

Rackspace Non-Disclosure Agreement for Rackspace's Audit or Security Reports

Instructions

You have requested to receive copies of Rackspace's audit and/or security reports covering Rackspace's operations.

Audit and security reports are Rackspace's confidential information. Rackspace is willing to provide copies to you subject to your agreement to the terms and conditions of the non-disclosure agreement set forth below. Please read them carefully.

By clicking on the "I ACCEPT" button at the bottom of this document, you signify that you agree to be bound by these terms. Such acceptance and agreement shall be as effective as your written signature.

Agreement

In consideration of the terms contained in this agreement, the Rackspace Customer (the "**Recipient**") and Rackspace US, Inc. ("**Rackspace**") agree as follows:

1. **Confidential Information.** The term "**Confidential Information**" shall mean all audit and/or security reports covering Rackspace's operations disclosed by Rackspace. It includes any report prepared by an independent auditor of its examination of Rackspace in accordance with the American Institute of Certified Public Accountants' ("AICPA"), the International Auditing and Assurance Standards Board ("IAASB"), the International Organization for Standardization ("ISO") and the Payment Card Industry Security Services Council (PCI). For the avoidance of doubt, Confidential Information shall include SOC, ISO, PCI-DSS reports and any associated FAQ's or supporting documentation.
2. **Affiliate.** In this agreement the term "**Affiliate**" means, in relation to a party, any company which, from time to time, Controls that party, is Controlled by that party, or is under common Control with that party and "**Control**" means the ownership of more than 25 percent (25%) of the issued share capital of the party in question, or the legal power to direct or cause the direction of the general management and policies of the party in question, and "Controls" or "Controlled" shall be construed accordingly.
3. **SOC and ISO Report Acknowledgement.** This section 3 applies only to those recipients receiving SOC and/or ISO reports who are not at this time a Rackspace customer or its auditor or a customer of a Rackspace customer and its auditor.
 - 3.1. The recipient understands that an independent auditor ("**Auditor**") was engaged by Rackspace to perform a SOC or ISO service auditor's examination for Rackspace (the "**Services**"). Recipient has requested that Rackspace deliver to it a copy of the Auditor's report (including any portion, abstract and/or summary thereof, (the "**Report**") prepared by Auditor in connection with the Services.

- 3.2.** The recipient understands that the Services were undertaken, and the Report was prepared solely for the information and use of Rackspace, Rackspace's customers and their auditors, and the customers and auditors of Rackspace's customers, and was not intended for use by Rackspace's prospective customers and auditors, or customers and auditors of Rackspace's prospective customers. Auditor has made no representation or warranty to the recipient as to the sufficiency of the Services, or otherwise with respect to the Report. Had Auditor been engaged to perform additional services or procedures, other matters have come to Auditor's attention that would have been addressed in the Report.
- 3.3.** The Services did not constitute an audit review or examination of financial statements in accordance with generally accepted auditing standards of the American Institute of Certified Public Accountants or the standards of the Public Company Accounting Oversight Board or an examination of prospective financial statements in accordance with applicable professional standards, or a review to detect fraud or illegal acts. The Services did not include any procedures to test compliance with the laws or regulations or any jurisdiction.
- 3.4.** The recipient further acknowledges and agrees that the recipient does not acquire any rights against Auditor, any other member firm of Auditor's global network, or any of its respective affiliates, partners, agents, representatives or employees (collectively, the "**Auditor Parties**"), and Auditor assumes no duty or liability to recipient in connection with the Services or the Report. The recipient hereby releases each of the Auditor Parties from any and all claims or causes of action that the recipient has, or hereafter may or shall have, against the Auditor in connection with the Report or Auditor's performance of the Services. The recipient may not rely on the Report, and will not contend that any provisions of United States or state securities laws could invalidate or avoid any provision of this Agreement.
- 3.5.** In addition, except where compelled by legal process (of which the recipient shall promptly inform Auditor and tender to Auditor, if Auditor so elects, the defense thereof), the recipient agrees that it will not disclose, orally or in writing any Report, or make any reference to Auditor in connection therewith, in any public document or to any third party.
- 3.6.** It is agreed and understood that Auditor shall be a third party beneficiary to this Agreement.
- 4. Use.** The Recipient shall only use the Confidential Information to evaluate Rackspace's operations for compliance with Recipient's security, regulatory and other business policies (the "**Purpose**").
- 5. Disclosure.**

5.1 Recipient shall use at least reasonable care to protect the Confidential Information from unauthorised use and inadvertent disclosure. Recipient shall not disclose the Confidential Information to any third party except:

5.1.1 Disclosure to Recipient's Affiliates, customers, consultants, employees or other third parties who need to know the Confidential Information for the Purpose, provided that such third party is informed of the confidential nature of the Confidential Information and will be bound by the Recipient to hold the information in confidence in terms equivalent or as stringent to those of this Agreement. The Recipient shall be primarily liable for any acts or omissions of such third parties which would have been a breach of this agreement were it done or omitted to be done by the Recipient.

5.1.2 Disclosure of Confidential Information as required by law in the reasonable opinion of the Recipient's counsel provided that the Recipient shall provide Discloser with prompt advance written notice of disclosure at least fifteen (15) days unless: (i) the Recipient is legally compelled to make such disclosure on fewer than twenty (20) days from the date it becomes aware of the requirement, in which case the Recipient shall give Discloser as much notice as is reasonably practicable under the circumstances, or (ii) notice is prohibited by law. The Recipient shall limit disclosure under this paragraph 5.1.2 to that Confidential Information which is legally required to be provided in the reasonable opinion of Recipient's counsel, and at Discloser's request and expense, the Recipient shall cooperate with Discloser's reasonable efforts to avoid or limit disclosure.

6 Inadvertent Disclosure. Recipient agrees to promptly notify Rackspace in the event there is a disclosure of Confidential Information other than authorised by this Agreement, either intentionally or inadvertently, and to assist Rackspace in recovering any such Confidential Information and/or mitigating harm to Rackspace resulting from such unauthorised disclosure.

7 Term and Termination. Recipient may use the Confidential Information for the Purpose for a period of one (1) year from date of disclosure by Rackspace. Rackspace may terminate this agreement at any time by providing ten (10) days' advance written notice. Upon termination of the Agreement, Recipient will promptly return or destroy all originals or copies of the Confidential Information and provide written certification that it has done so. The obligations stated in this agreement shall survive expiration of this agreement as to information disclosed prior to the expiration of this agreement for a period of five (5) years from the date of disclosure.

8 Securities Laws. Recipient acknowledges that Rackspace corporate group is owned by a publicly held company, and that United States securities laws prohibit any person who has material, non-public information about a public company from purchasing or selling securities of that company, or communicating such information to any other person where it is reasonably foreseeable that the person is likely to

purchase and sell those securities. Recipient agrees that it will not use, or cause any third party to use, any Confidential Information, or other material non-public information regarding Rackspace or its Affiliates in violation of applicable laws.

- 9 Disclaimers.** Nothing in this Agreement imposes an obligation on either party to enter into any new business relationships. Rackspace makes no warranty or representation whatsoever regarding the accuracy or completeness of the Confidential Information. This Agreement does not create any assignment by Rackspace of any rights in its intellectual property.
- 10 Notices.** Notices under this agreement shall be given in writing by electronic mail, return receipt requested, confirmed by facsimile or first class post. Notices to Rackspace shall be sent to General Counsel, Rackspace US, Inc., 1 Fanatical Place, City of Windcrest, San Antonio, Texas 78218, United States of America and copied to legalnotice@rackspace.com. Notices to Recipient shall be sent to the contact address Rackspace has for the Recipient. Notice shall be deemed given, received and effective at the time sent, provided that if such time is not during normal business hours for the receiving party, notice shall be deemed given, received and effective as of the time that the receiving party's business hours next begin.
- 11 Governing Law/Disputes.** The laws of the country (or where applicable, the State) in which the contracting Rackspace entity has its registered office address (exclusive of its choice of law principles) govern this agreement. Rackspace and Recipient hereby irrevocably submit to the non-exclusive jurisdiction of the courts of the country (or where applicable, the State) in which the contracting Rackspace entity has its registered office address, in relation to any dispute arising from or relating to this agreement. Rackspace and Recipient acknowledge that injunctive relief prohibiting disclosure is an appropriate remedy under this Agreement. To the extent permitted by law, Rackspace and Recipient waive the right to a trial by jury in respect of any litigation arising out of or related to this agreement and activities connected with this agreement.
- 12 Final and Complete Agreement.** This agreement represents the final and complete agreement between Rackspace and Recipient regarding the Purpose and supersedes and replaces any prior or contemporaneous communication, understanding or agreement, whether written or oral.



I ACCEPT

(Double-click Icon attachment above to view report)

I DO NOT ACCEPT

(Close document and do not view report)