

**PARTNER AGREEMENT** between Rackspace US, Inc. (“**we**” or “**Rackspace**”) and the Partner who signs below (“**you**” or “**Partner**”).

## **1. AGREEMENT**

This Partner Agreement establishes a relationship between us so that you may, at your option, refer customers to Rackspace for information technology hosting services. The schedules to this Partner Agreement identify the particular hosting services that you are authorized to market, and define your compensation for referrals (or discounts to your referred customers). This Agreement also defines our respective rights to use each other’s name, logos, and other proprietary and confidential information in our marketing efforts related to this Agreement.

## **2. LEVEL OF PARTICIPATION**

You may make referrals on a routine and substantial basis, or only occasionally. Your commission compensation and other benefits will vary depending on your level of participation in Rackspace’s partner program.

## **3. MARKETING/PUBLICITY**

You may use only the information and materials provided by Rackspace to market Rackspace® hosting services unless we have reviewed your materials in advance and given written consent. You may not use Rackspace’s name in any bulk email whatsoever unless we have given our advance written consent. We may terminate this Agreement if any meaningful spam complaints naming Rackspace result from your marketing activities. In addition, you must conduct your activities in compliance with applicable laws and regulations, and you must not misrepresent Rackspace’s services or fees. Any marketing activities you undertake will be at your sole expense unless otherwise agreed in advance in writing.

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.

Except for the links described in Section 4 (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 manner or engage in any conduct that is harmful to the reputation of the other.

## **4. LICENSE TO USE MARKS**

**4.1** 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 each other to use our respective Marks only in the very specific ways that we state in this Section or in the specific ways that we may subsequently authorize in writing.

**4.2 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 for your tier 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.

**4.3 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.

**4.4 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. 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 9 (Term and Termination) below, and in all events by the effective date of expiration or termination of the Agreement.

## **5. LEAD REGISTRATION**

To register a "New Contract", as that term is defined in the Schedules, you must identify the customer or prospect using the procedure defined by Rackspace, and you must receive a registration confirmation from Rackspace. Rackspace may refuse to register a New Contract for any reason within its reasonable discretion, including if the proposed New Contract is the subject of a then-active direct Rackspace sales effort, or the New Contract is not a desirable customer for credit or AUP reasons.

## **6. COMMISSIONS**

**6.1 Commission Terms.** Commission terms for each of the hosting services offered by Rackspace are defined in the Schedules to this Agreement. Your tier eligibility and commission rate for each type of hosting service shall apply for that type of hosting service only, except as may be expressly stated in the Schedules. Rackspace will calculate and pay the commissions on the basis of invoices transmitted for amounts included in your Commission Base, as the term "Commission Base" is defined in the applicable commission schedule. One-time payments and monthly commissions will be paid no later than the last day of the calendar month following the calendar month in which the referred customer is invoiced, provided that, if a monthly commission due to you from Rackspace for any month is less than \$100, then Rackspace may change you to a quarterly payment schedule until such time as 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 referred customer is invoiced.

**6.2 Charge Backs.** Rackspace may deduct from your commission checks or, at its option, require you to repay any amount paid to you as a commission for a prior period if the invoiced amount on which the commission was based is not timely paid, or is subsequently charged back or refunded for any reason. Rackspace shall have no obligation to you to pursue collection efforts against any of your referred customers. In addition, if you are also a customer of Rackspace and have not timely paid your invoices for services we have provided directly to you, Rackspace may either hold commission amounts due you under this Agreement until those invoices are paid, or deduct the fees for those services from the commissions due you under this Agreement.

**6.3 Change to Commission Terms.** Rackspace may modify its commission terms at any time in its sole discretion by giving you advance written notice of at least ten (10) business days. Any such change will be effective as to those New Contracts that are registered after the effective date of the

change, and will be effective as to New Contracts registered prior to the effective date of the change beginning twelve (12) months from the effective date of the change.

6.4 Other. Your affiliates and subsidiaries are eligible to receive commissions only if they sign the Rackspace Partner Agreement. Commissions shall not be paid, nor discount granted, under the Partner program on contracts for services to be used by you in your internal business operations. 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.

## **7. OTHER PROGRAM BENEFITS**

In addition to the commissions, Rackspace may also provide you with other program benefits for your tier as described in its program materials. Rackspace may modify or terminate these other program benefits at any time in its sole discretion.

## **8. NON-SOLICITATION**

You agree that during the term of this Agreement (initial term plus any renewal terms) and for twelve months following expiration or termination of this Agreement, you will not solicit any person 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. Nothing in this Section prohibits the customer from initiating a move of its hosting services account, or prohibits you from soliciting the customer for services other than the hosting service for which the customer was referred.

## **9. TERM AND TERMINATION**

The initial term of this Agreement will begin on the Effective Date stated in the signature block below and will continue for one year. On expiration of the initial term, the Agreement will automatically renew for consecutive one-year renewal terms unless either party gives the other written notice of non-renewal at least ten days prior to the expiration of the initial term or then-current renewal term, as applicable. Either of us may terminate this Agreement prior to expiration, with or without cause, by giving the other ten days advance written notice.

Each of us agrees to stop using the other party's Marks as soon as reasonably possible following receipt of a notice of non-renewal or termination, and in all events by the effective date of expiration or termination of the Agreement.

The following sections shall survive termination: 4.4, 6, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 21, 22, 23, and the commission schedules to the extent they define the amount of commissions due under Section 6.

## **10. PAYMENT OF COMMISSIONS AFTER EXPIRATION OF THE AGREEMENT**

Our obligation to pay you the commissions described in the Schedules (in respect of New Contracts referred prior to the expiration or termination of the Agreement) will continue for a period of twelve (12) months following the expiration or termination of the Agreement, provided that you remain in compliance with the surviving terms of the Agreement as defined above. Your tier eligibility and associated commission percentage for this twelve (12) month period will remain at the level in effect as of the effective time of expiration or termination.

## **11. MARK PROTECTION**

Any license to use the other party's Marks, including as stated in Section 4 (License to Use Marks) above, is a limited, 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 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; or (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.

## **12. INDEMNIFICATION RELATED TO USE OF MARKS**

If you, your affiliates, or any of their respective employees, agents, or owners, are faced with a legal claim by a third party arising out of your use of the Rackspace Marks as permitted by this Agreement, or arising out of Rackspace's use of your Marks other than as permitted in this Agreement, Rackspace 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 you as a result of the claim.

If Rackspace, its affiliates, or any of their respective employees, agents, or owners, are faced with a legal claim by a third party arising out of our use of your Marks as permitted by this Agreement, or arising out of your use of our Marks other than as permitted in this Agreement, 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.

## **13. CONFIDENTIAL INFORMATION**

"**Confidential Information**" means all 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 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.

Each of us agrees not to use the other's Confidential Information except in connection with the performance this Agreement, the exercise of our respective legal rights under the Agreement, or as required by law. In addition, Rackspace may use your Confidential Information to the extent necessary to provide the services contracted for with your referral and as necessary to generally manage its business with respect to the provision of such services. 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 or other compulsory legal process, provided that each of us agrees to give the other written notice of at least seven days prior to disclosing Confidential Information under this Subsection (or prompt notice in advance of disclosure, if seven days advance notice is not reasonably feasible), unless the law forbids such notice.

#### **14. 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 Information Schedule is true, correct, and complete, and (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.

#### **15. DISCLAIMER OF WARRANTIES**

Any service warranty stated in a contract with a customer referred by you hereunder shall be for the benefit of the customer and not you. Rackspace makes no representation or warranty whatsoever to you regarding its services.

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.

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.

#### **16. LIMITATION OF DAMAGES**

**Except for liability under Section 10 (*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 any indirect, special, incidental or consequential loss or damages of any kind, or 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 of us be liable to the other for any punitive damages.**

**Notwithstanding anything in the Agreement to the contrary, except for your claims based on Rackspace's obligation to indemnify you under Section 12 (*Indemnification Related to Use of Marks*) above, the maximum aggregate monetary liability of Rackspace and any of its employees, agent, suppliers, or affiliates, under any theory of law (including breach of contract, tort, strict liability, and infringement) shall not exceed amounts due and unpaid plus Two Thousand Five Hundred Dollars (\$2,500.00).**

## 17. 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.

Rackspace:                    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.

## 18. 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.

## 19. 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 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 fees or discounts provided for in this Agreement (including the addenda) are the sole and exclusive compensation for our activities under this Agreement. Neither party is the agent of the other. Neither party may represent to any person that it has the power to bind the other on any service contract or other agreement or take any action reasonably likely to lead the public to believe that it is the agent or representative of the other. 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.

## 20. ASSIGNMENT

Neither of us may assign this Agreement without the other's prior written consent, except to 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.

## 21. MISCELLANEOUS.

Neither party grants the other any rights to any of its intellectual property except for the license to use the Marks described in Section 4 (License to Use Marks) above. Each party shall retain all right, title, and interest in and to its intellectual property, including intellectual property that it may

develop during the term of the Agreement. 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, provided that the Agreement without the unenforceable provision(s) is consistent with the material economic incentives of the parties leading to the Agreement.

**22. 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.

**23. TERMINATION OF EXISTING PARTNER AGREEMENT.**

If there are any existing agreements between you and Rackspace in which Rackspace has agreed to pay you a commission or give you or your referred customers any compensation, discount, or other benefit in exchange for your referral or marketing services, then you agree with Rackspace that any such existing agreement(s) are hereby **TERMINATED effective as of the Effective Date stated below. Your referrals and other activities occurring after the Effective Date that fall within the subject matter of this Agreement will be governed by this Agreement.**

**Rackspace US, Inc.**

**Partner's Complete Legal Name:**

\_\_\_\_\_  
 {{{\*\_es\_signer1\_company}}}

By: \_\_\_\_\_  
**Robert Fuller**  
 Name: \_\_\_\_\_  
 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: 2009.08.31 14:40:55 -05'00'

By: {{{\*\_es\_signer1\_signature}}}

Name: {{{\*\_es\_signer1\_fullname}}}

Title: {{{\*\_es\_signer1\_title}}}

\_\_\_\_\_ {{{\*\_es\_signer1\_email}}}

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

Attach:            Schedule 1    Dedicated Managed Hosting Commission Terms  
                       Schedule 2    Hosted Email Commission Terms

**SCHEDULE 1**  
**Dedicated Managed Hosting**

This Schedule 1 defines your commissions for referrals of customers to Rackspace for dedicated managed hosting.

**PROGRAM TIERS**

Rackspace will assign you to a program tier according to the table below.

	<u>New Contracts</u>	<u>New Revenue</u>	<u>Training/Certification</u>	<u>Website</u>	<u>Sales Planning</u>
	–				
Member	1	n/a	optional	optional	n/a
Silver	2+	n/a	optional	optional	n/a
Gold	5+	\$30,000	required	required	required
Platinum	8+	\$75,000	required	required	required

If you are also a Rackspace managed hosting reseller pursuant to a formal Reseller Agreement, your New Contracts and New Reseller Revenue, as defined in your Reseller Agreement, will be counted toward your tier eligibility under this Partner Agreement.

Rackspace will determine tier eligibility on a calendar quarter basis with reference to the prior four calendar quarters (the “**Look Back Period**”). To qualify for the Gold or Platinum tier, you must have met all five of the criteria during the Look Back Period.

*For example, Rackspace will determine tier eligibility for the 4<sup>th</sup> quarter of 2010 by looking at the period from October 1, 2009 to September 30, 2010. To qualify for the Member or Silver tier, you must have achieved 1 or 2 New Contracts, as applicable, during that period. To qualify for the Gold or Platinum tier, you must have achieved the required number of New Contracts, the required New Revenue, and each of the other requirements during that period.*

The terms “New Contracts” and “New Revenue” are defined below in this Schedule 1. The Training/Certification, Website and Sales Planning requirements are defined in more detail on Rackspace’s Partner Portal, but generally require you to participate in Web-based sales and technical training, to display the Rackspace partner logo and hosting overview information on your website, provide monthly sales forecasting, and attend quarterly sales planning meetings.

**COMMISSIONS**

Rackspace will pay you a recurring monthly commission as a percentage of Commission Base, with the applicable percentage determined according to your program tier as follows:

<u>% of Commission Base</u>	<u>Tier</u>
5%	Member
10%	Silver
12%	Gold

15%

Platinum

The applicable commission percentage may vary from quarter-to-quarter if your tier eligibility changes. The applicable commission percentage for each quarter will be used to calculate your commission with respect to all of your Commission Base. However, if you fail to achieve at least the Member tier for any Look Back Period, the Agreement will be deemed terminated, and Rackspace will not owe you any further commissions with respect to your referrals.

*For example, if you are 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 rate on your Commission Base related to all New Contracts 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 rate will decline to 12% for your entire Commission Base, including the Commission Base related to New Contracts that you first brought to Rackspace during the Platinum quarter.*

At your request, Rackspace may agree to give your referred customer a discount in lieu of paying you a commission, provided that the customer is entering into a contract with an initial term of at least twelve (12) months. You must make this election prior to the time that Rackspace and the customer enter into the New Contract, and the election cannot be revoked as to that customer. The discount offered to your referred customer will be the same percentage as your monthly commission percentage for your tier at the time the contract is entered into. Discounts are based on Rackspace's standard pricing as of the date the contract is entered into. The discount percentage will be valid only for the initial term of the contract with Rackspace, and in no event for more than twenty-four (24) months. The discount will be granted only for the services included in the initial contract, and not any upgrades or services added to the account after the New Contract is initially signed.

If the monthly commission due to you from Rackspace for any month is less than \$100, then Rackspace may change you to a quarterly payment schedule until such time as 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.

## DEFINED TERMS

**"Hosted System"** means a configuration comprised of at least one dedicated server that is designed to perform a unique business function for the referred customer.

**"New Contract"** means Rackspace's agreement with your referred customer for dedicated managed hosting services where either:

- (i) the customer is a new customer of Rackspace as of the time that you register the lead as described in Section 5 (Lead Registration) of the Partner Agreement,

OR

- (ii) the customer is an existing customer of Rackspace, but you are referring the customer for the sale of a new Hosted System at Rackspace.

**AND**, in either case, you have registered the lead and received a confirmation from Rackspace as provided in Section 5 (Lead Registration) of the Partner Agreement. In addition, the contract must be for a term of at least twelve months to be counted as a New Contract. Renewals of existing

contracts and sales of upgrades and add-on services for existing Hosted Systems will not be counted as New Contracts.

**“New Revenue”** means the monthly recurring fees invoiced by Rackspace in respect of New Contracts that were first signed by the referred customer during the relevant Look Back Period. Set up fees, renewals of existing contracts, and sales of upgrades and add-on services for existing Hosted Systems, will not be counted as New Revenue.

**“Commission Base”** means the amount of recurring fees invoiced pursuant to your New Contracts, net of any credits, during the initial term of each of your New Contracts, provided that if the initial term of any New Contract is longer than twenty-four (24) months, the invoiced amounts will be included in your Commission Base for the first twenty-four months only. Unless otherwise agreed for a specific referral, the Commission Base does not include any non-recurring amounts (such as set up fees or bandwidth overages), any upgrades or services added to the account after the New Contract is initially signed, any renewals, or any sales taxes or like charges of governmental entities.

## SCHEDULE 2 Hosted Email

This Schedule 2 defines your commissions for referrals of customers to Rackspace for hosted email.

### PROGRAM TIERS and COMMISSIONS

Rackspace will assign you to a program tier according to the number of New Contracts you refer each month as defined below. Rackspace will pay you a recurring quarterly commission as a percentage of your Commission Base, with the applicable percentage determined according to your program tier as follows.

	<u>New Contracts</u>	<u>% of Commission Base</u>
Member	1+	10%
Silver	5+	20%

If you are also Rackspace managed hosting reseller pursuant to a formal Reseller Agreement, your New Contracts and New Reseller Revenue, as defined in your Reseller Agreement, will be counted toward your tier eligibility under this Partner Agreement.

Rackspace will determine tier eligibility on a calendar quarter basis with reference to the prior four calendar quarters (the “**Look Back Period**”).

*For example, Rackspace will determine tier eligibility for the 4<sup>th</sup> quarter of 2010 by looking at the period from October 1, 2009 to September 30, 2010. To qualify for the Member tier, you must have achieved at least 1 New Contract during that period. To qualify for the Silver tier, you must have achieved at least 5 New Contracts during that period, or have met the eligibility requirements for a Silver, Gold, or Platinum partner for dedicated managed hosting.*

The applicable commission percentage may vary from quarter-to-quarter if your tier eligibility changes. The applicable commission percentage for each quarter will be used to calculate your commission with respect to your entire Commission Base. If you fail to achieve at least the Member tier for any Look Back Period, the Agreement will be deemed terminated, and Rackspace will not owe you any further commissions with respect to your referrals.

*For example, if you are eligible for the Member tier for the 4<sup>th</sup> quarter of 2010, but then change to the Silver tier for the 1<sup>st</sup> quarter of 2011, the commission rate on your Commission Base related to all New Contracts since the inception of this Agreement will increase to 20% for each month of the 1<sup>st</sup> quarter of 2011. If you then change to the Member tier in the 2<sup>nd</sup> quarter of 2011, then the commission rate will decline to 10% for your entire Commission Base, including the Commission Base related to New Contracts that you first brought to Rackspace during the Silver quarter.*

If the monthly commission due to you from Rackspace for any month is less than \$100, then Rackspace may change you to a quarterly payment schedule until such time as 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.

## **DEFINED TERMS**

“**New Contract**” means Rackspace’s agreement with your referred customer for mail services where either:

- (i) the customer is a new customer of Rackspace as of the time that you register the lead with your Rackspace channel manager as described in Section 5 (*Lead Registration*) of the Partner Agreement,

OR

- (ii) the customer is an existing customer of Rackspace, but you are referring the customer for the sale of a new mail services account at Rackspace.

AND, in either case, you have registered the lead and received a confirmation from Rackspace as provided in Section 5 (*Lead Registration*) of the Partner Agreement. Renewals of existing contracts and sales of upgrades and add-on services for existing mail accounts will not be counted as New Contracts.

“**Commission Base**” means the amount of recurring fees invoiced pursuant to your New Contracts for the first twenty-four (24) months, net of any credits. The Commission Base does not include any non-recurring amounts (such as set up fees), any upgrades or services added to the account after the New Contract is initially signed (such as new mailboxes and additional records retention services), any renewals, or any sales taxes or like charges of governmental entities.

## **SPECIAL TERMS FOR DEDICATED HOSTING PARTNERS**

If you are a Silver, Gold, or Platinum partner for dedicated managed hosting (as defined on Schedule 1 of this Agreement), you will be a Silver partner for hosted mail services, regardless of whether you otherwise meet the requirements for Silver status for hosted email. If you are a Member partner for dedicated managed hosting services, then your New Contracts for Hosted Email will be included in your Commission Base under this Schedule 2, but will not be counted as “New Contracts” for tier eligibility under this Schedule 2 unless they are for at least \$250 per month in recurring fees.