

GENERAL TERMS AND CONDITIONS

1. THE HOSTING SERVICES AGREEMENT

The Hosting Services Agreement incorporates the following documents by reference: (i) the Services Description that describes the Services you are buying and related fees; (ii) these General Terms and Conditions containing the general terms and conditions applicable to all Services; (iii) the specific Product Terms and Conditions containing the additional terms for the particular Hosting Services you are buying; (iv) the Acceptable Use Policy; and (v) if your Hosted System will be provided from data centres located both in the United Kingdom and one or more non-U.K. jurisdictions, the Country Specific Terms that may be applicable in those jurisdictions. When we use the term “Hosting Services Agreement” or “Agreement” in any of these documents, we are referring collectively to all of them. The Agreement is effective as of the date of the email sent to you by Rackspace expressly confirming acceptance of your order or the date you accept the Agreement as part of Rackspace’s online order process.

2. DEFINED TERMS

Some words used in the Agreement have particular meanings:

“Acceptable Use Policy” or “AUP” means the Rackspace Acceptable Use Policy posted at <http://www.rackspace.com/information/legal/global/aupas> of the date you sign the Agreement.

“Affiliate” means a subsidiary or holding company of either party to this Agreement and any subsidiary of such holding company (where “holding company” and “subsidiary” have the meanings set out in section 1159 of the Companies Act 2006).

“Business Day” or “Business Hours” means 8:00 a.m. – 5:00 p.m. Monday through Friday, excluding public holidays in the United Kingdom.

“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including: (i) for you, all information transmitted to or from, or stored on, your Hosted System, (ii) for Rackspace, unpublished prices and other terms of service, audit and security reports, product development plans, solution diagrams, data centre designs (including non-graphic information you may observe on a tour of a data centre), and other proprietary information or technology, and (iii) for both of us, information that is marked or otherwise conspicuously designated as confidential. Information that is independently developed by one of us, without reference to the other’s Confidential Information, or that becomes available to one of us other than through breach of the Agreement or applicable law, shall not be “Confidential Information” of the other party.

“Country Specific Terms” means the addendum or addenda that may be incorporated into your Hosting Services Agreement if a portion of your Services are to be provided from a non-United Kingdom jurisdiction for which we have special legal terms.

“Hosted System” means a combination of hardware, software and networking elements that comprise an information technology system. Depending on the Services you are buying, the Hosted System may consist of a dedicated system for your use only, or 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.

“Hosting Services” means: (i) Rackspace’s provision for your use of the Hosted System described in the Services Description, and (ii) Support.

“Product Terms and Conditions” means the terms and conditions for the particular Hosting Services you are buying.

“Services Description” means a written description of the Hosted System and/or Supplementary Services you are buying from Rackspace, and related fees, that is incorporated by reference in the Agreement,

including any “plan” or other name given to a Services description that you submit to Rackspace as part of an online order process.

“Service Level Guarantee(s)” means (i) a guarantee or guarantees identified as a “Service Level Guarantee” or “Service Level Guarantees” in the applicable Product Terms and Conditions or (ii) any provision which provides a specified credit or financial remedy for an identified failure to deliver or provide the Services.

“Services” means Hosting Services and Supplementary Services, collectively.

“Supplementary Services” means those Services you purchase from Rackspace other than the Hosting Services, including time and materials based professional or consulting services (such as database administration or “DBA” services), one-time or non-recurring services which are not part of the existing Support (such as support for the application that you operate on your Hosted System), and any other services identified as “Supplementary Services” on the applicable Services Description.

“Support” has the meaning stated in the applicable Product Terms and Conditions.

3. OUR OBLIGATIONS

Rackspace’s obligation to begin providing Services is contingent on your satisfaction of Rackspace’s credit approval criteria. Rackspace will provide the Hosting Services in accordance with the Services Description, the Service Level Guarantees, and other specifications in this Agreement. Rackspace will perform any Supplementary Services in a good and professional manner. Rackspace will maintain security practices that are at least as stringent as the minimum security practices described at www.rackspace.co.uk/legal/securityservices/, and will provide the specific security services described in your Services Description. Rackspace will perform all Services in accordance with applicable law.

4. YOUR OBLIGATIONS

You must use reasonable security precautions in connection with your use of the Services. You must comply with the laws applicable to your use of the Services and with the Acceptable Use Policy. You must cooperate with Rackspace’s reasonable investigation of Service outages, security problems, and any suspected breach of the Agreement. You are responsible for keeping your account permissions, billing, and other account information up to date using your MyRackspace® portal or via another Rackspace defined process. You must pay when due the fees for the Services stated in the Services Description or other agreement between us. If there is a dispute with respect to any portion of an invoice, you

shall pay the undisputed portion of the fees promptly and provide written details specifying the basis of any dispute. Each of us agrees to work together to promptly resolve any disputes.

5. PROMISES WE DO NOT MAKE

5.1 We do not promise that the Services will be uninterrupted, error-free, or completely secure. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of your privacy, Confidential Information and property.

5.2 We disclaim any and all warranties not expressly stated in the Agreement to the maximum extent permitted by law, including the implied warranties relating to satisfactory quality and fitness for a particular purpose. You are solely responsible for the suitability of the services chosen. Any services that we are not contractually obligated to provide but that we may perform for you at your request and without any additional charge are provided on an 'AS IS' basis.

5.3 We do not have knowledge of the data you store within your Hosted System, including the quantity, value or use of the data. You are therefore responsible to take all reasonable steps to mitigate the risks inherent in the provision of the Services, including loss of your data, including any PII (as defined in the applicable Product Terms and Conditions) or "cardholder data" as that term is defined in the Payment Card Industry-Data Security Standard. The Services that Rackspace has agreed to provide to assist you to mitigate such loss (if required) are set out in the Services Description, which may include backup services and geographically redundant servers. Rackspace does not promise to back up your data unless you have purchased backup services. If you purchase backup services

Rackspace does not promise to retain any data backup(s) for longer than the agreed data retention period as set out in the Services Description. In all events, you release Rackspace from liability for loss of data to the extent that the data has changed since the time that we were last required by the Agreement to perform a backup.

5.4 We will provide Support only to your administrative or technical contacts listed on your account. We will not provide support directly to your end users unless specifically agreed in writing.

5.5 Certain Rackspace Services are designed to help you comply with various regulatory requirements that may be applicable to you. However, you are responsible for understanding the regulatory requirements applicable to your business and for selecting and using those Services in a manner that complies with the applicable requirements.

6. UNAUTHORISED ACCESS TO YOUR DATA OR USE OF THE SERVICES

Rackspace is not responsible to you or any third party for unauthorised access to your data or the unauthorised use of the Services unless the unauthorised access or use results from Rackspace's failure to meet its security obligations stated in Section 3 (Our Obligations) of these General Terms and Conditions or the Services Description. You are responsible for the use of the Services by any employee of yours, any person you authorise to use the Services, any person to whom you have given access to the Services, and any person who gains access to your data or the Services as a result of your failure to use reasonable security precautions, even if such use was not authorised by you.

7. TAXES ON SERVICES

7.1 Sales Taxes. Unless otherwise expressly provided in the Agreement or included in the invoice for the services, all amounts due to Rackspace under the Agreement are exclusive of any value added, goods, services, sales, use, property, excise and like taxes, import duties and/or applicable levies (collectively, "Tax"). If Rackspace is required by law to collect Taxes on the provision of the Service, Rackspace will invoice you for such Tax and you must pay Rackspace the amount of the Tax that is due or provide Rackspace with satisfactory evidence of your exemption from the Tax. The obligation to pay any Taxes that Customer may be required to pay in connection with Customer's use of Services or Customer's payment of amounts due to Rackspace under the Agreement shall be borne exclusively by Customer. You must provide Rackspace with accurate factual and adequate information and documentation (as determined by Rackspace), to help Rackspace determine if any Tax is due with respect to the provision of the Services.

7.2 Withholding Taxes. All payments to Rackspace shall be made without any withholding or deduction for any Taxes, except for any withholding (or similar) taxes imposed on income that may be attributed to Rackspace in connection with its provision of the Services that you are legally required to withhold from such payment and remit to the applicable governmental or taxing authority (such taxes, "Local Withholding Taxes"). You agree to timely provide Rackspace with adequate and accurate factual information and documentation (as determined by Rackspace), including tax receipts, of your payment of any such Local Withholding Taxes. Rackspace shall remit such cost to you in the form of a credit on your outstanding account balance following receipt of sufficient evidence of payment of any such Local Withholding Taxes as set forth above.

8. EXPORT MATTERS

You represent and warrant and undertake that you will not possess, use, import, export or resell (and shall not permit the possession, use, importation, exportation, or resale of) the Services or any information or technical data provided by Rackspace to you under this Agreement in any manner which would cause Rackspace or its Affiliates to breach any applicable export control laws, rules, or regulations of any jurisdiction (including without limitation those under UK and US law). Without limitation, you represent and warrant and undertake that you will not provide administrative access to or permit use of the Services by any persons (including any natural person, government or private entity or other form of body corporate) that is located in or is a national of any country that is embargoed or highly restricted under United Kingdom or US export laws, rules or regulations.

9. TERMS AND FEES

Your applicable Product Terms and Conditions and Services Description set out your term and renewal information as well as fee and pricing information.

10. SUSPENSION OF SERVICES

10.1 We may suspend Services without liability if:

10.1.1 we reasonably believe that the Services are being used in breach of the Agreement;

10.1.2 you don't cooperate with our reasonable investigation of any suspected violation of the

Agreement;

10.1.3 there is an attack on your Hosted System or your Hosted System is accessed or

manipulated by a third party without your consent;

10.1.4 we are required by law or a regulatory or government body to suspend your Services; or

10.1.5 there is another event for which we reasonably believe that the suspension of Services is necessary to protect the Rackspace network or our other customers.

10.2 We will give you advance notice of a suspension under this clause of at least twelve (12) Business Hours unless we determine in our reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect Rackspace or its other customers from imminent and significant operational, legal, or security risk. If your Hosted System is compromised, then you must address the vulnerability prior to Rackspace placing the Hosted System back in service or, at your request, we may be able to perform this work for you at our standard hourly rates as a Supplementary Service.

11. TERMINATION FOR BREACH

11.1 You may terminate the Agreement for breach if we:

11.1.1. materially fail to provide the Services as agreed and do not remedy that failure within ten (10) days of your written notice describing the failure;

11.1.2. fail to meet The Fanatical Support Promise™ (subject to the conditions and procedures described at www.rackspace.co.uk/honour/); or

11.1.3. materially fail to meet any other obligation stated in the Agreement and do not remedy that failure within thirty (30) days of your written notice describing the failure.

11.2 We may terminate the Agreement for breach if:

11.2.1. we discover that the information you provided for the purpose of establishing the Services is materially inaccurate or incomplete;

11.2.2. the individual signing the Agreement did not have the legal right or authority to enter into the Agreement on behalf of the person represented to be the customer;

11.2.3. your payment of any invoiced amount is overdue and you do not pay the overdue amount within four (4) Business Days of our written notice;

11.2.4 you have made payment arrangements via credit card or other third party, and the third party refuses to honour our charges;

11.2.5. you fail to comply with any other obligation stated in the Agreement and do not remedy the failure within thirty (30) days of our written notice to you describing the failure;

11.2.6. you contravene Section 8 (Export Matters) of this General Terms and Conditions;

11.2.7. you breach the Export Control section of the AUP;

11.2.8. with the exception of the Export Control section of the AUP for which Sub-Section 11.2.7 applies, you breach any provision of the AUP more than once even if you remedy each breach; or

11.2.9. your agreement for any other Rackspace service is terminated for breach of the acceptable use policy applicable to that service.

11.3 Either of us may terminate the Agreement with immediate effect on written notice if the other (or we reasonably believe that the other): (i) is unable to pay its debts; or (ii) enters into compulsory or voluntary liquidation; or (iii) compounds with or contravenes a meeting of its creditors; or (iv) has a receiver or manager or an administrator appointed (or an application is made to the court for the same); or (v) ceases for any reason to carry on business or takes or suffers any similar action which means that it may be unable to pay its debts ("Insolvency Event").

11.4 Notwithstanding anything to the contrary within the Agreement, the fees for the Services shall become due immediately upon the occurrence of an Insolvency Event.

12. CONFIDENTIAL INFORMATION

12.1 Each of us agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, as applicable, the exercise of our respective legal rights under the Agreement, as may be required by law, or as set forth below.

Each of us agrees not to disclose the other's Confidential Information to any third person except as follows:

12.1.1 to each of our respective service providers, employees, Affiliates, suppliers, agents and representatives, provided that such service providers, employees, Affiliates, suppliers, agents or representatives agree to confidentiality measures that are at least as stringent as those stated in this General Terms and Conditions; or

12.1.2. to a law enforcement or government agency if either of us reasonably believes that the other's conduct may violate applicable criminal law;

12.1.3. as required by law; or

12.1.4. in response to a 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 clause (or prompt notice in advance of disclosure, if seven (7) days advance notice is not reasonably feasible), unless the law forbids such notice.

13. LIMITATION ON DAMAGES

13.1 Subject to clause 13.2, but without prejudice to Rackspace's right to the fees for the Services, including any early termination fee (if applicable) and your right to service credits under the applicable Service Level Guarantee and/or termination for our failure to meet the Fanatical Support Promise:

13.1.1 each party's liability to the other for direct loss or damages whether in tort (including, without limitation, negligence), contract or otherwise, is limited to and shall not exceed:

13.1.1.1 for Hosting Services, an amount that is twelve (12) times the monthly recurring fee under this Agreement as of the time of the occurrence of the event(s) giving rise to the claim; and

13.1.1.2 for Supplementary Services, the greater of five hundred British Pounds Sterling (£500) or the fees paid for the Supplementary Services that are the subject of the claim;

13.1.2 neither party will be liable to the other in any way for any special, incidental, economic, or indirect loss or damages, or for loss of data, loss of profits, revenues, customers or contracts, wasted management time, increased costs or expenses, whatsoever and howsoever arising including in connection with the performance, non-performance or delayed performance of the Services or otherwise under this Agreement even if that party has been advised by the other or should have reasonably been aware of the possibility of such loss.

13.2 Nothing in this Agreement limits or excludes either party's liability for any loss or damages resulting from:

13.2.1 death or personal injury caused by its negligence; and 13.2.2 any fraud or fraudulent misrepresentation.

13.3 The service credits stated in the Service Level Guarantee are your exclusive remedy for Rackspace's failure to meet those guarantees for which service credits apply.

13.4 Rackspace agrees to have valid insurance cover in place for its own legal liability to you under this Agreement up to the limits set out in this clause 13. As the fees for the Services properly reflect the delineation of risk between the parties, each party agrees to ensure that it will be responsible for making its own arrangements for the insurance of any loss in excess of its accepted legal liability as necessary.

14. INDEMNIFICATION

14.1 If we, our affiliates, or any of our or their respective employees, agents, or suppliers (the "Indemnitees") is faced with a legal claim by a third party arising out of your actual or alleged negligence, breach of law, failure to meet the security obligations required by the Agreement, breach of the AUP, breach of your agreement with your customers or end users, or breach of Section 8 (Export Matters) or Section 16 (Software) of this General Terms and Conditions, then you will pay the cost of defending the claim (including reasonable legal fees) and any damages award, fine or other amount that is imposed on the Indemnitees as a result of the claim. Your obligations under this clause include claims arising out of the acts or omissions of your employees or agents, any other person to whom you have given access to the Services, and any person who gains access to the Services as a result of your failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorised by you. You must also pay reasonable legal fees and other expenses we incur in connection with any dispute between persons having a conflicting claim to control your account with Rackspace, or any claim by your customer or end user arising from an actual or alleged breach of your obligations to them.

14.2 We will choose legal counsel to defend the claim, provided that these decisions must be reasonable and must be promptly communicated to you. You must comply with our reasonable requests for assistance and cooperation in the defence of the claim. We may not settle the claim without your consent, although such consent may not be unreasonably withheld, delayed or conditioned. You must pay reasonable legal fees and expenses due under this clause as we incur them.

15. PUBLICITY

You agree that we may publicly disclose that we are providing Services to you and may use your name and logo to identify you as our customer in promotional materials, including press releases. We will not use your name or logo in a manner that suggests an endorsement or affiliation.

16. SOFTWARE

16.1 General. You may not copy any software we provide for your use, unless expressly permitted by this Agreement or use such software after the expiration or termination of the Agreement. You may not remove, modify or obscure any copyright, trade mark, or other proprietary rights notices that appear on any software we provide for your use. Unless permitted by the terms of an open source software licence, you may not reverse engineer, decompile or disassemble any software we provide for your use except and to the extent that you are expressly permitted by applicable law to do this, and then following at least ten (10) days advance written notice to Rackspace. In addition to the terms of this Agreement, your use of any Microsoft® software is governed by Microsoft's licence terms that appear at:

www.rackspace.co.uk/aboutus/microsoftlicense.htm/ including use restrictions on Microsoft software that is provided for your use under a subscriber access licence or "SAL" or an "anonymous" licence as indicated in your Services Description.

16.2 Customer Provided Licences. If you use any non-Rackspace provided software on your Hosted System you represent and warrant to Rackspace that you have the legal right to use the software in that manner. If we have agreed to install, patch or otherwise manage software for you in reliance on your licence with a software vendor (rather than Rackspace's licence with the software vendor), then you represent and warrant that you have a written licence agreement with the software vendor that permits Rackspace to perform these activities. On Rackspace's request you will certify in writing that you are in compliance with the requirements of this paragraph and any other software license

restrictions that are part of the Agreement, and will provide evidence of your compliance as we may reasonably request. If you fail to provide the required evidence of licensing, Rackspace may, at its option, either:

16.2.1. charge you its standard fee for the use of the software in reliance on Rackspace's licensing agreement with the vendor until such time as the required evidence is provided; or

16.2.2. suspend or terminate the Agreement.

Your licensed software may not be compatible with our standard process for deploying and repairing Hosted Systems. In addition, in order to install the software, Rackspace may require you to send the physical or electronic media provided to you by the software vendor, both for deployment, and again in the event of a failure of your Hosted System. You agree that Rackspace will not be in breach of any Service Level Guarantee or other obligation under this Agreement that would not have occurred but for the delay resulting from our agreement to use your licensed software.

17. RECOMMENDATIONS

Rackspace personnel may from time to time recommend third party software or other products and services for your consideration. RACKSPACE MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING SUCH PRODUCTS AND SERVICES. Your use of any products and services not provided by Rackspace is governed by the terms of your agreement with the provider of those products and services, and is at your sole risk. Rackspace is not responsible in any way for the third party product's performance, features nor failures

18. WHO MAY USE THE SERVICES

You may permit your subsidiaries and affiliated companies to use the Services if you wish, however you are responsible for the acts or omissions of your permitted users. Rackspace

will provide support only to you, not to your customers, subsidiaries or affiliates. There are no third party beneficiaries to the Agreement, meaning that your customers, subsidiaries, affiliates, and other third parties do not have any rights against either of us under the Agreement.

19. DATA PROTECTION

Each of us agrees to comply with our respective obligations under the Data Protection Act 1998 (the “Act”) as applicable to personal data that it controls or processes as part of, or in connection with, its use or provision of the Services. Specifically, but without limitation, you must comply with the Act as it relates to personal data that you store or transfer using your Hosted System. You agree that, subject to the requirements of this paragraph and Rackspace’s obligations stated in Section 30 (Assignment,Subcontractors), Rackspace may give its affiliates and subcontractors outside of the European Economic Area (EEA) access to personal data you store on your Hosted System. For example, we may provide our US affiliates with access to your Hosted System so that the US affiliate may provide Support to you during our off office hours in the UK.

We agree that we will not provide access to personal data that you store on your Hosted System to any subcontractor or affiliate outside of the EEA unless that person meets the requirements stated below during the entire time that it has access to the personal data:

19.1 for personal data for which we are a “controller” under the Act, the affiliate or subcontractor to whom we transfer the personal data (i) is located in a country for which the European Commission has made a positive finding of adequacy, (ii) is located in the United States and has certified to the United States Department of Commerce that it adheres to the Safe Harbour framework developed by the United States Department of Commerce in coordination with the European Union, or (iii) has signed the standard contractual model clauses for the transfer of personal data from either: (a) Rackspace to a processor, or (b) Rackspace to a controller who is based in a country outside the EEA that is not recognised as offering an adequate level of data protection; and

19.2 for personal data for which we are a “processor” under the Act, the affiliate or subcontractor that has access to the Hosted System has signed a data processing agreement with us. We have such an agreement in place with Rackspace US, Inc., and have posted a signed copy of that agreement at www.rackspace.co.uk/legal/subprocessing/.

20. DATA CENTRES

We are constantly upgrading our data centre facilities and in order for you to benefit from this, you agree that we may relocate your servers within our data centres, make changes to the provision of the Services, URLs and your IP addresses and may establish new procedures for the use of the Services. We may also make changes to DNS records and zones on Rackspace operated or managed DNS servers as we deem necessary for the operation of the shared network infrastructure. In each case, we will give you reasonable advance notice and use all reasonable endeavours to minimise the effect that such change will have on your use of the Services.

21. FANATICAL SUPPORT PROMISE®

Rackspace commits to its Fanatical Support Promise® found at <http://www.rackspace.co.uk/fanatical-support/the-promise/elements>. You may terminate the Agreement in accordance with clause 11.1.2 above if we fail to meet The Fanatical

Support Promise®. Such termination is your sole and exclusive remedy for our failure to meet The Fanatical Support Promise®.

22. IMPERVA WAF SERVICES

If you purchase an Imperva WAF Service from Rackspace, such service is subject to the terms at www.rackspace.co.uk/legal/imperva-waf-terms/

23. CRITICAL APPLICATION SERVICES

If you purchase Rackspace's Critical Application Services - Standard Service Level Guarantee, such guarantee is subject to the terms at <http://www.rackspace.co.uk/legal/critical-application-services-standard/>. Alternatively, if you purchase Rackspace's Critical Application Services - Advanced Service Level Guarantee, such guarantee is subject to the terms at <http://www.rackspace.co.uk/legal/critical-application-services-advanced/>.

24. TEST SERVICES

If you use any Services that have been designated as a “Beta” service, pilot test, early access, limited access, limited release, or with similar designation, then your use of that Service is subject to the terms at <http://www.rackspace.co.uk/legal/betaservices>.

25. SERVICES MANAGEMENT AGENT

You agree that you will not interfere with any services management software agent(s) that Rackspace installs on your Hosted System. Rackspace agrees that its agents will use only a minimal amount of computing resources, and will not interfere with your use of your Hosted System. Rackspace will use the agents to track the hardware and software that Rackspace provides, so that it can more efficiently manage various service issues, such as patching exceptions and product life cycles. Rackspace may also use the software to identify security vulnerabilities. Rackspace will not use the agents to view or capture your content or data. Your Services will become “unsupported” as described in the Product Terms if you disable or interfere with our service management software agents. You agree that Rackspace may access your Hosted System to reinstall services management software agents if you disable or interfere with their performance.

26. NOTICES

Your routine communications to Rackspace regarding the Services, including any notice of non-renewal, should be sent to your Rackspace account team using the MyRackspace portal. If you want to give a notice regarding termination of the Agreement for breach, indemnification, or other non-routine legal matter, you should send it by electronic mail and first class post to:

legalnotices@rackspace.co.uk
Vice President International, Legal & Company Secretary Rackspace Limited
Unit 5 Millington Road
Hyde Park Hayes
Hayes UB3 4AZ

Rackspace's routine communications regarding the Services and legal notices will be posted on the MyRackspace portal or sent to the individual(s) you designate as your contact(s) on your account either by electronic mail (including an electronic mail referring you to a ticket posted on your MyRackspace portal), first class post, or overnight courier. Notices are deemed received as of the time posted or delivered, or if that time does not fall on a Business Day, as of the beginning of the first Business Day following the time posted or delivered. For purposes of counting days for notice periods, the Business Day on which the notice is deemed received counts as the first day. Notices must be given in the English language.

27. OWNERSHIP OF INTELLECTUAL PROPERTY

Each of us retains all right, title and interest in and to our respective trade secrets, inventions, copyrights and other intellectual property. Any intellectual property developed by Rackspace during the performance of the Service(s) shall belong to Rackspace unless we have agreed with you in advance in writing that you shall have an interest in the intellectual property.

28. OWNERSHIP OF OTHER PROPERTY

You do not acquire any ownership interest in or right to possess the Hosted System, and you have no right of physical access to the Hosted System. We do not acquire any ownership interest in or right to the information you transmit to or from or store on your Rackspace servers or other devices or media.

29. INTELLECTUAL PROPERTY INFRINGEMENT

If Rackspace or any of its customers is faced with a credible claim that the Services infringe the intellectual property rights of a third party, and Rackspace is not reasonably able to obtain the right to use the infringing element or modify the Services such that they do not infringe, then Rackspace may terminate the Services on reasonable notice of at least ninety (90) days, and will not have any liability on account of such termination except to refund amounts paid for Services not used as of the time of termination.

30. ASSIGNMENT/SUBCONTRACTORS

Neither party may assign the Agreement without the prior written consent of the other party except that Rackspace may assign the Agreement to an Affiliate with sufficient financial standing in order to meet its obligations under this Agreement or as part of a bona fide corporate reorganisation or a sale of its business. We may transfer your Confidential Information as part of any such transaction. Rackspace may use third party service providers to perform all or any part of the Services, but Rackspace remains responsible to you under this Agreement for Services performed by its third party service providers to the same extent as if Rackspace performed the Services itself.

31. FORCE MAJEURE

Neither of us will be in breach of the Agreement if the failure to perform the obligation is due to an event beyond our control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organised labour action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.

32. GOVERNING LAW, LAWSUITS

The Agreement is governed by the English law and each of us expressly and unconditionally submits to the exclusive jurisdiction of the courts of England and Wales except that Rackspace may seek to enforce any judgment anywhere in the world where you may have assets. Each of us agrees that it will not bring a claim under the Agreement more than two (2) years after the event giving rise to the claim occurred.

33. SOME AGREEMENT MECHANICS

33.1 Changes to Terms on Website. These General Terms and Conditions, the applicable Product Terms, and any applicable Country Specific Terms are incorporated in your Agreement by reference to pages on the Rackspace website. Although we may from time to time revise the General Terms and Conditions, Product Terms and Country Specific Terms posted on these pages, those revisions will not vary the Agreement until the first day of any renewal or extended term that follows the date that we publish the revision. However if over time you sign multiple Agreements for a single Hosted System, for example to add service elements to an existing Hosted System, then the version of the General Terms and Conditions, Product Terms and Conditions and Country Specific Terms (if any) referenced in the last signed Agreement will govern the entire Hosted System, unless otherwise agreed in writing.

33.2 Modifications. Unless otherwise expressly permitted in this Agreement, the General Terms and Conditions, Product Terms, and Country Specific Terms may be amended only by a formal written agreement signed by both parties. A Services Description may be amended to modify, add, or remove services by a formal written agreement signed by both parties, or by an exchange of correspondence, including via electronic mail or the Rackspace ticketing system, that includes the express consent of an authorised individual for each of us. The pre-printed terms on your purchase order or other business forms will not become part of this Agreement.

33.3 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. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of Rackspace which is not set out in the Agreement.

33.4 Order of Precedence. If there is a conflict between the terms of any of the documents that comprise the Agreement, the documents will govern in the following order: signature page for the Hosting Services Agreement, Country Specific Terms (if any), Services Description, Product Terms, any addendum to the General Terms and Conditions, the General Terms and Conditions, and the Acceptable Use Policy.

33.5 Unenforceable Provisions. If any part of the Agreement is found unenforceable by a court, the rest of the Agreement will nonetheless continue in effect, and the unenforceable part shall be reformed to the extent possible to make it enforceable but still consistent with the business and financial objectives of the parties underlying the Agreement.

33.6 No Waiver. Each party may enforce its respective rights under the Agreement even if it has waived the right or failed to enforce the same or other rights in the past.

33.7 No Partnership. The relationship between the parties is that of independent contractors and not business partners. Neither party is the agent for the other, and neither party has the right to bind the other to any agreement with a third party.

33.8 Interpretation. The captions in the Agreement are for convenience only and are not part of the Agreement. The use of the word "including" in the Agreement shall be read to mean

“including without limitation.” The words “our” and “us” refer to Rackspace unless the context clearly indicates another meaning.

33.9 Survival. The following terms shall survive expiration or termination of the Agreement: Sections 7, 12, 13, 14, 17, 26, 27, 28, 29, 31, 32 and 33 of these General Terms and Conditions, all terms of the Agreement requiring you to pay any fees for Services provided prior to the time of expiration or termination or requiring you to pay an early termination fee, and all other provisions of the Agreement that by their nature are intended to survive expiration or termination of the Agreement.

33.10 Changes Not Made Known. If you have made any change to the Agreement that you did not bring to Rackspace’s attention in a way that is reasonably calculated to put Rackspace on notice of the change, the change shall not form part of the Agreement.

33.11 Counterparts. The Agreement may be signed in multiple counterparts, which taken together will be considered 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.