

## RACKSPACE PARTNER AGREEMENT

This Rackspace Partner Agreement (this “**Agreement**”) is between Rackspace US, Inc. (“**we**” or “**Rackspace**”) and the Partner who signs below (“**you**” or “**Partner**”). Each of Rackspace and the Partner may be referred to as a “**Party**” and collectively as the “**Parties**.”

### BACKGROUND

1. Rackspace provides hosting services both directly to customers and via partners;
2. Partner desires to become either a Reseller or Referral Partner or both with respect to the following Hosting Services – Dedicated Hosting, Cloud Hosting and Email Hosting;
3. The Parties desire to create a framework under which Partner is paid a Commission for referring customers to Rackspace for Hosting Services and/or Partner receives a Discount for reselling Hosting Services to End Users, collectively referred to as the “**Partner Program**”;

**NOW, THEREFORE**, for good and valuable consideration, Rackspace and Partner agree as follows:

### AGREEMENT

1. **APPOINTMENT.** By execution of this Agreement, we appoint you as a Rackspace Partner and grant you the non-exclusive right to (i) refer customers to Rackspace for Hosting Services and/or (ii) resell Hosting Services that Rackspace provides to you to third parties pursuant to the following terms and conditions.

### 2. DEFINITIONS.

2.1 The following terms are applicable to both Resellers and Referral Partners:

“**Confidential Information**” means all proprietary information disclosed by one of us to the other, whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential, including: (i) unpublished prices and other terms of service, audit and security reports, server configuration designs, data center designs (including non-graphic information you may observe on a tour of a data center), product development plans, and proprietary technology; (ii) identities of customers and prospective customers; (iii) the terms of this Agreement; and (iv) information that is marked or otherwise conspicuously designated as “confidential” or with like notice or that, if disclosed orally, is designated as confidential in a written notice given within thirty (30) days of its disclosure. 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 the Agreement or applicable law, shall not be “Confidential Information” of the other Party.

“**Discount**” means a reduction from the list price of the applicable Hosting Services.

“**Hosting Services**” means Rackspace’s commercially available services as described on the Rackspace website [www.rackspace.com](http://www.rackspace.com), including: (i) Dedicated Hosting Services; (ii) Cloud Hosting Services (Cloud Servers™, Cloud Sites™, Cloud Files™ and Rackspace Cloud Drive™ (Jungle Disk®)); and (iii) Email Hosting Services and application services (Rackspace® Email, Hosted Microsoft® Exchange and Microsoft® SharePoint®).

“**Hosted System**” means, for Dedicated Hosting Services, a combination of hardware, software and networking elements that comprise an information technology system. The Hosted System may

consist of a dedicated system, the right to use certain parts of a shared system that Rackspace maintains for many customers or a combination of some dedicated elements and some shared elements.

“**Partner Portal**” means the website utilized by Rackspace Partners to enter orders for Hosting Services, update their contact information and receive updated information regarding the Partner Program, currently found at: <https://partners.rackspace.com/partner/login/auth>.

“**Partner Tier**” means the Partner Program level for which you meet all listed criteria, as more particularly described in Schedule 1.

“**Rackspace Partner**” means a Referral Partner or Reseller who has signed a Rackspace Partner Agreement.

2.2 The following terms are specific to Resellers:

“**End User**” means any customer to whom you are reselling Hosting Services pursuant to this Agreement.

“**Qualifying Resale**” means: (i) for Dedicated Hosting Services, your resale of a dedicated Hosted System for use by a single End User; (ii) for Cloud Hosting Services, your resale of Cloud Servers, Cloud Sites, Cloud Files, and/or Rackspace Cloud Drive (Jungle Disk) to one or more End Users; and (iii) for Email Hosting Services, your resale of Hosted Microsoft® Exchange, Microsoft® SharePoint® and/or Rackspace Email to one or more End Users.

“**Reseller**” means a Partner who is making Qualifying Resales to End Users.

2.3 The following terms are specific to Referral Partners:

“**Commission**” means the compensation that Rackspace awards a Referral Partner who has referred a New Customer or New Opportunity to Rackspace.

“**New Contract**” means a contract with either a New Customer and/or New Opportunity.

“**New Customer**” means a customer that does not use the Hosting Services at the time you register the customer as described in [Section 3.1 \(Opportunity Registration\)](#).

“**New Opportunity**” means a new sale of Hosting Services to an existing Rackspace customer that is not part of their existing portfolio of Hosting Services. Renewals of existing contracts and sales of upgrades and add-on services for existing Hosted Systems will not be counted as a New Opportunity unless the Partner is referring Dedicated Hosting Services and meets the Gold or Platinum criteria outlined in Schedule 1.

“**Referral Partner**” means a Partner who is referring New Customers or New Opportunities to Rackspace.

### 3. COMMISSION AND DISCOUNTS.

3.1 **Opportunity Registration.** To register a New Contract or Qualifying Resale, you must identify the customer or prospect using the Rackspace Partner portal or other procedure provided by Rackspace and you must receive a registration confirmation from Rackspace. Rackspace shall respond to such registration request within five (5) business days. Rackspace may refuse to register a New Contract or Qualifying Resale if the proposed New Customer, New Opportunity or End User: (i) is the subject of a then-active

direct sales effort by Rackspace or another Rackspace Partner; **(ii)** is the subject of a public request for proposal; or **(iii)** is not a desirable customer for credit or AUP reasons. You agree to allow Rackspace to participate in meetings with your New Customers, New Opportunities or identified End Users and agree to notify Rackspace if you choose not to pursue a New Contract or Qualifying Resale you registered with Rackspace.

**3.2 Eligibility for Commission and/or Discounts.** To be eligible for Commission and/or Discounts pursuant to this Agreement: **(i)** you must meet the requirements for at least the Member Partner Tier set forth in Schedule 1, **(ii)** you must have an active business relationship with the End User or the person or entity to whom the New Contract relates, **(iii)** the New Contract or Qualifying Resale must be signed within twelve (12) months of the registration approval date; and **(iv)** for Dedicated Hosting Services, the New Contract or Qualifying Resale must be for an initial term of at least twelve (12) months. In order to remain eligible for your Partner Tier, you agree to comply with the education and training certification requirements within the time frames set forth on Schedule 1.

**3.3 Commission Payment Terms for New Contracts.** For Referral Partners, Rackspace agrees to pay you a Commission for referrals of New Contracts based on the amount of recurring fees due during the preceding month for such New Contracts, net of any credits, and not on any non-recurring amounts (such as set up fees or bandwidth overages), any upgrades on services (except as set forth in [Section 3.6 \(Upgrades\)](#), or any sales taxes or like charges of governmental entities. Commissions shall be calculated based on the percentage set forth opposite your Partner Tier under the applicable Hosting Services on Schedule 1. For referrals of Dedicated Hosting Services, Rackspace will only pay Commissions through the initial term of the New Contract, up to a maximum of twenty-four (24) months. For referrals of Cloud and/or Email Hosting Services, Rackspace will only pay Commissions for a maximum of twenty-four (24) months, beginning on the effective date of the New Contract. Commissions will be paid no later than the last day of the calendar month following the calendar month in which the New Contract is invoiced, provided that, if a Commission due to you from Rackspace for any month is less than \$100, then Rackspace may change you to a quarterly payment schedule until you have completed a full calendar quarter in which the monthly Commission payable to you for each month of the quarter is at least \$100. Quarterly Commissions will be paid no later than the last day of the calendar month following the end of the calendar quarter during which the New Contract is invoiced. Commissions will be paid by electronic transfer to the bank account you designate or, if you have a Rackspace account, Rackspace may issue a credit to your account, at its discretion.

**3.4 Discount in Lieu of Commission.** At the request of a Referral Partner, Rackspace may agree to give your referred New Customer a Discount instead of paying you a Commission, provided that the New Contract is for Dedicated Hosting Services and has an initial term of at least twelve (12) months. You must make this election prior to the time that the New Contract is executed, and the election cannot be revoked as to that New Customer. The Discount offered to your referred New Customer will be the same percentage you would have received as a Commission at the time of registration of the New Contract. The Discount will be valid only for the initial term of the New Contract, up to a maximum of twenty-four (24) months. The Discount will be granted only for the Dedicated Hosting Services included in the initial New Contract, and not any upgrades after the New Contract is signed.

**3.5 Discount Payment Terms.** For Resellers, Rackspace agrees that it will provide a Discount for Qualifying Resales from its standard pricing in effect as of the date of registration of the Qualifying Resale. Such Discount will be applied against the recurring fees due during the preceding month, net of any credits, and

not on any non-recurring amounts (such as set up fees or bandwidth overages), any upgrades on services added to the account (except as set forth in [Section 3.6 \(Upgrades\)](#), or any sales taxes or like charges of governmental entities. For Qualifying Resales of Dedicated Hosting Services, Rackspace will only provide a Discount through the initial term of the Qualifying Resale, up to a maximum of twenty-four (24) months. For Qualifying Resales of Dedicated and Cloud Hosting Services, Discounts will be calculated monthly based on the percentage set forth opposite your Partner Tier under the applicable Hosting Services on Schedule 1 and applied as a credit on your account(s). For Qualifying Resales of Email Hosting Services, Discounts will be applied at the time of sale and adjusted quarterly based on your Partner Tier. Discounts will not be provided in connection with any other discount, special offer, or promotion.

**3.6 Upgrades.** For Dedicated Hosting Services, if you are a Platinum or Gold Partner at the time your New Customer, New Opportunity or End User adds a server, firewall, load balancer, SAN, dedicated NAS, Intrusion Detection device, or Recover Point Appliance after the New Contract or Qualifying Resale is initially signed, then the recurring fees for such devices will be eligible for a Commission or Discount at the percentage set forth opposite your Partner Tier on Schedule 1 for the remaining months of the then-current term (initial term or renewal term, as applicable), *provided that* **(i)** you have registered this addition in advance as described in [Section 3.1 \(Opportunity Registration\)](#), and **(ii)** you substantially participated in the sales process.

**3.7 Renewals.** If you are a Platinum or Gold Partner at the time of renewal of a New Contract or Qualifying Resale for Dedicated Hosting Services, the renewal will be entitled to a Commission or Discount at the percentage set forth opposite your Partner Tier on Schedule 1, *provided that* **(i)** the renewal is for at least twelve (12) months, **(ii)** you have registered the renewal in advance as described in [Section 3.1 \(Opportunity Registration\)](#), and **(iii)** you substantially participated in the sales process. The renewal will be entitled to a Commission or Discount for the renewal term, up to a maximum of twenty-four (24) months. In the case where an existing contract and a New Contract or Qualifying Resale are combined and renewed for a new term of at least twelve (12) months, then the Partner will be paid a weighted Commission or Discount rate, as applicable.

**3.8 Disputes.** In the event that there is a dispute regarding whether your sale or use of Rackspace hosting services counts as a New Contract or Qualifying Resale under this Agreement, Rackspace's reasonable determination shall govern. On Rackspace's request, you will provide information reasonably necessary to document that your referral or resale meets the requirements for a New Contract or Qualifying Resale, as applicable.

**3.9 Charge Backs and Withholding.** If the invoiced amount on which the Discount or Commission was based is not paid when due, or is later charged back or refunded for any reason, Rackspace will revoke such Commission or Discount. At its discretion, Rackspace may require you to repay such Discount or Commission or deduct the unpaid amount on which it was based from your future Discount or Commission. Rackspace shall have no obligation to you to pursue collection efforts against any of your New Contracts or End Users, as applicable. If you are also a customer of Rackspace and have not timely paid amounts due for services we have provided directly to you, Rackspace may either withhold Discounts or Commissions due to you under this Agreement until those invoices are paid, or deduct the fees for those services from the Discount or Commission due to you under this Agreement.

**3.10 Change to Partner Program Terms.** Rackspace may modify its Partner Program terms, including the Commission or Discount terms, at any time in its sole discretion by giving you advance written notice (which includes notice posted on the Partner Portal) of at least

sixty (60) days. Any New Contracts or Qualifying Resales that were registered prior to the effective date of a change in the terms will continue under their existing terms until twelve (12) months following the effective date of the change. Any New Contracts or Qualifying Resales that are made after the effective date of the change will be governed by the new terms.

**3.11 Other.** Your affiliates and subsidiaries are eligible to receive a Commission and/or Discount only if they sign a Rackspace Partner Agreement. Neither Commissions nor Discounts shall be provided on contracts for services to be used by you in your internal business operations. For Partners in the United States of America, Rackspace is not obligated to pay any Commissions that may otherwise be due until you have provided a complete IRS Form W-9 and/or other appropriate tax forms. Partner shall have full responsibility for applicable withholding taxes for all compensation paid to you pursuant to this Agreement, and for compliance with all applicable labor and employment requirements with respect to your self-employment, sole proprietorship or other form of business organization.

#### **4. ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO RESELLERS ONLY.** The following provisions in this Section 4 are applicable only to Resellers.

**4.1 Hosting Services Agreement.** You agree that Qualifying Resales are also subject to the terms and conditions of the hosting services agreement(s) (“HSA”) you have in place with Rackspace, including any HSAs you sign after you sign this Agreement. If you do not have an HSA in place with Rackspace, any Qualifying Resales shall be subject to the General Terms and Conditions found at: <http://www.rackspace.com/information/legal/generalterms.php>, and the applicable Hosting Service product terms as of the date of your signature below until such time as you have entered into an HSA.

**4.2 Support.** You agree that you will be the first line of support for your End Users and will provide live support to your End Users 24x7, year round, including basic trouble-shooting for the Hosting Services. If your End Users need advanced support, Rackspace will, at your request, participate in three-party communications to assist you. Rackspace does not expect to communicate directly with your End Users regarding support questions, and Reseller agrees not to refer your End Users to Rackspace for direct support without Rackspace’s prior written consent.

**4.3 No Third Party Beneficiaries.** Your End Users are not parties to or beneficiaries of this Agreement between us.

**4.4 Written Agreement.** You must require your End Users to sign a written contract that includes the following: (i) an acknowledgement that such End User will abide by Rackspace’s Acceptable Use Policy found at: <http://www.rackspace.com/information/legal/aup/php> as of the date of your signature below (the “AUP”) and shall have no rights against Rackspace in connection with the Hosting Services that you are reselling and, (ii) if you are reselling Hosting Services that include Microsoft software, those Microsoft license terms that appear at: <http://www.rackspace.com/aboutus/legal/microsoftlicense.php> and (iii) a prohibition against high risk use of the hosting services: “*No High Risk Use. You may not use the [hosting services] in any situation where failure or fault of the [hosting services] could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, you may not use, or permit any other person to use, the [hosting services] in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or medical life support devices.*” You may use a term other than “hosting services” in this clause, as appropriate to the language in your contract with your End Users.

**4.5 Export Matters.** Reseller may not resell Hosting Services to a country specified as a prohibited country under applicable law. You represent and warrant that you are not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and are not otherwise a person to whom Rackspace is legally prohibited to provide the Hosting Services.

**4.6 Liability for Fees and Use of Services, Breach of Agreement.** You acknowledge the following: (i) that you are liable under the HSA for the fees due for Services (as defined in your HSA) regardless of whether your End User pays amounts due in connection with their account with you; (ii) that you are responsible for use of the Services by your End Users in violation of the AUP or other portion of this Agreement to the same extent as if you were using the Services yourself, and (iii) that Rackspace may suspend Services or terminate this Agreement and the HSA between us for your End Users’ violations of this Agreement.

**4.7 Transfers of End Users’ Data.** In the event your End User chooses to sign an agreement for Hosting Services directly with Rackspace, you agree not to prevent such End User from transferring their data or DNS records to Rackspace, or from using their DNS records on the Rackspace network.

**4.8 Claims by Your End Users.** If Rackspace, its affiliates, or any of their respective employees, agents, or suppliers is faced with a legal claim by your End Users (on any theory), Reseller will pay the cost of defending the claim (including reasonable legal fees) and any damages awards, fine, or other amounts reasonably incurred by Rackspace as a result of the claim. Conduct of such indemnification shall be in accordance with Section 8.3 (Notice and Defense Requirements) hereof.

**5. OTHER PROGRAM BENEFITS.** In addition to the Commission or Discounts, Rackspace may provide you with other benefits as described in the Partner Program materials. Rackspace may modify or terminate these other benefits at any time in its sole discretion. Rackspace may from time to time pay Commission or offer Discounts on more favorable terms than those reflected in this Agreement as part of a limited promotional offer. Any promotional offers are temporary, do not vary the terms of this Agreement and may be subject to additional terms and conditions.

#### **6. MARKETING/ PUBLICITY/ COMPLIANCE WITH LAW.**

**6.1 Partner Marketing Rights.** You may use only the information and materials provided by Rackspace to market Hosting Services in the manner we agree unless we have reviewed your materials in advance and given written consent. Any marketing activities you undertake will be at your sole expense unless otherwise agreed in advance in writing.

**6.2 Rackspace Marketing Rights.** We may, at our option, market your products or services in compliance with your guidelines and instructions communicated to us from time to time. Any marketing activities we undertake will be at our sole expense unless otherwise agreed in advance in writing.

**6.3 Restrictions.** You may not use Rackspace’s name in any bulk email whatsoever unless we have given our advance written consent and must not represent that the Hosting Services have any qualities, features, fees or terms other than those described in Rackspace’s online materials or other material provided to you by Rackspace.

**6.4 No Publicity.** Except as described in Section 7 (License to Use Marks) below, neither of us may issue any press release or other publicity regarding our relationship without the other’s advance written consent. Neither of us may disparage the other in any way nor engage in any conduct that is harmful to the reputation of the other.

**6.5 Applicable Law.** You agree to act in compliance with applicable laws.

## **7. LICENSE TO USE MARKS.**

**7.1 Limited License.** Each of us wishes to fully protect our rights in our respective names, logos, trademarks, trade names, domain names, and other identifying indicia (“**Marks**”). Therefore, we each authorize the other to use our respective Marks only in the very specific ways that we state in this Section or that we may subsequently authorize in writing. Except as set forth in this [Section 7](#), nothing contained in this Agreement will be deemed to grant any right, title or interest in or to the Marks.

**7.2 Partner’s Use of Rackspace Marks:** You may: (i) establish a hypertext link from your approved web site (the “**Partner Web Site**”) to [www.rackspace.com](http://www.rackspace.com) (the “**Rackspace Web Site**”) and use Rackspace’s name and approved domain name solely for the purpose of displaying this link, (ii) use the “Rackspace Partner” logo as provided by Rackspace, and (iii) use the Rackspace Marks as part of your use of any Rackspace provided marketing materials or information on which the Marks are reproduced. You agree to abide by the standards set by Rackspace in the Rackspace policies and guidelines (including the Rackspace Trademark Guidelines, as such may change from time to time). If in the course of performing the services hereunder, you acquire any goodwill in any of Rackspace’s Marks, all such goodwill will automatically vest in Rackspace and you agree to take all such actions or execute any documents necessary to effect such vesting.

**7.3 Rackspace’s Use of Partner Marks:** We may: (i) establish a hypertext link from the Rackspace Web Site to the Partner Web Site, (ii) use your name and approved domain name solely for the purpose of displaying this link, and (iii) use the “Partner” logo provided by you to Rackspace.

**7.4 Supervision/Revocation.** Each of us agrees to comply with the other Party’s ongoing instructions and supervision with respect to its Marks, including (i) the context in which the Marks are used; (ii) the substitution of a newer version of a Mark for a version previously authorized; (iii) the size, color, and graphic quality of the display of the Marks; and (iv) all other matters within the reasonable discretion of the owner of the Marks. Rackspace shall have the right to remove the hypertext link to the Partner Web Site from the Rackspace Web Site and to require the removal of the hypertext link to the Rackspace Web Site from the Partner Web Site if, in Rackspace’s reasonable opinion, the Partner Web Site is displaying content that is illegal, obscene, defamatory, infringes third party rights or would otherwise bring Rackspace into disrepute. Either of us may revoke any license to use one or more of our Marks at any time for any reason within our sole discretion. Each of us agrees to stop using the other Party’s Marks as soon as reasonably possible following receipt of a notice of revocation of a license, or receipt of a notice of non-renewal or termination of the Agreement under [Section 10 \(Term\)](#) or [Section 11 \(Termination\)](#) below, and in all events by the effective date of expiration or termination of the Agreement.

**7.5 Mark Protection.** Any license to use the other Party’s Marks, including as set forth above, is a limited, royalty-free, non-exclusive, non-sublicenseable, and non-transferable license. Each of us reserves all rights in our respective Marks, including any non-English version of such Marks, except to the extent specifically stated above or in a subsequent written authorization. Each Party’s use of the other Party’s Marks shall inure to the benefit of the owner of the Mark. Each Party acknowledges that there is substantial goodwill and commercial value associated with the other Party’s Marks and agrees that it will use commercially reasonable efforts to protect the other Party’s Marks. Neither of us will do any of the following in any market or jurisdiction in the world with respect to the other Party’s Marks: (i) attack ownership of or rights to any of the Marks, or

protectability of the Marks, (ii) file an application for registration of any of the Marks with the trademark office of any country, or file an application to register any of the Marks as a domain name in any country or with any domain name registrar; (iii) use in any manner or file an application for registration of any of the Marks or any mark that is confusingly similar to the Marks; (iv) take any action that would bring any of the Marks into public disrepute; (v) take any action that would tend to destroy or diminish the goodwill in any of the Marks, including using the Marks in a descriptive manner or as generic references for similar services of other providers; or (vi) reverse engineer, disassemble or decompile any of the other’s Marks to the extent such materials are provided in object code format.

## **8. INDEMNIFICATION.**

**8.1 Indemnification Related to Use of Marks.** If either Party (the “**Indemnified Party**”) or its affiliates, or any of their respective employees, agents, or owners, are faced with a legal claim by a third party arising out of its use of the other Party’s (the “**Indemnifying Party**”) Marks as permitted by this Agreement, or arising out of the Indemnifying Party’s use of the Indemnified Party’s Marks other than as permitted in this Agreement, the Indemnifying Party will pay the cost of defending the claim (including reasonable attorney fees) and any damages award, fine, or other amount that is reasonably incurred by the Indemnifying Party as a result of the claim.

**8.2 Indemnification for Breach.** If Rackspace or its affiliates, or any of their respective employees, agents, or owners, is faced with a legal claim by a third party arising out of your failure to comply with [Sections 4.5 \(Export Matters\)](#); [4.6 \(Liability for Fees; Breach of Agreement\)](#); [6.3 \(Marketing Restrictions\)](#); or [17 \(Improper Conduct\)](#), you will pay the cost of defending the claim (including reasonable attorney fees) and any damages award, fine, or other amount that is reasonably incurred by Rackspace as a result of the claim.

**8.3 Notice and Defense Requirements.** The Indemnifying Party (Partner for the purposes of [Section 8.2](#)) will have no obligation with respect to any claim under this [Section 8](#) unless: (i) such Indemnifying Party is promptly notified of such claim; (ii) the Indemnified Party (Rackspace for the purposes of [Section 8.2](#)) allows the Indemnifying Party sole control of the defense and settlement of such claim; and (iii) the Indemnified Party provides the Indemnifying Party with reasonable assistance, at the Indemnifying Party’s expense, in connection with the Indemnifying Party’s defense and settlement of such claim.

**9. NON-SOLICITATION FOR REFERRAL PARTNERS.** Referral Partner agrees that during the term of this Agreement (initial term plus any renewal terms) and for twelve (12) months following expiration or termination of this Agreement, you will not solicit any account who you referred to Rackspace and who has been counted as a New Contract to move their Hosting Services account to another provider, unless Rackspace has failed to perform its obligations under its agreement with the customer entitling the customer to terminate its agreement with Rackspace. Nothing in this Section prohibits the customer from independently initiating a move of its Hosting Services account, or prohibits Referral Partner from soliciting the customer for services other than the Hosting Services.

**10. TERM.** The initial term of this Agreement will begin on the Effective Date stated in the signature block below and will continue for twelve (12) months. On expiration of the initial term, the Agreement will automatically renew for consecutive twelve (12) month renewal terms unless either party gives the other written notice of non-renewal at least thirty (30) days prior to the expiration of the initial term or then-current renewal term, as applicable. Our obligation to pay you Commissions and provide Discounts for New Contracts and Qualifying Resales registered prior to the expiration of this Agreement will continue for twelve (12) months following the expiration of this Agreement, provided that you remain in compliance

with the surviving terms of this Agreement. Your Commission or Discount percentages for this twelve (12) month period will remain at the Partner Tier in effect as of the effective time of expiration.

## 11. TERMINATION.

**11.1** Rackspace may terminate your participation in the Partner Program as follows: **(i)** at any time in its sole discretion on thirty (30) days advance written notice; **(ii)** for breach if you fail to comply with the terms of this Agreement and do not cure the failure within thirty (30) days of our written notice describing the breach in reasonable detail; **(iii)** immediately for your material breach of the terms of Sections 4.5 (Export Matters); 6.3 (Marketing Restrictions); 7 (License to Use Marks) or 17 (Improper Conduct), this Agreement; **(iv)** if you fail to achieve at least the Member Partner Tier for any rolling twelve (12) month period; and **(v)** as set out in Section 4.6 (*Liability for Fees; Breach of Agreement*).

**11.2** If Rackspace terminates your participation in the Partner Program in accordance with Section 11.1 (i) or **(iv)** above, Commissions will be paid and Discounts will be honored for the remaining portion of the initial term or then-current renewal term, as applicable, up to a maximum of twelve (12) months. If Rackspace terminates your participation in the Partner Program in accordance with Section 11.1 (ii), **(iii)** or **(v)** above, all Commissions and Discounts will be revoked as of the effective date of termination and Rackspace will not owe you any future Commission or Discounts.

**11.3** You may terminate your participation in the Partner Program at any time upon thirty (30) days advance written notice; however, no Commission or Discounts will be paid or accrued for the remaining portion of the initial term or then-current renewal term, as applicable.

**11.4** If your participation in the Partner Program is terminated, you must apply to Rackspace for approval to be re-admitted to the Partner Program and, if accepted, will be re-admitted at the Member Partner Tier. For Resellers only, nothing in this Agreement modifies Rackspace's right to suspend or terminate your Hosting Services (including Qualifying Resales) as provided in your HSA.

**11.5** The following sections shall survive termination: 3, 4, 7.4, 7.5, 8, 9, 10, 11, 12, 14, 16, 17, 19, 20, 22, 23 and 24 and Schedule 1 to the extent it defines the amount of Commissions or Discounts due under Section 3.

## 12 CONFIDENTIAL INFORMATION.

**12.1 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.

**12.2 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 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 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 the other written notice of at least seven (7) days prior to disclosing Confidential Information under this Subsection (or prompt notice if seven (7) days advance notice is not reasonably feasible), unless the law forbids such notice.

**13 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 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.

**14 DISCLAIMER OF WARRANTIES.** Any terms and conditions, including any service warranty stated in a New Contract shall be for the benefit of the customer of that New Contract and not you. Rackspace makes no representation or warranty to you whatsoever regarding its services except as set forth in your HSA, if applicable. To the 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, non-infringement, and timeliness. Rackspace may from time to time arrange for third party products and services to be made available to its Partners on an optional basis via the Partner Program. Rackspace makes no representations or warranties whatsoever regarding any third party products or services.

## 15 LIMITATION OF DAMAGES.

**15.1 Except for liability under Section 12 (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 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.**

**15.2 Notwithstanding anything in the Agreement to the contrary, except for your claims based on indemnification obligations set forth in Section 8 (Indemnification) above, the maximum aggregate monetary liability of Rackspace 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 Discounts or Commissions due and unpaid plus Two Thousand Five Hundred Dollars (\$2,500.00).**

**15.3** 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.

**16 NOTICES.** Notices under the Agreement must be given via e-mail, return receipt requested, and confirmed in writing via first class mail or by established and well-known express courier to the address for Rackspace appearing below, and to the address for Partner appearing on Rackspace's Partner Program records.

[legalnotice@rackspace.com](mailto:legalnotice@rackspace.com)  
Rackspace US, Inc  
5000 Walzem Road  
San Antonio, TX, 78218  
Attention: General Counsel  
MAIL STOP: US109-230

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.

## **17 IMPROPER CONDUCT**

17.1 It is a criminal offence, to offer, or agree to pay or give, or pay or give any sum of money, gift inducement or other valuable consideration directly or indirectly to any person for doing or having done, or for causing or having caused to be done any improper act or omission in relation to the procurement of any contract.

17.2 Rackspace could be liable for any acts listed in Section 17.1 done by its Partners. Rackspace corporate policy requires that its Partners commit to enforcing compliance with applicable anti-bribery and corruption law within their organizations.

17.3 You are required to have a corporate policy which communicates internally the need for compliance with such law, 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 and take into account our reasonable requests for changes to it to comply with our own corporate policy or applicable law. 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.

**18 CURRENCY.** All amounts denoted in "\$" in this Agreement mean that amount in United States dollars or the equivalent sum in the currency applicable to a given HSA which results in a Commission or Discount pursuant to this Agreement converted to United States dollars at the exchange rate communicated to you by Rackspace, which shall be updated once per calendar quarter.

**19 GOVERNING LAW / VENUE / DISPUTES.** This Agreement shall be governed by the laws of the State of Texas, exclusive of its choice of law principles, 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 OR RELATING TO THE AGREEMENT SHALL BE THE STATE AND FEDERAL COURTS IN BEXAR COUNTY, TEXAS.** Each of us agrees that in the event of a dispute, neither of us may file any claim for damages against the other Party until it has given the other at least thirty (30) days advance written notice of its intent to file a claim. In the event such a notice is given, the Parties shall each appoint an executive officer and the executive officers shall jointly designate a neutral mediator to conduct a non-binding mediation in Bexar County, Texas. This Section does not restrict a Party's right to seek injunctive relief.

**20 RELATIONSHIP BETWEEN THE PARTIES.** Although we refer to each other as "partners" in this Agreement and elsewhere, we do not mean that we are members of a partnership or joint venture in the legal sense, but only that we are a referral source or reseller for the other. 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 or Discounts provided for in this Agreement are the sole and exclusive compensation for our activities under this Agreement. Neither Party is the agent of the other. Other than the applicable HSA for Resellers, 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. The Agreement is non-exclusive. Either Party may provide services of the type described herein to any person, including a competitor of the other Party. Neither Party agrees to provide the other with any type of exclusivity in any market segment or geographical region.

**21 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 the 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.

**22 MISCELLANEOUS.** This Agreement may be amended only by a formal written agreement signed by both Parties. The terms on either Party's purchase order, invoice, or other business forms are not binding on the other Party unless they are expressly incorporated into a formal written agreement signed by both Parties. A Party's failure or delay in enforcing any provision of the Agreement will not be deemed a waiver of that Party's rights with respect to that provision or any other provision of the Agreement. A Party's waiver of any of its rights under the Agreement is not a waiver of any of its other rights with respect to a prior, contemporaneous, or future occurrence, whether similar in nature or not. The captions in the Agreement are not part of the Agreement, but are for the convenience of the Parties. The use of the word "including" in the Agreement shall be read to mean "including without limitation." Any documents signed in connection with the Agreement may be signed in multiple counterparts which, taken together, will constitute 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. There are no third party beneficiaries to the Agreement. In the event any term of this Agreement is held unenforceable by a court having jurisdiction, the remaining portion of the Agreement will remain in full force and effect, and the unenforceable term(s) shall be reformed to the extent possible to make it enforceable but still consistent with the business and financial objectives of the Parties underlying this Agreement.

**23 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.

**24 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 Discount, 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 stated below. Your referrals and resales occurring under any prior agreement will become subject to the terms of this Agreement on the effective date. By execution of this Agreement, you hereby waive any right to receive Commissions or Discounts pursuant to any existing agreement for New Contracts or Qualifying Resales occurring after the date hereof and waive any rights to notice set forth in any such existing agreement.

The individual signing represents to Rackspace that he or she is authorized to sign on behalf of Partner. The 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.

**Rackspace US, Inc.**

**Partner's Complete Legal Name:**

By: Robert  
Name: Fuller  
Title: \_\_\_\_\_

Digitally signed by Robert Fuller  
DN: cn=Robert Fuller, o=Rackspace  
Hosting, ou=WW Channel Sales,  
email=robert.fuller@rackspace.com,  
c=US  
Date: 2011.03.18 13:13:53 -05'00'

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Effective Date:** \_\_\_\_\_, 20\_\_ (last to sign should fill in date of signature)

Attach:           Schedule 1 – Program Benefits

## SCHEDULE 1

### PROGRAM TIERS

In order to qualify for a particular Partner Tier, you must meet all the applicable requirements during the previous four calendar quarters (the “**Look Back Period**”). Partner Tiers are re-evaluated every calendar quarter. Rackspace will assign you to a Partner Tier according to the following requirements:

Partner Tier	Points Required	Closed/Won Opportunities	On-boarding Education Requirements	Training Certificates Required	Quarterly Business Plan
<b>Platinum</b>	75,000	2+*	Within first 90 days	4 within first 90 days	Required within first 90 days
<b>Gold</b>	30,000	2+*	Within first 90 days	2 within first 90 days	Required within first 90 days
<b>Silver</b>	2,500	or 2*	Within first 90 days	1 within first 90 days	Optional
<b>Member</b>	500	or 1*	Within first 90 days	Optional	Optional

\* Not applicable for Cloud and Email Hosting Services

If you have been in the Partner Program less than twelve (12) months, you will be evaluated based on the number of months you have been in the Partner Program and can move up or down a Partner Tier every calendar quarter, but will not be terminated from the Partner Program unless you fail to meet at least the requirements for the Member Partner Tier for a full twelve (12) month period. *For example, Rackspace will determine your Partner Tier eligibility for the 1<sup>st</sup> quarter of 2011 by looking at the twelve (12) month period from January 1, 2010 to December 31, 2010 and will determine Partner Tier eligibility for the 2<sup>nd</sup> quarter of 2011 by looking at the twelve (12) month period from April 1, 2010 to March 31, 2011. If you joined the Partner Program after March 31, 2011 at the Member Partner Tier, you will be eligible to move up to a higher Partner Tier after June 30, 2011 if you met each of the requirements for that higher Partner Tier during the Look Back Period.*

Information regarding on-boarding education, training/certification and other website and business planning requirements may be found at Rackspace’s Partner Portal: <https://partners.rackspace.com/partner/login/auth>.

### THE POINT SYSTEM

In calculating your Points required over the Look Back Period, Rackspace converts the monetary value of your New Contracts and/or Qualifying Resales over the Look Back Period according to the following schedule:

Dedicated Hosting	Cloud Hosting	Email Hosting
\$1 = 1 point	\$1 = 2 points	\$1 = 5 points
£0.70 = 1 point	£0.70 = 2 points	£0.70 = 5 points
€0.85 = 1 Point	€0.85 = 2 points	€0.85 = 5 points

For Partners referring or reselling Dedicated Hosting Services, Rackspace will calculate the monetary value of each of your New Contracts or Qualifying Resales based on one month’s equivalent of the monthly recurring fees set forth on the initial hosting services agreement (HSA) for such New Contract or Qualifying Resale, net of any credits, sales taxes or like charges by government entities. By way of example only, if you were to refer or resell one New Contract or Qualifying Resale for Dedicated Hosting Services with a monthly recurring fee of \$5,000, you would be awarded 5,000 points for that Look Back Period.

For Partners referring or reselling Cloud or Email Hosting Services, Rackspace will calculate the monetary value of each of your New Contracts or Qualifying Resales by taking the average of billed revenue of such New Contract or Qualifying Resale over the Look Back Period.

## COMMISSIONS AND DISCOUNTS

Rackspace will provide the following Discounts on Qualifying Resales or Commissions for New Contracts (unless noted otherwise), each in accordance with your Partner Tier set forth below.

Partner Tier	New Contract (referrals) or Qualifying Resales	Upgrades	Renewals
	Platinum	15%	15%
Gold	12%	12%	2%
Silver	10%	None	None
Member	5%	None	None

### Dedicated Hosting

**Cloud Hosting**  
(Rackspace Cloud Drive™ (Jungle Disk®), Cloud Servers™, Cloud Files™, Cloud Sites™)

Partner Tier	New Contract (referrals)*	Qualifying Resales
Platinum	15%	15%
Gold	12%	12%
Silver	10%	10%
Member	5%	5%

\*Not applicable to Rackspace Cloud Drive (Jungle Disk)

**Email Hosting**  
(Rackspace Email, Hosted Microsoft® Exchange and Microsoft® SharePoint®)

Partner Tier	New Contract (referral only)	Front End Discount for Qualifying Resales	
		Rackspace Email	Hosted Exchange & SharePoint
Platinum	15%	72%	20%
Gold	12%	70%	20%
Silver	10%	68%	20%
Member	5%	66%	20%

Your Partner Tier for each quarter will be used to calculate your Commission and/or Discount percentage with respect to the applicable Hosting Services you referred or resold during the Look Back Period as set forth above. These percentages may vary from quarter-to-quarter if your Partner Tier eligibility changes during the applicable Look Back Period.

*For example, if you were eligible for the Gold tier for the 4<sup>th</sup> quarter of 2010, but then change to the Platinum tier for the 1<sup>st</sup> quarter of 2011, the Commission and/or Discount rate applicable to all your eligible New Contracts and Qualifying Resales of Hosting Services since the inception of this Agreement will increase to 15% for each month of the 1<sup>st</sup> quarter of 2011. If you then change to the Gold tier in the 2<sup>nd</sup> quarter of 2011, then the Commission and/or Discount rate will decline to 12% for all your eligible New Contracts and Qualifying Resales during that quarter, including those that you first brought to Rackspace during the Platinum quarter.*

**SUMMARY OF COMMISSION AND DISCOUNT PAYOUT TERMS**

Dedicated Hosting	Reseller and Referral Partners – 12-month minimum term. Maximum payout term is 24 months.
Cloud and Email Hosting	Resellers – Rackspace Cloud Drive (Jungle Disk), Cloud Servers, Cloud Files, Cloud Sites and Email - No minimum or maximum term.
	Referral Partners – Cloud Servers, Cloud Files, Cloud Sites and Email - No minimum term. Maximum payout term is 24 months.

**CLOUD AFFILIATE MARKETING PROGRAM**

Partners who choose to participate in the Cloud Affiliate Marketing Program will be entitled to receive Commissions based on the following schedule:

<b>Cloud Affiliate</b>	<b>Closed/Won Opportunities</b>	<b>New Contract referrals</b>
	1+ referrals	5%

For Cloud Affiliate Partners, Rackspace will only pay Commissions for a maximum of thirty-six (36) months, beginning on the New Contract start date. If you refer a new Cloud Hosting opportunity with the same Cloud account number that previously existed through the Cloud Affiliate Marketing Program, you will not be compensated through both programs. Instead, your Commission tied to that Cloud account number will be maintained with the Cloud Affiliate Marketing Program unless you notify Rackspace to the contrary in writing and register the New Contract in accordance with Section 3.1 (Opportunity Registration) of the Agreement.