

**Amendment 1 to Vendor Contract between Rackspace Government Solutions, Inc.  
and Region 10 Education Service Center**

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**Rackspace Government Solutions, Inc.** (“**Rackspace**”) agreed to a Vendor Contract with its signed proposal, including certain exceptions, dated March 4, 2021, and **Region 10 Education Service Center** (“**Region 10 ESC**”) countersigned such contract on May 4, 2021 (Rackspace and Region 10 ESC collectively, the “**Parties**”) which Vendor Contract has an effective date of May 1, 2021 (the “**Vendor Contract**”). This amendment (the “**Amendment 1**”) documents the Parties’ agreement of such exceptions and is attached to and specifically made a part of the Vendor Contract.

Notwithstanding any of the terms and conditions contained in the Vendor Contract, the Parties agree to amend the following terms and conditions of the Vendor Contract, retroactively effective as of May 1, 2021 (the “**Amendment Effective Date**”):

1. Section 5.1 – Cancellation for non-performance or contractor deficiency

The following new language is added after the first sentence of this section:

*“For clarity, “low volume” shall be understood to mean no sales related to services offered under the Vendor Contract.”*

2. Section 5.2 – Termination for Cause

The first sentence of this section shall be deleted in its entirety and replaced with the following:

*“If, for any reason, the Vendor fails to fulfill its obligation in a timely manner, or if the Vendor violates any of the covenants, agreements, or stipulations of this contract (such failure or violation referred to as a “breach”), and where the breach is remediable, does not remedy the breach within 30 business days of receipt of written notice describing the breach, Region 10 ESC reserves the right to terminate the contract immediately and pursue all other applicable remedies afforded by law.”*

3. Section 5.3 – Delivery/Service Failures

This section shall be deleted in its entirety and replaced with the following:

*“The parties agree that SLA(s) credits stated in any applicable SLA(s) are Regional 10 ESC’s sole and exclusive remedy for Rackspace’s failure to deliver goods or services within the time specified or failure to make replacements or corrections of rejected articles/services. The maximum credit(s) for failures to meet any applicable SLA(s) for any calendar month shall not exceed 100% of the then current monthly recurring Fee for the Services. Customer is not entitled to a credit if Customer is in breach of the Agreement at the time of the occurrence of the event giving rise to the credit, until such time as Customer has remedied the breach. No credit shall be due if the credit would not have accrued but for Customer’s action or omission.”*

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4. Section 7.2 – Inspection & Acceptance

This section is deleted in its entirety and replaced with the following:

*“If defective or incorrect material is delivered, the parties agree that SLA(s) credits stated in any applicable SLA(s) are Region 10 ESC’s sole and exclusive remedy for Rackspace’s failure to meet those guarantees for which credits are provided. The maximum credit(s) for failures to meet any applicable SLA(s) for any calendar month shall not exceed 100% of the then current monthly recurring Fee for the Services. Customer is not entitled to a credit if Customer is in breach of the Agreement at the time of the occurrence of the event giving rise to the credit, until such time as Customer has remedied the breach. No credit shall be due if the credit would not have accrued but for Customer’s action or omission.”*

5. Section 8.1 – Payments

This section is deleted in its entirety and replaced with the following:

*“The participating entity using the contract will make payments directly to the awarded vendor. Payment shall be made in accordance with all provisions stated in the purchase order and any supplemental agreements thereto, and upon receipt of a properly completed invoice.”*

6. Sections 12.1 - Cleanup and 12.2 – Site Preparation

These sections are deleted and labeled as [NOT USED].

7. Section 13.3 – Indemnity

This section is deleted in its entirety and replaced with the following:

*“Vendor shall protect, indemnify, and hold harmless both Region 10 ESC, Equalis Group, each of their Affiliates, and its and their Representatives, participants, and administrators (collectively referred to as “Customer Group”) against all third party claims resulting in damages, losses and expenses arising out of or resulting from Vendor Group’s actual or alleged: (i) willful misconduct; (ii) breach of applicable law; (iii) breach of the agreement; or (iv) bodily injury (including death) or damage to tangible personal property to the extent directly caused by Vendor’s gross negligence or willful misconduct, in the preparation of the solicitation and the later execution of the contract, including any supplemental agreements with members.*

*To the extent allowable by law, Region 10 ESC shall protect indemnify, and hold harmless Vendor, its Affiliates and any of its and their Representatives (collectively referred to as “Vendor Group”) against all third party claims resulting in damages, losses and expenses arising out of or resulting from Customer Group’s actual or alleged (i) willful misconduct; (ii) breach of applicable law; (iii) breach of the agreement; or (iv) bodily injury (including death) or damage to tangible personal property to the extent directly caused by Customer Group’s gross negligence or willful misconduct in the preparation of the solicitation and the later execution of the contract, including any supplement agreements with members.*

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*If either party receives notice of a claim that is covered by this section 13.3, the party seeking indemnity shall give the other party prompt written notice thereof to the financially responsible party (the "Indemnifying Party"). The Indemnifying Party shall be allowed to conduct the defense of the matter, provided that it uses due care and diligence, and provided that its decisions regarding the defense of the matter are reasonable and are promptly communicated to the party against whom the claim is made (the "Indemnified Party"). The Indemnifying Party's choice of counsel to defend the claim shall be subject to the approval of the Indemnified Party, not to be unreasonably withheld, conditioned or delayed. The Indemnifying Party may not settle the claim without the consent of the Indemnified Party, not to be unreasonably withheld, conditioned or delayed, and shall keep the Indemnified Party reasonably apprised of the status. The Indemnified Party shall, at the expense of the Indemnifying Party, provide such information and assistance as the Indemnifying Party may reasonably request. The Indemnified Party may, at its own expense, participate in the defense of the matter with counsel of its choosing."*

8. Limitation of Liability

The following new language is added to the Vendor Contract:

*"13.11 LIMITATIONS ON DAMAGES.*

*13.11.1 Notwithstanding anything in the Agreement to the contrary, and as allowable by Texas state law:*

*13.11.1.1 Customer's payment obligations to Rackspace (including the payment of any early termination fees), and each party's liability arising from: (i) death or personal injury caused by negligence; (ii) fraudulent misrepresentation; or (iii) any other loss or damages for which such limitation is expressly prohibited by applicable law, shall be unlimited.*

*13.11.1.2 Subject to section 13.11.1.1, the maximum aggregate monetary liability of either party and any of its respective Representatives in connection with the Services or the Agreement under any theory of law shall not exceed the actual damages incurred up to the greater of: (i) an amount equal to six times the Fees payable by a Customer for the Services that are the subject of the claim in the first month in which Fees are charged under the Agreement, or (ii) the total amount paid by a Customer to Rackspace for the Services that are the subject of the claim in the 18 months immediately preceding the event(s) that first gave rise to the claim.*

*13.11.2 Except for breaches of confidentiality obligations under section 13.5, neither party (nor any of its Representatives) is liable to the other party for any indirect, special, incidental, exemplary, or consequential loss or damages of any kind. Neither party is liable 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 party be liable to the other for any punitive damages; or for any loss of profits, data, revenue, business opportunities, customers, contracts, goodwill, or reputation. Nothing in this section excludes liability for damages of the type described that may be awarded to a third party in an indemnified matter."*

9. Documents Otherwise Unchanged. Except as provided in this Amendment 1, the Vendor Contract shall remain unchanged and in full force and effect. Should there be any conflict between the terms of the Vendor Contract and this Amendment 1, the terms of this Amendment 1 shall control.

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10. Counterparts. This Amendment 1 may be executed in separate counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document.

Region 10 Education Service Center	Rackspace Government Solutions, Inc.
<i>Dr. Jana Burns</i> _____ <i>Signature</i>	<i>R. Rosenberg</i> _____ <i>Signature</i>
Dr. Jana Burns _____ <i>Printed Name</i>	Rick Rosenberg _____ <i>Printed Name</i>
Deputy Executive Director _____ <i>Title</i>	Vice President and General Manager _____ <i>Title</i>
October 26, 2021 _____ <i>Date</i>	October 6, 2021 _____ <i>Date</i>