Data Processing Agreement

Dated 27 November 2012

between

RACKSPACE INTERNATIONAL GmbH
Registered in Switzerland under number CH-020.4.047.077-1, of Balz-Zimmermann-
Strasse 7, 8302 Kloten
(hereinafter "Data Processor")

and

RACKSPACE LIMITED
Registered in England under number 03897010, of Unit 5 Millington Road, Hayes, Mid-
dlessex UB3 4AZ
(hereinafter "Data Sub-processor")

and

RACKSPACE BENELUX B.V.
Registered in the Netherlands under number KvK 34276327, of Teleportboulevard 110, 1043
EJ Amsterdam, Nederland

and

RACKSPACE US, INC
Registered in Delaware under number 4377687, of 5000 Walzem Road, San Antonio,
Texas 78218
(hereinafter "Data Sub-processor")

and

RACKSPACE ASIA LIMITED
Registered in Hong Kong under number 1211294, of 9/F., Cambridge House, Talkoo
Place, 979 King's Road, Quarry Bay, Hong Kong.
(hereinafter "Data Sub-processor")

and

RACKSPACE HOSTING AUSTRALIA PTY LIMITED
Data Processing Agreement

Registered in Australia under company number 153 275 524 of Suite 3, Level 7, 210 George Street, Sydney, NSW 2000, Australia

(herinafter "Data Sub-processor")
Data Processing Agreement

Whereas, the Data Processor provides information technology hosting services to its customers (the "Hosting Customers"), which it wishes to sub-contract, in part, to its associated companies, the Data sub-processors, for the purpose of providing information technology hosting and support services to the Hosting Customers and otherwise acting in accordance with the Data Processor's instructions from time to time;

Whereas, in providing support, information technology hosting services as specified above, and otherwise acting on the Data Processor's instructions, the Data Sub-processors may have access to Personal Data that the Hosting Customer may hold on their Hosted System;

Whereas, the parties have agreed to the terms upon which the Data Sub-processors will provide information technology hosting services to the Hosting Customers with respect to the Personal Data as set hereafter (the "Agreement");

Whereas, prior to this Agreement, Rackspace Limited, Rackspace US and Rackspace Asia have entered into a data processing agreement dated 8 January 2010, which the parties agree to terminate herewith;

Now, therefore, the Parties hereto agree as follows:

Definitions

"Appropriate Technical and Organisational Measures" means the following measures, and any additional measures from time to time notified in writing by the Data Processor to the Data Sub-processor:

a) those measures required by the terms of hosting services agreement between the Data Processor and the Hosting Customer, including without limitation measures aimed at protecting Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing;

b) treating and safeguarding the Personal Data that Hosting Customer stores on the Hosted System as strictly private and confidential, and
taking those steps agreed between the Data Processor and the Hosting Customer to preserve such confidentiality;

c) process the Personal Data stored on the Hosted System only for the purpose(s) prescribed by the Hosting Customer and/or by the Data Processor and for not any other purposes;

d) informing the Data Processor Immediately if the Data Sub-processor becomes aware of or suspects that Personal Data have been disclosed to an unauthorised person;

e) making the access to the Hosted System available only to employees and/or agents who need access for the purpose of providing support in Hosting Services and procuring that all persons who have such access are made subject to the confidentiality and security obligations agreed by the Data Processor and the Hosting Customer; and

f) copying, reproducing or distributing Personal Data only to the extent necessary to enable the discharge of obligations under this Agreement and for no other purpose.

"Data Subject", "Personal Data" and "Processing"

 Shall have the meaning set out in the Swiss Federal Act on Data Protection of 19 June 1992 (the "Act") and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated;

"Hosting Customer"

 shall mean the person to whom the Data Processor provides a Hosted System;

"Hosted System"

 shall mean a combination of hardware, software and networking elements that comprise an information technology system.
1. **Scope**

1.1 This Data Processing Agreement is entered into by and between the Data Processor and the Data Sub-processors to provide adequate protection for the Personal Data that the Hosting Customer stores on its Hosted System physically located in Switzerland and/or in the EU, in situations in which such data is accessed by the Data Sub-processor established in the EU, the US, Australia or Hong Kong; and to provide adequate protection for the Personal data that the Hosting Customer may store on its Hosted System physically located in Rackspace datacenters in the EU, in the US, in Australia or in Hong Kong for the purpose described in Recitals of this Agreement.

1.2 This Data Processing Agreement is further entered into by and between the Data Processor and the Data Sub-processor to provide adequate protection for Hosting Customer's Personal Data processed by Data Processor and accessed by the Data Sub-processor or physically located in Rackspace datacenters in the EU, in the US, in Australia or in Hong Kong for the purpose of providing hosting services to the Hosting Customer.

1.3 The Data Sub-processor hereby agrees to process the Personal Data in accordance with the terms and conditions of the Agreement.

2. **Term and Termination**

2.1 The Agreement shall be for an Initial period of 5 years commencing on the date of this Agreement and shall continue in force until terminated pursuant to the provisions of Clause 2.2.

2.2 The Data Processor may terminate the Agreement forthwith on giving written notice to the Data Sub-processor.

3. **Effect of Termination**

3.1 In the event of the termination of this Agreement:

3.1.1 the Data Sub-processor shall at the request of the Data Processor either immediately supply any Personal Data that the Data Sub-processor was exposed to while providing the services to the Hosting Customer, to the Data Processor at the address set out above or immediately delete the Personal Data from its databases and destroy all backup or archive copies of the Personal Data and furnish the Data Processor with a certificate signed by a duly authorized director of the Data Sub-processor certifying the same has been done; and
3.1.2 the Data Sub-processor will, on request of the Data Processor, immediately allow the Data Processor access to its data processing facilities for an audit to enable the Data Processor to confirm that the Data Sub-processor has complied with the provisions of Clause 3.1.1.

3.2 Any termination of the Agreement (howsoever occasioned) shall not affect the accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

3.3 Clauses 2, 3, 5, 6, 11, 12, and 13 shall survive expiry on termination of the Agreement.

4 Use of the Data

The Data Sub-processor shall process the hosted data and the data stored for the purpose of providing hosting services, in accordance with the Hosting Customer's and/or Data Processor's instructions, using its data processing facility/facilities for the purposes described in the Recitals of this Agreement.

5 Processing of Personal Data

5.1 The Data Sub-processor agrees and warrants that it:

6.1.1 has implemented the technical and organisational security measures specified in this Agreement;

6.1.2 has no reason to believe that the legislation applicable to him prevents him from fulfilling the instructions received from the Hosting Customer and/or Data Processor and the Data Sub-processor's obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by this Agreement, the Data Sub-processor will promptly notify the change to the Data Processor as soon as the Data Sub-processor is aware, in which case the Data Processor is entitled to suspend the access to the Hosted System and/or terminate this Agreement; and

6.1.3 shall promptly notify the Data Processor about any legally binding request for disclosure of the Personal Data by a law enforcement authority unless otherwise prohibited; any accidental or unauthorized access; and any request received directly from the Data Subjects without responding to that request, unless it has been authorised by the Data Processor to do so.
5.2 The Data Sub-processor shall at all times during this Agreement:

5.2.1 act only in accordance with the Hosting Customer's and/or Data Processor's instructions from time to time regarding the Processing of Personal Data pursuant to this Agreement; if the Data Sub-processor cannot provide such compliance for whatever reason, the Data Sub-processor agrees to inform promptly the Data Processor of the Data Sub-processor's inability to comply, in which case the Data Processor is entitled to suspend the access to the Hosted System and/or terminate this Agreement;

5.2.2 deal promptly and properly with all inquiries from the Data Processor relating to the information technology hosting services provided by the Data Sub-processor; and

5.2.3 take reasonable steps to ensure the reliability of any of its employees, agents and sub-contractors who may have access to the Hosted System, including the following:

   a) performing background screening of its employees who have access to Hosting Customers' Hosted System;

   b) restricting the use of administrative access codes for accessing the Hosting Customers' Hosted System to its employees and other agents who need the access codes for the purpose of providing support. The Data Sub-processor's employees or its agents who use access codes shall be required to log on using an assigned user name and password;

   c) access the Hosted System via a secure Internet connection and take Appropriate Technical and Organisational Measures as defined in this Agreement to protect the Personal Data;

   d) in the event that Data Sub-processor is exposed to the Hosting Customers' Personal Data: not disclose the Personal Data to any third party in any circumstances other than in compliance with the Data Processor's written agreement with the Hosting Customer or in compliance with a legal obligation;

   e) at the Data Processor's reasonable cost, co-operate with and provide to Data Processor such information and access to any facilities, premises or equipment from or on which Personal Data is, has been, or is to be processed pursuant to this Agreement as the Data Processor may reasonably require to enable it to monitor compliance by the Data Sub-processor with the obligations in these Data Processing Requirements.

5.2.4 The Data Sub-processor shall fully and without delay cooperate with the Data Processor and shall take adequate measures to ensure that the Hosting Cus-
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tomer's right to have access, to correct or to delete his/her/its Personal Data are complied with.

5.2.5 The Data Sub-processor shall delete Personal Data at the latest 10 years after termination of the agreement with the Hosted Customer or as notified by the Data Processor.

5.3 The Data Sub-processor agrees that where the Hosting Customer and the Data Processor have factually disappeared or ceased to exist in law, then

5.3.1 the Data Subject can enforce against the Data Sub-processor this Clause 5;

5.3.2 the Data Subject who has suffered damage as a result of any violation of the provisions of this Clause 5 by the Data Sub-processor is entitled to receive compensation from the Data Sub-processor.

5.3.3 If the Data Subject invokes against the Data Sub-processor third party beneficiary rights and/or claims compensation for damages under this Clause 5 then the Data Sub-processor will accept the decision of the Data Subject to refer the dispute to the competent authority in Switzerland or in the United Kingdom and that the Data Subject's choice will not prejudice the Data Subject's substantive or procedural rights to seek remedies in accordance with other provisions of national or international law, if any.

5.4 The Data Sub-processors agrees that the supervisory authority has the right to conduct an audit of the Data Sub-processor which has the same scope and is subject to the same conditions as would apply to an audit of the Data Processor under the applicable data protection act.

6 Confidentiality

6.1 For so long as the Agreement is in force and thereafter, all parties agree with each other to treat the Hosting Customer's hosted data, including any Personal Data in accordance with the confidentiality requirements stated in the agreement between the Data Processor and the Hosting Customer.

6.2 Without prejudice to any other rights or remedies that the Data Processor may have, the Data Sub-processor acknowledges and agrees that if the Personal Data is used or disclosed other than in accordance with the terms of the Agreement, the Data Processor shall, without proof of special damage, be entitled to seek an injunction, specific performance or other equitable relief in respect of such misuse, in addition to any damages or other remedy to which it may be entitled.
7 Force Majeure

Neither party shall be liable for failure to perform or delay in performing any obligation under the Agreement if the failure or delay is caused by any circumstances beyond its reasonable control, including but not limited to acts of god, war, terrorism, civil commotion or industrial dispute (not extending to disputes by its own employees or sub-contractors). If such delay or failure continues for at least thirty (30) days, the party not subject to the force majeure shall be entitled to terminate the Agreement by notice in writing to the other.

8 Assignment

8.1 The Data Sub-processor shall not, without the consent of the Data Processor, assign any benefit or burden of the Agreement in whole or in part or purport to do the same, or sub-contract any or all its obligations under the Agreement such consent not to be unreasonably withheld or delayed.

8.2 The Data Processor shall not, without the consent of the Data Sub-processor, assign any benefit or burden of the Agreement in whole or in part or purport to do the same, or sub-contract any or all of its obligations under the Agreement, such consent not to be unreasonably withheld or delayed.

9 Notices

All Notices which are required to be given under the Agreement shall be in writing and shall be sent to the address of the recipient set out in the Agreement or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause 9. Any such notice may be delivered by hand or by first class post or facsimile and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and, if by facsimile, when despatched.

10 General

10.1 The failure on the part of either party to the Agreement to exercise or enforce any rights conferred by the Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement at any time.

10.2 The Agreement may be executed in one or more counterparts each signed by one of the parties and such counterparts shall together constitute the Agreement.
10.3 No addition to or modification of any provision of the Agreement shall be binding upon the parties unless expressed in writing and signed by a duly authorised representative of all the parties.

10.4 Nothing in the Agreement shall be construed as creating a partnership or joint venture or any kind between the parties or as constituting either party as the agent of the other party for any purpose whatsoever and neither party shall have the authority or power to bind the other party or to contract in the name of or create a liability against the other party in any way or for any purpose.

11 Entire Agreement

The Agreement and its Annexes and Appendices (as amended from time to time) together with any document expressly referred to in any of its terms, contains the entire agreement between the parties relating to the subject matter covered and supersedes any previous agreements, arrangements, undertakings or proposals, written or oral, between the parties in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of the Agreement.

12 Rights of Third Parties

Nothing in the Agreement shall be construed as conferring any rights (including the right to rely on any exclusion or limitation clause contained within it) or obligations on any person or class of persons whether in existence now or at any time in the future that is not a party to the Agreement, for the avoidance of doubt, the Contract (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

13 Law and Jurisdiction

The Agreement shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts in respect of any dispute or matter arising out of or connected with the Agreement.
Data Processing Agreement

Rackspace International GmbH

DAVID BROLSMA

DATE

Rackspace Limited

TIFFANY LATHE

DATE

Rackspace Benelux B.V.

ALAN SCHOENBAUM, DIRECTOR

27 November 2012

DATE

Rackspace US, Inc

ALAN SCHOENBAUM, SVP of General Counsel

27 November 2012

DATE

Rackspace Hosting Australia Pty Limited

ALAN SCHOENBAUM, CEO Security

27 November 2012

DATE

Rackspace Asia Limited

ALAN SCHOENBAUM, DIRECTOR

27 November 2012

DATE
Data Processing Agreement

Rackspace International GmbH

[Signature]

DAVID BROLSMA

29 November 2012

DATE

Rackspace Limited

[Signature]

TIFFANY LATHE

4 December 2012

DATE

Rackspace Benelux B.V.

[Signature]

ALAN SCHÖNBAUM, DIRECTOR

27 November 2012

DATE

Rackspace US, Inc

[Signature]

ALAN SCHÖNBAUM, SVP & General Counsel

27 November 2012

DATE

Rackspace Hosting Australia Pty Limited

[Signature]

ALAN SCHÖNBAUM, CEO & President

27 November 2012

DATE

Rackspace Asia Limited

[Signature]

ALAN SCHÖNBAUM, Director

27 November 2012

DATE