END-USER TERMS

These End-User Terms (these "**Terms**") govern End Customer's access to and use of the VMware-based cloud services made available to End Customer by Provider (the "**Services**"). By accepting these Terms, or by accessing or using the Services, End Customer agrees to these Terms; if End Customer does not agree, it shall not access or use the Services. These Terms supplement, and do not replace, the agreement between End Customer and Provider for the Services, and for the VMware Products the VMware Terms control as described below.

1. DEFINITIONS.

"**Broadcom**" means Broadcom Inc. and its subsidiaries, the licensor of the VMware Products.

"**End Customer**" means the entity accepting these Terms and using the Services.

"**Provider**" means the entity from which End Customer obtains the Services.

"**Rackspace**" means Rackspace US, Inc. or Rackspace International GmbH, the supplier of the underlying cloud platform and VMware licensing for the Services.

"**Services**" means the VMware-based cloud services made available to End Customer by Provider, which incorporate the VMware platform and licensing supplied by Rackspace.

"**VMware Products**" means the VMware-branded software and related solutions, including VMware Cloud Foundation, used in the Services.

"**VMware Terms**" means the current terms and conditions applicable to the VMware Products, including support terms, the Specific Program Documentation, and applicable SaaS Listings, as updated by Broadcom, presently at https://www.vmware.com/agreements.html.

2. LICENSE AND VMWARE TERMS. End Customer's access to and use of the VMware Products is subject to, and conditioned on End Customer's compliance with, the VMware Terms, which are incorporated into these Terms by reference. End Customer is granted only the right to use the VMware Products as part of the Services for its own internal business operations, and obtains no other license, right, or title in the VMware Products.

3. USE RESTRICTIONS. End Customer shall not: (i) use the VMware Products beyond the quantity or capacity authorized for the Services; (ii) reverse engineer, decompile, or disassemble the VMware Products, except to the extent permitted by law; (iii) remove or obscure any proprietary notices; (iv) use the VMware Products other than in accordance with their documentation; (v) resell, sublicense, distribute, or otherwise make the VMware Products or the Services available to any third party, the Services being for End Customer's internal use only; or (vi) use the Services in violation of any applicable law.

4. METERING. End Customer acknowledges that the Services include metering and reporting tooling required by Broadcom, that End Customer shall permit its operation and shall not interfere with or disable it, and that usage of the VMware Products is measured and reported for licensing and billing. End Customer shall cooperate with reasonable requests relating to usage reporting. End Customer shall not disable, remove, or reconfigure that tooling or the telemetry and product-improvement reporting features of the VMware Products, and shall not disable processor cores or otherwise alter the environment in a manner that affects the licensed quantity.

5. COMPLIANCE AND EXPORT. End Customer shall comply with all applicable export-control and sanctions laws, represents that it is not a sanctioned or denied party and is not located in an embargoed country, and shall

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not use the VMware Products for any chemical, biological, nuclear, or missile application or for any other prohibited end-use.

6. AUDIT AND ACCESS.

6.1. Audit. End Customer acknowledges that the VMware Products are licensed to Rackspace, and that Broadcom (or its designee) and Rackspace may audit the VMware Products and the systems on which they are deployed to provide the Services to End Customer, together with the related deployment, configuration, and licensing records (the "**Estate**"), to verify compliance with the VMware Terms and the licensing under which the Services are provided, whether or not the Estate is owned or operated by End Customer or by Provider. End Customer shall permit and cooperate with each such audit, which is coordinated through Provider, conducted on reasonable notice during normal business hours, and subject to End Customer's reasonable site security requirements. An audit is limited to verifying the deployment, configuration, and licensed use of the VMware Products and does not give Rackspace or Broadcom any right of access to End Customer's content or personal data; any such data to which access is unavoidably incidental remains subject to the confidentiality and data-protection terms of End Customer's agreement with Provider and to applicable law. This section survives termination for 24 months.

6.2. Access. End Customer shall provide, and shall not restrict, condition, or revoke, the access to the Estate that Rackspace requires to deploy, operate, meter, support, and verify the Services, including privileged administrative access to the VMware Products and access to the sites at which the Estate is located. Where site access or administration is subject to local licensing, certification, or security-clearance requirements, End Customer shall make available appropriately qualified personnel to perform or escort the required activity.

7. NO WARRANTY; NO RACKSPACE SERVICE RELATIONSHIP.

7.1. AS IS. THE VMWARE PRODUCTS, AND ANY HARDWARE OR THIRD-PARTY SOFTWARE, ARE PROVIDED "AS IS," WITH WARRANTIES, IF ANY, ONLY FROM THE ORIGINAL MANUFACTURER OR LICENSOR. RACKSPACE AND BROADCOM MAKE NO WARRANTY OF ANY KIND TO END CUSTOMER AND, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

7.2. Service Relationship with Provider. End Customer's relationship for the Services—including provisioning, support, service levels, availability, and billing—is solely with Provider. Rackspace has no support, service-level, availability, or other service obligation to End Customer, and End Customer's remedies in connection with the Services are solely against Provider.

8. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER RACKSPACE NOR BROADCOM IS LIABLE TO END CUSTOMER UNDER THESE TERMS FOR ANY DAMAGES, INCLUDING ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR ANY LOST PROFIT OR DATA, AND END CUSTOMER'S RECOURSE IN CONNECTION WITH THE SERVICES IS SOLELY AGAINST PROVIDER. NOTHING IN THESE TERMS LIMITS LIABILITY THAT CANNOT BE LIMITED BY LAW.

9. THIRD-PARTY BENEFICIARIES. Rackspace and Broadcom are third-party beneficiaries of these Terms and may enforce the provisions relating to the VMware Products, use restrictions, metering, audit and access, compliance, disclaimers, and limitation of liability directly against End Customer.

10. TERM; SUSPENSION; TERMINATION. End Customer's right to use the VMware Products continues only while End Customer's arrangement with Provider and the underlying licensing remain in effect. Rackspace or Broadcom may require suspension or cessation of End Customer's use if End Customer breaches these Terms or if the underlying licensing ends. On termination of End Customer's right to use the VMware Products, End Customer shall stop using and delete all copies of the VMware software. If requested, End Customer shall certify the deletion and permit verification of it.

11. GENERAL.

11.1. VMware Terms Control. For the VMware Products, the VMware Terms control and, in the event of conflict with these Terms as to the VMware Products, prevail.

11.2. Feedback. Broadcom may use any feedback End Customer provides relating to the VMware Products for any business purpose without obligation to End Customer.

11.3. Updates. These Terms and the VMware Terms may be updated from time to time, and continued use of the Services after an update constitutes acceptance of the update.

11.4. Relationship to Provider Agreement. These Terms supplement the agreement between End Customer and Provider; if that agreement conflicts with these Terms as to the VMware Products or the matters addressed above, these Terms control.

11.5. Governing Law; Severability; Waiver. These Terms are governed by the law governing End Customer's agreement with Provider. If any provision is held unenforceable, the remainder remains in effect, and no failure to enforce is a waiver.