OPTIMIZER ON AWS
NEW CUSTOMER PROMOTIONAL TERMS

Where these Optimizer on AWS New Customer Promotional Terms ("**Promotional Terms**") are incorporated by reference in the Service Order between Rackspace and the customer ordering the Services ("**Customer**"), these terms shall apply to Customer's purchase of Rackspace Optimizer on AWS Services or Rackspace Optimizer+ on AWS Services ("**Eligible Services**") as set out herein. Promotional Terms are applicable only to new customers of the Rackspace group, purchasing only the Eligible Services and no other Services ("**Eligible Customer**").

1. DEFINED TERMS. The defined terms in Schedule 1 shall be applicable to the Agreement.

2. NO MSA. Customer is not required to accept the Rackspace Master Services Agreement for purchase of Eligible Services under these Promotional Terms, and any reference to such in the Service Order shall be of no force and effect as to the Eligible Services.

3. NO ADDITIONAL FEES. Rackspace will not apply any added usage or fee in excess of the published AWS Service prices for the Eligible Services.

4. SERVICES.

4.1. AWS Services Resale. As part of these Services, Rackspace will resell to Customer a subscription for AWS Services, including AWS Support to cover the AWS Accounts, and help Customer to provision its AWS Account(s) as detailed in the Guide. Default settings shall be applied to the AWS Account(s) provisioned by Rackspace on Customer's behalf. Customer may modify its AWS Support level at any time, on notice to Rackspace, however, Customer must provide at least 90 days prior written notice to Rackspace to remove AWS Support from any AWS Account. If Customer is a Public Sector Customer, prior to consuming these Services, Customer must execute an AWS Customer Agreement directly with AWS and comply with any other Public Sector Authorizations required by Rackspace and/or AWS. Customer acknowledges that Customer's use of the AWS Services is subject to the AWS Customer Agreement; except for those sections of the AWS Customer Agreement governing fees, payment, pricing, and taxes, for which the Agreement shall be controlling. Customer releases Rackspace from any and all liability whatsoever arising out of or in connection with the AWS Services, AWS' provision, management, or operation of the AWS Services, and AWS' exercise of its rights in the AWS Customer Agreement or Customer's breach thereof. Notwithstanding anything to the contrary, AWS Services are excluded from the definition of "Services", and Fees for AWS Services are excluded from any limitation on damages calculation. Customer is prohibited from reselling the AWS Services. Customer is prohibited from selling, transferring, providing, or sublicensing Customer's Rackspace or AWS Account credentials to any other party (except to agents and subcontractors performing work on Customer's behalf). Customer represents and warrants that Customer has read and understands the SPP Program Guide and understands that Rackspace is Customer's "Authorized Solution Provider" as defined in the SPP Program Guide.

4.2. Optimizer Services.

(A) Customer will receive a notice in Customer's Rackspace Portal when on-boarding has completed.

(B) Rackspace will provide support, on a reasonable efforts basis, for requests submitted via ticket for billing and cost optimization issues arising out of the AWS Services purchased under these Promotional Terms.

(C) If Rackspace determines the root cause of an issue is related to AWS Services, Rackspace will guide Customer in opening a case through Customer's AWS Support, as applicable, and Customer will be responsible for working with AWS to resolve the issue.

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(D) Rackspace will provide, at no additional charge to Customer, access to a Cloud Management Platform, or comparable system, in order to manage Customer's AWS consumption.

4.3. Optimizer+ Services. Where, and only for the duration that, Customer has purchased Optimizer+ Services, the following additional terms shall apply:

(A) Section 4.2(B) shall not apply. Instead, Rackspace will provide technical and operational support 24 hours per day, seven days per week, year-round, via telephone and ticket, for issues arising out of the AWS Services purchased under these Promotional Terms (e.g., general to expert-level inquiries on specific Third Party Cloud Services). Rackspace will respond to billing and cost optimization related inquiries on a reasonable efforts basis following Customer's telephone or ticket request. Notwithstanding the foregoing, during on-boarding, only technical and operational support will only be available and only during Business Hours, and the target response times shall not apply.

(B) Rackspace will review applicable AWS Services purchased under these Promotional Terms in accordance a well-architected, industry supported architecture framework, not to exceed one review per quarter. To the extent applicable, Rackspace will provide suggestions for improvement of Customer architecture to facilitate cost management, and improved scalability and reliability. Reviews will be provided on-demand, on a first-come first-served basis.

(C) Rackspace will guide Customer through enablement of native AWS Services monitoring functionality and provide additional proprietary automated alerting and proactive monitoring of Customer's AWS Services environments covered under to these Promotional Terms. Monitoring alerts will be escalated to Customer's personnel and, as requested through the Encore ticketing portal, Rackspace will guide Customer through remediating identified issues.

(D) Rackspace will provide access to a Technical Account Manager for Customer to contact, via phone and ticket, regarding possible Third Party Cloud infrastructure modifications and to conduct quarterly account reviews with Customer.

(E) Rackspace will try to respond to Customer's support requests submitted to Rackspace via phone in the following timeframes, which are determined by Customer's underlying AWS Services support level. Customer may submit support requests directly to Rackspace by telephone using the contact information provided in the Guide, provided that the target response times in this Section will only apply to requests submitted by phone.

<table>
<tr><th>AWS Support Level</th><th>Severity</th><th>Definition</th><th>Contact Method</th><th>Initial Response Time</th></tr>
<tr><td>Enterprise</td><td rowspan="2">Emergency</td><td rowspan="2">Business critical system outage / extreme business impact / production system outage / significant business impact</td><td rowspan="2">Phone</td><td>15 Minutes</td></tr>
<tr><td>Business</td><td>30 Minutes</td></tr>
</table>

4.4. Add-On Services. Customer may only purchase Add-on Services subject to an additional Service Order.

4.5. Default Configurations. Customer shall grant Rackspace a reasonable method to access the Customer Configuration. Rackspace's obligation to provide these Services, including any Add-on Services, is contingent on Customer retaining the default account settings applied by Rackspace, and meeting any Rackspace Configuration Requirements provided to Customer from time to time in the Guide, Service Order, product

documentation, or otherwise communicated to Customer in writing. Rackspace shall have no obligation to provide Services for Customer Configurations which do not meet the Rackspace Configuration Requirements.

4.6. Service Limitations. Rackspace shall provide support only to those individuals designated by Customer in the customer portal and is not required to provide any support directly to Customer's end users. Customer remains liable for the acts and omissions of Customer's end users. Customer may use the Services for commercial purposes only and may not use the Services in any situation where failure or fault of the Services or the Customer Configuration could lead to death or serious bodily injury of any person or physical or environmental damage.

4.7. Account Management & Control Panel. Customer is responsible for keeping its account permissions, billing, and other account information up to date. Customer shall not use Rackspace cloud control panel to use Rackspace Cloud Services and if Customer does so then by making use of any Rackspace Cloud Services Customer automatically agrees to the standard terms of service for Rackspace Cloud Service as published on the Rackspace website from time to time.

5. LICENSES.

5.1. Third Party Software Licenses. Customer's use of CloudHealth by VMware ("**CloudHealth**") is additionally subject to Customer's compliance with the CloudHealth Terms. Customer releases Rackspace from any and all liability whatsoever arising out of or in connection with Customer's use of CloudHealth, VMware's provision, management or operation of CloudHealth, and VMware's exercise of its rights in the CloudHealth Terms, or Customer's breach thereof. As directed by Customer, Rackspace may agree to install third-party software (for example, from the AWS marketplace) as part of the Services. Where such activity requires the acceptance of any TPS Agreements (or similar terms), Customer hereby authorizes Rackspace to accept such TPS Agreements on Customer's behalf, and Customer agrees to be bound by and adhere to such terms, and acknowledges that Customer, not Rackspace, is bound by such terms. Rackspace shall notify Customer via ticket when Rackspace accepts any TPS Agreements on Customer's behalf and direct Customer to a copy. Rackspace will not engage in negotiation on Customer's behalf. TPS Agreements are independent and separate from the Agreement, and Rackspace is not a party to and is not responsible for the performance of any TPS Agreements. In the event Rackspace distributes or otherwise provides for Customer use any Open Source Software to Customer as part of the Services then such Open Source Software is subject to the terms of the applicable open source license. To the extent there is a conflict between this Agreement and the terms of the applicable open source license, the open source license shall control. Except as expressly provided herein, Rackspace makes no representation or warranty whatsoever regarding Open Source Software or with regard to any third party products or services which Rackspace may recommend for Customer's consideration.

6. PRIVACY & SECURITY.

6.1. Security. Rackspace shall provide the Services in accordance with the Security and Privacy Practices. Customer shall use reasonable security measures and precautions in connection with its use of the Services, including appropriately securing and encrypting in transit and at rest Sensitive Data stored on or transmitted using the Customer Configuration; and shall take appropriate measures to otherwise prevent access to Sensitive Data by Rackspace where Rackspace's access to the Customer Configuration may result in its exposure. Specifically, Customer must enable multi-factor authentication for all AWS Account root users prior to Rackspace providing support to Customer pursuant to the Agreement. Customer is responsible for determining the suitability of the Services and Customer's compliance with any applicable laws, including export laws and data privacy laws.

6.2. Customer Data. AWS' Processing of Customer Data is subject to the AWS Customer Agreement. As between Customer and AWS or Rackspace, Customer agrees that Customer is the Controller and primary Processor of Customer Data. Customer consents to the processing of Customer Data in, and the transfer of Customer Data into, the AWS regions selected by Customer. Customer may specify the AWS regions in which Customer Data will be stored and accessible by Customer and its end users. Rackspace shall not move Customer Data from Customer's selected AWS regions without Customer's instructions and without notifying

Customer, unless required to comply with the law or a request by one or more governmental entities. Customer warrants that Customer shall process any Customer Data that includes PII in compliance Applicable Data Protection Law. Customer shall comply with Applicable Data Protection Law of the state, province, country, or other jurisdiction in which the PII is stored, regardless of whether the software-defined data center region selected by Customer for storing Customer's PII is inside or outside of Customer's own state, province, country, or other jurisdiction. Customer shall, and require its end user(s) to, implement those technical and organizational measures required by Applicable Data Protection Law relative to Customer's use of these Services and the AWS Services and the nature and the volume of the PII processed through Customer's use thereof. Customer is responsible for providing any necessary notices to individuals and for obtaining any legally required consent from individuals in relation to Rackspace's provision of any services to Customer or Customer's Processing of any PII. Customer shall not, by any act or omission, place Rackspace or its Representatives in breach of Applicable Data Protection Law. Nothing in the Agreement shall preclude AWS from capturing, retaining, and using network or usage information whenever a Customer accesses or uses the AWS Site or the AWS Services.

6.3. Information About Customer. Information obtained by AWS is subject to the applicable AWS privacy terms found in the AWS Customer Agreement. If the AWS Services include one or more third party solutions, AWS may disclose, among other things, Customer's name, city, state/region, country and zip/postal code and information associated with Customer's use of the Services. To resell to Customer a subscription for the AWS Services and help Customer to provision its AWS Account(s) as detailed in the Guide, Rackspace shall provide AWS the following information on a monthly basis: (i) Customer name and contact information (including customer name, telephone number, email address, city, state/region, country and zip/postal code), and (ii) Customer's AWS Account ID associated with Rackspace's reseller account. Customer consents to Rackspace's collection, use, and disclosure of this information in accordance with the Rackspace Privacy Statement.

7. BILLING AND FEES.

7.1. AWS Fees. Rackspace shall charge Customer the current AWS public pricing for Customer's use of the AWS Services, Fees for any Add-on Services, and Fees for any AWS marketplace purchases. Customer is responsible for all fees and charges accrued under Customer's AWS Account(s), regardless of whether such fees and charges accrued before or after the date of transfer to or from Rackspace, and Rackspace will invoice Customer accordingly.

7.2. Billing Details and Taxes. Recurring fees shall be billed monthly in arrears, and any one-time fees shall be billed immediately as incurred. Please review the Guide for further details regarding billing cycles and accessing Customer's invoices. All amounts due to Rackspace under the Agreement are exclusive of Tax. Customer shall pay Rackspace any Tax that is due or provide Rackspace with satisfactory evidence of Customer's exemption from the Tax in advance of invoicing. Customer shall provide Rackspace with accurate and adequate documentation sufficient to permit Rackspace to determine if any Tax is due. All payments to Rackspace shall be made without any withholding or deduction for any taxes. Customer agrees to timely provide Rackspace with accurate factual information and documentation of Customer's payment of any such Local Withholding Taxes. Rackspace shall remit such cost to Customer in the form of a credit on Customer's outstanding account balance following receipt of sufficient evidence of payment of any such Local Withholding Taxes.

7.3. Billing Access. To determine Third Party Cloud usage, and to calculate applicable Fees, Customer must provide Rackspace with ongoing administrative level access to the top level billing account associated with any applicable Third Party Cloud Accounts; and when required Customer will comply with Rackspace's reasonable request to provide the requisite level of access in a timely manner.

7.4. Administration Fee. If Rackspace is unable to obtain the required usage and billing access to Customer's AWS Account as described in section 7.3, an additional monthly service Fee at 2% of infrastructure spend will be added to Customer's Fees to administer the billing manually (an "Administrative Fee"), which will continue until automated billing has been restored. Customer agrees that the Administrative Fee is a fair and reasonable determination of additional expense for the indicated manual billing.

7.5. Payment Terms. Customer shall pay the Fees due within 30 days from the invoice date. If payment for Fees is overdue by at least ten days, and not disputed by Customer in good faith and in written detail, Rackspace may immediately suspend the associated Services and any other services Customer receives from Rackspace on written notice. Invoices that are not disputed in good faith and in written detail within 90 days of the invoice date are conclusively deemed to be accepted as accurate by Customer. Customer shall pay the Fees in the currency identified on the Service Order, and, except as expressly permitted in these terms, without setoff, counterclaim, deduction, or withholding. Rackspace will charge interest on overdue amounts at the greater of 1.5% per month or the maximum legal rate, and will charge Customer for any cost or expense arising out of Rackspace's collection efforts.

7.6. DDI Moves. Customer requests for DDI moves must be submitted at least 14 business days in advance of the designated DDI Move date. DD Moves are performed ONLY on a quarterly basis and ONLY during designated periods to minimize impact on billing. (i.e., starting on or about the 15th of the month and ending on or about the 25th of the month). Subject to Rackspace discretion, DDI Moves requested outside of designated DDI Move window will be subject to additional Fees. DDI Moves are subject to additional terms and conditions as may be communicated to Customer via Services ticket.

8. TERM & TERMINATION.

8.1. Term. The Initial Term of the Services will be as defined in, and commence upon Customer's signature of, the applicable Service Order. Upon expiration of the Initial Term, the Services will renew for consecutive, rolling 30 day terms unless: (i) otherwise stated in the Agreement, (ii) the parties enter into an agreement for a Renewal Term, or (iii) either party provides the other with written notice of termination at least 30 days prior to the expiration of the then current term.

8.2. Termination for Cause. Either party may immediately terminate the Agreement and/or the affected Service Order(s) for cause on written notice if the other party materially breaches the Agreement and, where the breach is remediable, does not remedy the breach within 30 days of the non-breaching party's written notice describing the breach. Rackspace may immediately terminate the Agreement and/or the applicable Service Order(s) for breach on written notice if, following suspension of Customer's Services for non-payment, payment of any invoiced amount, not disputed in good faith and in written detail, remains overdue for a further ten days. Subject to applicable law, either party may immediately terminate the Agreement and any Service Order(s) on written notice if the other party enters into compulsory or voluntary liquidation, or ceases for any reason to carry on business, or takes or suffers any similar action which the other party reasonably believes means that it may be unable to pay its debts. Notwithstanding anything to the contrary in the Agreement, the Fees for the Services through the conclusion of all Service Orders shall become due immediately in the event Rackspace terminates the Agreement in accordance with this Section 8.2.

8.3. Post-Termination. Upon termination, Rackspace will no longer be the reseller of Customer's AWS Services, and Customer must elect to either: (i) transfer ownership of its AWS Accounts to Customer, or (ii) close Customer's AWS Accounts. Such election must be made at the time Customer provides notice of termination. If Customer does not make such election at the time Customer provides notice of termination, then Rackspace may close Customer's account on the effective date of termination, without liability (e.g., for any lost Customer Data or account credentials).

9. LIMITATIONS & DISCLAIMERS.

9.1. Notwithstanding anything in the Agreement to the contrary:

(A) Rackspace's liability arising from: (i) death or personal injury caused by negligence; (ii) fraudulent misrepresentation; or (iii) any other loss or damages for which such limitation is expressly prohibited by applicable law, shall be unlimited.

(B) Subject to Section 9.1(A), the maximum aggregate monetary liability of Rackspace and any of its Representatives in connection with the Services or the Agreement under any theory of law shall

not exceed the actual damages incurred up to the greater of: (i) an amount equal to six times the Fees payable by Customer for the Services that are the subject of the claim in the first month in which Fees are charged under the Agreement, (ii) the total amount paid by Customer to Rackspace for the Services that are the subject of the claim in the 12 months immediately preceding the event(s) that first gave rise to the claim, or (iii) US$500 (five hundred US dollars).

9.2. Neither party (nor any of its Representatives) is liable to the other party for any indirect, special, incidental, exemplary, or consequential loss or damages of any kind. Neither party is liable 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. In no event shall either party be liable to the other for any punitive damages; or for any loss of profits, data, revenue, business opportunities, customers, contracts, goodwill, or reputation.

9.3. If Rackspace, or any of its or their respective Representatives (collectively, the "**Indemnitees**" or "**Indemnified Parties**") are faced with a claim by a third party arising out of: Customer's breach of TPS Agreement, end user agreement, or security obligation then Customer shall hold Rackspace harmless and pay the cost of defending the claim (including reasonable legal and professional fees and expenses) and any damages, losses, fine, or other penalty that is imposed on or incurred by the Indemnitees as a result of the claim. Customer's obligations under this Section include claims arising out of the acts or omissions of Customer's employees, agents, end users, any other person to whom Customer has given access to the Customer Configuration, and any person who gains access to the Customer Configuration as a result of Customer's failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorized by Customer. If Rackspace receives notice of a claim that is covered by this Section 9.3, Rackspace shall give Customer prompt written notice thereof. Rackspace shall be allowed to conduct the defense of the matter, including choosing legal counsel to defend the claim, provided that the choice is reasonable and is communicated to Customer. Customer shall comply with Rackspace's reasonable requests for assistance and cooperation in the defense of the claim. Rackspace may not settle the claim without Customer's consent, which may not be unreasonably withheld, delayed or conditioned. Customer shall pay costs and expenses due under this Section 9.3 as Rackspace incurs them.

9.4. Rackspace and its Representatives disclaim any and all warranties not expressly stated in the Agreement to the maximum extent permitted by law including implied warranties such as merchantability, satisfactory quality, fitness for a particular purpose, and non-infringement. Notwithstanding anything to the contrary, Rackspace makes no express or implied warranty or condition on behalf of its Representatives under the Agreement, and to the extent any language may be construed as a warranty or condition, it is hereby disclaimed.

9.5. Rackspace will only provide those Services stated in the Service Order. In the event Rackspace does provide Unsupported Services or services that are not obligated under the Agreement, such services are provide AS-IS with no warranty whatsoever, and Rackspace shall not be liable to Customer for any loss or damage arising from the provision of such services. Rackspace is not responsible for unauthorized access to Customer Data or for unauthorized use of the Services that is not solely caused by Rackspace's failure to meet its security obligations in Section 6.1, and Rackspace disclaims all responsibility where the security, availability, or stability of the Services is compromised, in whole or in part, by a party other than Rackspace (e.g. Customer, Customer's end users, agents, and/or contractors, and/or any third-party). If Customer uses any Test Services, then Customer's use of those Test Services is subject to the Test Terms.

10. GOVERNING LAW.

10.1. The governing law of the Agreement is determined by reference to the Rackspace contracting entity identified in Schedule 2, exclusive of any choice of law principle that would require the application of the law of a different jurisdiction, and each party unconditionally and irrevocably submits to (i) the exclusive jurisdiction of the courts of the applicable jurisdiction, or (ii) binding arbitration, as set out in Schedule 2.

10.2. Where stated to be subject to arbitration in Schedule 2, any dispute or claim relating to or arising out of the Agreement shall be submitted to binding arbitration. The arbitration shall be conducted in the state and

county (or equivalent geographic location) of the non-asserting party's principal business offices in accordance with the Commercial Rules of the AAA in effect at the time the dispute or claim arose. The arbitration shall be conducted by one arbitrator from AAA or a comparable arbitration service. The arbitrator shall issue a reasoned award with findings of fact and conclusions of law. Either party may bring an action in any court of competent jurisdiction to compel arbitration under the Agreement, or to enforce an arbitration award. Neither party nor an arbitrator may disclose the existence, content, or results of any arbitration under the Agreement without the prior written consent of both parties. Either party shall be permitted to appeal the final award under the AAA's Optional Appellate Arbitration Rules in effect at the time the dispute or claim arose. Grounds for vacating the award shall include, in addition to those enumerated under the Federal Arbitration Act, 9 U.S.C. §1, et seq, that the arbitrator committed errors of law that are material and prejudicial. The appeal shall be determined upon the written documents submitted by the parties, with no oral argument. After the appellate rights described in this Section 10.2 have been exercised or waived, the parties shall have no further right to challenge the award.

10.3. Notwithstanding any exclusive jurisdiction provision above, Customer agrees that Rackspace may seek to enforce any judgment anywhere in the world where Customer may have assets. No claim may be brought as a class or collective action, nor may Customer assert such a claim as a member of a class or collective action that is brought by another claimant. Each party agrees that it shall not bring a claim under the Agreement more than two years after the time that the claim accrued. The Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. The prevailing party in any action or proceeding relating to the Agreement shall be entitled to recover reasonable legal fees and costs, including attorney's fees.

11. GENERAL.

11.1. Eligibility. If Customer is not an Eligible Customer, Rackspace's standard terms and conditions for the applicable Service as published on the Rackspace website from time to time shall apply to the Services, and these Promotional Terms shall not be applicable.

11.2. Notices. Customer's communications to Rackspace regarding the Services should be sent to Customer's account team using the customer portal; except that, Customer must send legal notices (including termination notices) by electronic mail to legalnotice@rackspace.com; and by overnight postal service to: General Counsel, Rackspace US, Inc., 1718 Dry Creek Way Ste 115, San Antonio, Tx. 78259-1837. Rackspace's communications regarding the Services and legal notices shall be posted on the customer portal or sent by email or post to the individuals Customer designates as contacts on Customer's account. 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 shall be given in English.

11.3. Assignment/Subcontractors. Neither party may assign the Agreement or any Service Orders without the prior written consent of the other party, except to an Affiliate or successor as part of a corporate reorganization or a sale of some or all of its business, provided the assigning party notifies the other party of such assignment. Rackspace may use its Affiliates or subcontractors to perform all or any part of the Services, but Rackspace remains responsible under the Agreement for work performed by its Affiliates and subcontractors to the same extent as if Rackspace performed the Services itself.

11.4. Force Majeure. Neither party shall be liable or be in breach of the Agreement (excluding in relation to the Customer's payment obligations) if the failure to perform the obligation is due to an event beyond its control, including significant failure of a part of the power grid, failure of the Internet, natural disaster or weather event, fire, acts or orders of government, war, riot, insurrection, epidemic, strikes or labor action, or terrorism. Rackspace shall not be liable for any failure to comply with its obligations in the Agreement to the extent that such failure arises from a failure of Customer to comply with its obligations under the Agreement.

11.5. Changes to Agreement. Notwithstanding anything in the Agreement to the contrary, Rackspace may change the terms of this Agreement at any time, effective immediately, as required to comply with the reseller

agreement between AWS and Rackspace or in response to changes made by AWS to the reseller agreement between AWS and Rackspace. Additionally, Rackspace may immediately terminate any applicable Service Order, the Agreement (if necessary), and/or Customer's AWS Accounts if AWS determines such termination is necessary to comply with the law or if AWS no longer permits resale of one or more of the AWS Services. Rackspace shall use commercially reasonable efforts to provide Customer advance notice of any termination made pursuant to this Section.

11.6. Variation. Some terms are incorporated into the Agreement by reference to pages on the Rackspace website and Rackspace may revise those terms from time to time. If there is a conflict between the terms of the Agreement, the documents shall govern in the following order: the Service Order, any document(s) incorporated by reference in these Promotional Terms, and these Promotional Terms. Unless otherwise expressly permitted in the Agreement, the terms of the Agreement may be varied only by a written agreement signed by both parties that expressly refers to the Agreement. A Service Order may be amended to modify, add, or remove Services by a formal written agreement signed by both parties, or by an exchange of correspondence (including via the Rackspace ticketing system) that includes the express consent of an authorized individual for both parties. The pre-printed terms of Customer's purchase order or other business form or terms that Customer provides shall be void and of no effect.

11.7. Confidential Information. Each party agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, the exercise of its legal rights under the Agreement, or as required by law; and shall use reasonable care to protect Confidential Information from unauthorized disclosure. Each party agrees not to disclose the other's Confidential Information to any third party except: (i) to its Representatives, provided that such Representatives agree to confidentiality measures that are at least as stringent as those stated in this Agreement; (ii) as required by law; (iii) in response to a subpoena or court order or other compulsory legal process, provided that the party subject to such process shall give the other written notice of at least seven days prior to disclosing Confidential Information unless the law forbids such notice; or (iv) with the other party's consent.

11.8. Publicity, Use of Marks. Customer agrees that Rackspace may publicly disclose that it is providing Services 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 publicity regarding the Agreement, use the Rackspace name or logo or other identifying indicia, or publicly disclose that it is using the Services without Rackspace's prior written consent.

11.9. Survival. The following provisions shall survive expiration or termination of this Agreement: Licenses, Confidential Information, Limitation on Damages, Indemnification, Notices, Governing Law, Miscellaneous, all terms of the Agreement requiring Customer to pay any Fees for Services provided prior to the time of expiration or termination or requiring Customer to pay an early termination Fee, and any other provisions that by their nature are intended to survive expiration or termination of the Agreement.

11.10. Exclusive Agreement. The Agreement constitutes the complete and exclusive understanding between the parties regarding its subject matter and supersedes and replaces any prior or contemporaneous representation(s), agreement(s) or understanding(s), written or oral.

11.11. Other. Any portion of the Agreement found unenforceable shall be reformed to the extent possible to make it enforceable and give business efficacy to the Agreement. The parties acknowledge and agree that the pricing and other terms in the Agreement reflect and are based upon the intended allocation of risk between the parties and form an essential part of 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. 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. Other than Representatives for the purposes of Section 9, or as otherwise specifically designated a "Third Party Beneficiary", there are no third-party beneficiaries to the Agreement.

Schedule 1
DEFINED TERMS

"AAA" means the American Arbitration Association.

"Affiliate" as to Customer means any entity that directly or indirectly controls, is controlled by, or is under common control with the entity referred to, but only for so long as such control exists; and as to Rackspace means Rackspace Hosting, Inc. and any entity that is directly or indirectly controlled by Rackspace Hosting, Inc. As used in this definition "control" means control of more than a 50% interest in an entity.

"**Agreement**" means, collectively, any applicable Service Order, these Promotional Terms, or other addenda which govern the provision of Services.

"**Applicable Data Protection Law**" means all applicable laws, rules, regulations, orders, ordinances, regulatory guidance, and industry self-regulations in relation to data privacy, including but not limited to the EU General Data Protection Regulation ((EU) 2016/679).

"**Add-On Service**" means an additional product or service purchased by Customer from Rackspace to enhance, add to, or modify specific, identifiable Services or deliverables.

"**AWS**" means the contracting Amazon Web Services affiliate entity identified in Customer's AWS Customer Agreement.

"AWS Account" means Customer's payee account(s) joined via AWS Organizations to a Rackspace master AWS account designated by Rackspace.

"**AWS Customer Agreement**" means the separate customer agreement between Customer and AWS governing Customer's use of the AWS Services (meaning Customer's AWS enterprise agreement, AWS customer agreement, or similar terms governing Customer's use of AWS Services), and if Customer does not have a fully executed agreement with AWS then in default the AWS customer agreement found here (as may be updated by AWS from time to time and as may be made available on a successor or related site): https://aws.amazon.com/agreement/ which shall be effective without signature.

"**AWS Services**" means the web services made available by AWS for Rackspace to resell.

"**AWS Support**" means a specified AWS support level (in accordance with the following URL: https://aws.amazon.com/premiumsupport/plans/, as may be updated by AWS) purchased through Rackspace, and provided directly by AWS to Customer through the AWS support console.

"**AWS Site**" means http://www.aws.amazon.com (and any successor or related locations designated by AWS), as may be updated by AWS from time to time.

"**Business Day**" means Monday through Friday, excluding public holidays, in the country whose laws govern the Agreement.

"**Business Hours**" means, for purposes of these Promotional Terms only, for US Customers, Monday through Friday, 8 a.m. to 5 p.m. PDT/PST, excluding federal public holidays in the United States; for EMEA Customers, Monday through Friday 8 a.m. to 5 p.m. GMT/BST, excluding federal public holidays in the United Kingdom and for APJ Customers, Monday through Friday, 8 a.m. to 5 p.m. AEST, excluding federal public holidays in Australia.

"**Confidential Information**" means non-public information disclosed by one party to the other in any form that: (i) is designated as "Confidential"; (ii) a reasonable person knows or reasonably should understand to be confidential; or (iii) includes either party's products, customers, marketing and promotions, know-how, or the negotiated terms of the Agreement; and which is not independently developed by the other party without reference to the other's Confidential Information or otherwise known to the other party on a non-confidential basis prior to disclosure.

"**Customer Configuration**" means an information technology system (hardware, software and/or other information technology components) which is the subject of the Services or to which the Services relate.

"**Customer Data**" means all data which Customer receives, stores, or transmits on or using the Customer Configuration.

"**CloudHealth Terms**" means the applicable CloudHealth by VMware terms of service (presently available at https://www.vmware.com/download/eula/cloudhealth-by-vmware.html), as such terms may be updated by VMware from time to time.

"**Cloud Management Platform**" means a third-party cloud management tool provided by Rackspace.

"**Controller**", "**Processor**", "**Data Subject**", "**Personal Data**", and "**Process**" or "**Processing**" shall all have the meanings set out in Applicable Data Protection Law.

"DDI Move" refers to the process of moving a Customer's AWS Account, associated with a specific Rackspace Customer account number, to another Rackspace Customer account number.

"**Fees**" means the fees payable under the applicable Service Order.

"**Guide**" means that portion of the Fanatical Support for AWS Product Guide describing the Rackspace Optimizer on AWS Services or Rackspace Optimizer+ on AWS Services as applicable (presently found at the following URL: https://docs.rackspace.com/docs/fanatical-support-aws/) as may be updated by Rackspace. The contents of the Guide that are applicable to these Services are incorporated into these Promotional Terms by reference.

"**Initial Term**" means the initial term of the applicable Service Order.

"**Local Withholding Taxes**" means withholding (or similar) taxes imposed on income that may be attributable to Rackspace in connection with its provision of the Services that Customer is legally required to withhold and remit to the applicable governmental or taxing authority.

"**Open Source Software**" means open source software including Linux, OpenStack, and software licensed under the Apache, GPL, MIT, or other open source licenses.

"**PII**" means personally identifiable information as defined by the Applicable Data Protection Law.

"**Public Sector Authorization(s)**" means the terms and conditions of one or more agreements, subject to these Promotional Terms or Customer's AWS Customer Agreement, that relate to Customer's use of these Services as a Public Sector Customer.

"**Public Sector Customer**" means a Customer that is an agency, organization, or other entity that is within (or is substantially owned, funded, managed, or controlled by): (i) the executive, legislative, or judicial branches of any government within the U.S. (federal, state, or local) and its territories; or by any other country's government at any level; (ii) Quasi-governmental entities (such as the World Bank); (iii) international governing/regulatory bodies (such as EU institutions); (iv) publicly funded institutions (such as colleges, universities, and hospitals); or (v) higher-tier prime contractors, consultants, or other entities working in support of the foregoing. Commercial entities which also qualify as Public Sector Customers (e.g., higher tier prime government contractors) do not constitute Public Sector Customers for purposes of this Agreement.

"**Rackspace**" means the Rackspace Affiliate identified in the Service Order, or if none is identified: (i) Rackspace US, Inc. if Customer's primary billing address is located in the United States, or (ii) Rackspace International GmbH if Customer's primary billing address is located outside of the United States.

"**Rackspace Cloud Services**" means the Rackspace cloud software and services that Customer self-provisions through the Rackspace cloud control panel or which Customer utilizes via an API.

"**Rackspace Privacy Statement**" means the Rackspace Privacy Statement available at http://www.rackspace.com/information/legal/privacycenter/, as such may be updated by Rackspace from time to time.

"**Rackspace Configuration Requirements**" means those specifications identified by Rackspace as required to perform the Services, such as a required reference architecture or software version, as described in the Agreement.

"**Renewal Term**" means a fixed term extension of the Service Order term.

"**Representatives**" means a party's respective service providers, officers, directors, employees, contractors, Affiliates, suppliers, and agents.

"**Security and Privacy Practices**" means Rackspace's Global Security and Privacy Practices found at

www.rackspace.com/information/legal/securitypractices.

"**SPP Program Guide**" means the *AWS Solution Provider Program - Program Guide For End Customers* as it may be updated from time to time, and presently found here: https://s3-us-west-2.amazonaws.com/solution-provider-program-legal-documents/AWS+Solution+Provider+Program+-+Program+Guide+for+End+Customers.pdf.

"**Sensitive Data**" means any: (i) personally identifiable information or information that is referred to as personal data (including sensitive personal data); PII (or other like term) under applicable data protection or privacy law and includes information that by itself or combined with other information can be used to identify a person; (ii) financial records; and (iii) other sensitive or regulated information.

"**Services**" means the Rackspace services identified in a specific Service Order.

"**Service Order**" means the document describing the Services Customer is purchasing, including any online order, process, API, statement of work, or tool through which Customer requests or provisions Services.

"**Tax**" means any value added, goods and services, sales, use, property, excise, and like taxes, import duties and/or applicable levies arising out of the provision of the Services.

"**Technical Account Manager**" means Rackspace personnel tasked with providing support and guidance to Customer on AWS Services purchased pursuant to these Promotional Terms.

"**Test Services**" means those Services designed by Rackspace as "Test", "Beta", "early access", or with like designation in a Service Order.

"Test Terms" means the Test Terms found at www.rackspace.com/information/legal/testterms.

"**Third Party Fee Increase**" means the direct or indirect increase of fees by a third party vendor charged to Rackspace for Customer's use of Third Party Services, Third Party Software, or both, which may occur at any time.

"**Third Party Services**" means services provided by a third party and used in connection with the Services.

"**Third Party Software**" means software provided by a third party and used in connection with the Services.

"**TPS Agreements**" means agreements for products and services provided by third parties, which are entered into directly between Customer and such third party.

"**Unsupported Services**" means Services designated by Rackspace as "best efforts", "non-standard", "reasonable endeavors", "unsupported", or with like designation in a Service Order.

Schedule 2

GOVERNING LAW

GOVERNING LAW	ARBITRATION OR JURISDICTION	CONTRACTING ENTITY
England and Wales	Courts of England	Datapipe Europe Limited
		Rackspace Benelux B.V.
		Rackspace Germany GmbH
		Rackspace International GmbH, unless stated otherwise in this table
		Rackspace Limited
Hong Kong Special Administrative Region of the People's Republic of China	Courts of Hong Kong Special Administrative Region of the People's Republic of China	Datapipe Asia Limited
		Rackspace Asia Limited
		Rackspace International GmbH, only if Customer's primary address is in Hong Kong
New South Wales, Australia	Courts of New South Wales, Australia	Rackspace International GmbH, only if Customer's primary address is in Australia
		Rackspace Hosting Australia PTY LTD
		Rackspace New Zealand Limited
Singapore	Courts of Singapore	Datapipe Singapore Pte. Ltd.
		Just Analytics Pte. Ltd.
		Rackspace International GmbH, only if Customer's primary address is in Singapore
		Rackspace Singapore Pte. Ltd.
State of Texas, USA and the federal laws of the USA	Arbitration	Datapipe, Inc.
		ObjectRocket LLC
		Onica Group, LLC
		Onica Technologies Canada Inc.
		Rackspace Government Solutions, Inc.
		Rackspace International GmbH, only if the Customer's primary address is in the United States, Latin America (including the Caribbean) or Canada
		Rackspace Mexico S.de R.L. de C.V.
		Rackspace US, Inc.
		RelationEdge, LLC
		TriCore Solutions, LLC