Hosting Services**" means Rackspace's commercially available services as described in the Referral Program Rules.

2.6. "**Lead**" means a prospective customer referred to Rackspace by a Referral Partner and registered with Rackspace using the Rackspace Partner Portal.

2.7. "**Marks**" means a Party's respective names, logos, trademarks, trade names, domain names, URLs and other identifying indicia.

2.8. "**New Contract**" means a contract with a New Customer for Hosting Services, which unless expressly agreed otherwise by Rackspace in such agreement shall be on Rackspace standard terms.

2.9. "**New Customer**" means a Lead that does not use the Hosting Services at the time you register the customer and is accepted by Rackspace in its sole discretion as described in the Referral Program Rules.

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2.10. "**Rackspace**" or "**we**" means (i) Rackspace US, Inc. if Reseller's address, as stated in the Reseller's application, is located in the United States, or (ii) Rackspace International GmbH if Reseller's address, as stated in the Reseller's application, is located outside of the United States.

2.11. "**Rackspace Partner Portal**" means the website utilized to register New Customers and provide information for the Referral Program, currently found at https://partners.rackspace.com/English/default.aspx.

3. MARKETING & LICENSE.

3.1. Any marketing by Referral Partner of Rackspace Hosting Services, utilization of Rackspace information and/or materials, or use of Rackspace's Marks shall be undertaken in accordance with this Agreement and only as permitted under the Referral Program Rules.

3.2. Subject to this Agreement and its terms, Rackspace hereby grants to Referral Partner a royalty-free, non-exclusive, nontransferable and revocable license for the term of this Agreement to use Rackspace's Marks, and associated materials, language or code for the sole and exclusive purpose of promoting the Hosting Services to potential New Customers subject to compliance with Rackspace's Referral Program guidelines and instructions, including Rackspace's Trademark Usage Guidelines which can be found at http://www.rackspace.com/information/legal/copyrights_trademarks as may be updated from time to time by Rackspace at its sole discretion. Rackspace may revoke this license at any time by giving Referral Partner written notice (including via email).

3.3. We may, at our option, market your products or services in compliance with your guidelines and instructions that are communicated to us in advance in writing and you agree to grant us a license to do so accordingly.

4. COMMISSIONS. Rackspace will pay Commissions for New Contracts in accordance with the Referral Program Rules. Commissions shall not be provided in connection with any other discount or commission, special offer or promotion.

5. INDEMNIFICATION.

5.1. Indemnification Related to Use of Marks. Each party (an "Indemnitor") shall pay the cost of defending a legal claim by a third party (including reasonable legal fees) and any damages award, fine, or other amount that is reasonably incurred by the other Party (an "Indemnitee") arising out of: (i) the use of its own Marks by the other Party as permitted by this Agreement, or (ii) its own use of the other Party's Marks other than as permitted by this Agreement.

5.2. Indemnification for Breach. If Rackspace or its Affiliates, or any of their respective employees, agents, or owners (collectively, an "Indemnitee"), is faced with a legal claim by a third party arising out of your failure to comply with Sections 3 (Marking & License) or 16 (Improper Conduct) you (an "indemnitor") will pay the cost of defending the claim (including reasonable legal fees) and any damages award, fine, or other amount that is reasonably incurred by Rackspace as a result of the claim.

5.3. Notice and Defense Requirements. In order to qualify for the defense and payment obligations described in this Section 5, the Indemnitee is required to: (i) promptly notify the Indemnitor of any such claim; (ii) Allow the Indemnitor to maintain sole control of the defense and settlement of such claim; and (iii) provide reasonable assistance to the Indemnitor, at the Indemnitor's expense, in connection with the Indemnitor's defense and settlement of such claim.

6. TERM & TERMINATION.

6.1. The initial term of this Agreement will begin on the Effective Date and will continue for 12 months (the "**Initial Term**"). On expiration of the Initial Term, this Agreement will automatically renew for consecutive 12 month Renewal terms (each a "**Renewal term**") unless either Party gives the other written notice of non-renewal

at least 30 calendar days prior to the expiration of the Initial Term or then-current Renewal term, as applicable. Either of us may terminate this Agreement prior to expiration, with or without cause, by giving the other Party 30 calendar days advance written notice. Each of us agrees to stop using the other Party's Marks as soon as reasonably possible following receipt of a notice of non-renewal or termination, and in all events by the effective date of expiration or termination of this Agreement.

6.2. Rackspace's obligation to pay Commissions (with respect to New Customers referred prior to the expiration or termination of this Agreement) will continue for a period of six months following the expiration or termination of this Agreement, provided that you are and remain in compliance with the surviving terms of this Agreement as defined below.

6.3. The following sections shall survive expiration or termination of this Agreement: Section 3 (Marketing & License), Section 4 (Commissions), Section , 5 (Indemnification), Section 6 (Term & Termination), Section 7 (Confidential Information), 9 (Disclaimer of Warranties), Section 10 (Limitation of Damages), Section 11 (Governing Law/Disputes), Section 13 (Notices), Section 14 (Relationship Between the Parties), Section 15 (Non-solicitation) Section 16, (Improper Conduct), Section 18 (Final Agreement), Section 19 (Termination of Existing Partner Agreement), Section 20 (Miscellaneous) and all other sections that by their nature are intended to survive expiration or termination of this Agreement.

7. CONFIDENTIAL INFORMATION.

7.1. Use of Confidential Information. Each of us agrees not to use the other's Confidential Information except in connection with the performance of this Agreement, the exercise of our respective legal rights under this Agreement, or as required by law. Rackspace may use your Confidential Information to the extent necessary to provide the services contracted for under a New Contract and as necessary to generally manage its business with respect to the provision of such services.

7.2. Disclosure of Confidential Information. Each of us agrees not to disclose the other's Confidential Information to any third person except as follows: (i) to our respective agents, service providers, and representatives ("**Agents**"), provided that such Agents 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 either of us reasonably believes that the other's conduct may violate applicable criminal law; (iii) as required by law; or (iv) in response to a subpoena, court order or other compulsory legal process, provided that each of us agrees to give written notice of at least seven calendar days prior to disclosing Confidential Information under this Subsection 7.2 (or prompt notice if seven calendar days advance notice is not reasonably feasible), unless the law forbids such notice. Neither Party will make any public statements, press releases or other public announcements regarding the Parties' relationship and any terms and conditions under this Agreement without the prior written consent of the other Party. Such consent shall not be unreasonably withheld.

8. REPRESENTATIONS AND WARRANTIES. You represent and warrant to Rackspace that: (i) all information you have provided and will provide in connection with this Agreement, including the information on the Rackspace Partner Portal is true, correct, and complete, (ii) you have not been and are not currently the subject of any investigation or legal proceeding of any kind in relation to spamming or the violation of any consumer protection or deceptive trade practices law or regulation, and (iii) entering into this Agreement does not and will not violate any agreement or obligation existing between you and any third party. You agree to promptly advise Rackspace in writing if at any time any of the representations and warranties in this Section 8 can no longer be asserted by you.

9. DISCLAIMER OF WARRANTIES. Any service warranty stated in a contract with a New Customer hereunder shall be for the benefit of the customer and not you. Rackspace makes no representation or warranty whatsoever to you regarding its services. To the fullest extent permitted by applicable law, Rackspace disclaims any and all warranties not expressly stated in this Agreement, including the implied warranties of merchantability, fitness for a particular purpose, freedom from viruses or other harmful elements, accuracy, reliability, availability, noninfringement, and timeliness.

10. LIMITATION OF DAMAGES.

10.1. Except for liability under Section 7 (Confidential Information) and liability for infringement of the other Party's intellectual property, neither of us (nor any of our employees, agents, Affiliates, or suppliers) is liable to the other for: (i) any indirect, special, incidental, exemplary or consequential loss or damages of any kind, (ii) any loss of profit, (iii) any loss of business, (iv) any loss of data, (v) any anticipated savings or revenue, or (vi) 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. In no event shall either of us be liable to the other for any punitive damages.

10.2. Notwithstanding anything in this Agreement to the contrary, except for claims based on (i) each Party's indemnification obligations set forth in Section 5 (Indemnification) and (ii) each Party's confidentiality obligations set forth in Section 7 (Confidential Information), the maximum aggregate monetary liability of each Party and any of its employees, agents, suppliers, or Affiliates, under any theory of law (including breach of contract, tort, strict liability, and infringement) shall not exceed the amount of Commissions due and unpaid plus USD $2,500.00.

10.3. Nothing in this Agreement shall exclude or limit liability to a greater extent than is permitted by applicable law and nothing in this Agreement shall exclude or limit liability for fraud, fraudulent misrepresentation, or for death or personal injury caused by negligence.

11. GOVERNING LAW/DISPUTES. Where Rackspace International GmbH is the contracting entity, this Agreement shall be governed by the law and jurisdiction of the courts of England, and where Rackspace US Inc. is the contracting entity, this Agreement shall be governed by the laws of the State of Texas, USA and the federal laws of the USA and the jurisdiction of the State or Federal Courts of Bexar County, Texas, exclusive of any choice of law principle that would require the application of the law of a different jurisdiction. Each party unconditionally and irrevocably submits to the exclusive jurisdiction of the courts of the applicable jurisdiction. In addition, the parties agree to comply with all applicable law. In the event of any dispute, prior to initiating any legal action, the parties agree to use their best efforts to resolve or settle the dispute by consulting and negotiating with each other in good faith. This Section 11 does not restrict a party's right to immediately seek injunctive relief for a breach of confidentiality or misuse any marketing material.

12. ASSIGNMENT. Neither of us may assign this Agreement without the other's prior written consent, except to a subsidiary or an Affiliate, or as part of a transaction by which all or substantially all of that Party's assets are transferred to a third party, in which case the Party assigning this Agreement shall provide written notification of such assignment to the other Party. Subject to the preceding sentence, this Agreement will inure to the benefit of the Parties' successors and assigns.

13. NOTICES. Notices under this Agreement shall be given via either: (i) e-mail, return receipt requested, and/or (ii) via certified mail, return receipt requested (or by other established and well-known express courier) and addressed to the Referral Partner per contact information appearing on Rackspace's Referral Partner Program records, and addressed to Rackspace as follows:

e-mail

To: raxpartnerhelp@rackspace.com;
With copy to: legalnotice@rackspace.com

Mail

Rackspace US, Inc.
1 Fanatical Place
City of Windcrest
San Antonio, Texas, USA 78218

Notices are deemed received on the day transmitted via electronic mail, or if that day is not a business day, on the first business day following the day delivered.

14. RELATIONSHIP BETWEEN THE PARTIES. We agree that we are independent contractors, and that neither of us has any fiduciary duty to the other. We each acknowledge that the Commission provided for in this Agreement is the sole and exclusive compensation for our activities under this Agreement. Neither Party is the agent of the other. Neither Party may represent to any person that it has the power to bind the other on any service contract or other agreement or take any action reasonably likely to lead the public to believe that it is the agent or representative of the other. This Agreement is non-exclusive.

15. NON-SOLICITATION. You agree that during the term of this Agreement (Initial Term plus any Renewal terms) and for twelve months following expiration or termination of this Agreement, you will not solicit or encourage any New Customer to move their Hosting Services account to another provider, unless Rackspace has failed to perform its obligations under its agreement with the New Customer. Nothing in this Section 15 prohibits the New Customer from initiating a move of its Hosting Services account, or prohibits you from soliciting the New Customer for services other than the Hosting Services for which the New Customer was referred.

16. IMPROPER CONDUCT. You are required to have a corporate policy which communicates internally the need for compliance with applicable anti-bribery and corruption laws, sets out good practice that your staff should follow, and which rigorously enforces any breach of such policy or the law. On request, you will provide us with your anti-bribery policy. You agree to cooperate with us at our reasonable cost in regular audits we undertake to monitor your compliance with your policy and applicable law.

17. CURRENCY. All amounts denoted in "$" in this Agreement mean that amount in United States Dollars (USD); or, in respect of Commissions, the equivalent sum in the currency applicable to your given Qualified Resale which results in an equivalent Commission pursuant to this Agreement when converted to United States Dollars (USD) at the exchange rate communicated to you by Rackspace, which shall be updated once per calendar quarter.

18. FINAL AGREEMENT. This Agreement is the complete and exclusive agreement between the Parties regarding its subject matter and supersedes and replaces any prior agreement, understanding, or communication, written or oral.

19. TERMINATION OF EXISTING PARTNER AGREEMENT. This Agreement supersedes any existing agreements between you and Rackspace in which Rackspace has agreed to pay you a Commission, or other benefits in exchange for your referral, marketing or resale services, and you hereby agree that any such existing agreement(s) are TERMINATED effective as of the Effective Date. Your referrals occurring under any prior agreement will become subject to the terms of this Agreement on the Effective Date. You hereby waive any right to receive Commissions pursuant to any existing agreement for New Contracts occurring after the Effective Date and waive any rights to notice set forth in any such existing agreement.

20. MISCELLANEOUS. Neither Party grants the other any rights to any of its intellectual property except for the license to use the Marks described in Section 3 (Marketing & License) above. Each Party shall retain all right, title, and interest in and to its intellectual property, including intellectual property that it may develop during the term of this Agreement. Except as expressly set out otherwise, this Agreement may be amended only by a formal written agreement signed by both Parties. A Party's failure or delay in enforcing any provision of this Agreement will not be deemed a waiver of that Party's rights with respect to that provision or any other provision of this Agreement. There are no third party beneficiaries to this Agreement. In the event any term of this Agreement is held unenforceable by a court having jurisdiction, the remaining portion of this Agreement will remain in full force and effect, provided that the Agreement without the unenforceable provision(s) is consistent with the material economic incentives of the parties leading to this Agreement.