# RACKSPACE ELASTIC ENGINEERING FOR AWS, AZURE, GCP, & THE VMWARE & OPENSTACK CLOUD PLATFORMS

In addition to any other terms and conditions of Customer's Agreement with Rackspace, these Product Terms shall apply when Customer purchases the Rackspace Elastic Engineering Services.

**1. DEFINITIONS**.

"**AWS Region**" means those geographical regions defined by AWS and found at the following URL (or such successor URL as Amazon may designate in the future): https://docs.aws.amazon.com/AWSEC2/latest /UserGuide/using-regions-availability-zones.html

"**Azure Region**" means those Azure regions defined by Microsoft found at the following URL (or such successor URL as Microsoft may designate in the future): https://azure.microsoft.com/en-us/global-infrastructure/regions/

"**Google Cloud Region**" means those Google Cloud Platform regions defined by Google and found at the following URL (or such successor URL as Google may designate in the future): https://cloud.google.com/about/locations/.

"**Pod**" means a shared team comprised of an engagement manager, one or more Third Party Cloud specific engineers, and one or more Third Party Cloud specific solution architects, all supporting Customer's applicable Third Party Cloud pursuant to these Services.

"**REE Review**" means the monthly business review between Rackspace and Customer in which Pod provided Services for the previous month and the upcoming month are discussed and the REE Review Document is presented and updated.

"**REE Review Document**" means the status report document that is presented by Rackspace to Customer during the monthly REE Review.

**"Region**" means the AWS Region, Azure Region, the Google Cloud Region, and/or geographic locations in which Rackspace may provide Services, as applicable.

"**Third Party Cloud**" means Amazon AWS, Microsoft Azure, Google Cloud Platform, VMware Cloud Platform, and/or OpenStack Cloud Platform, as applicable.

"**Third Party Cloud Account**" means an AWS account, an Azure subscription, a Google Cloud Platform project, a VMware Cloud platform account, and/or an OpenStack Cloud platform accountas applicable.

**2. SERVICES**.

**2.1. Support Services**. Rackspace shall provide Customer with access to a Pod, which may be utilized by Customer to innovate, evolve, and remediate the infrastructure and engineering of the Third Party Cloud environment identified in Customer's Service Order, as directed by Customer and agreed by Rackspace. Prior to executing a Service Order, Customer may elect to have the Pod personnel for that Service Order be solely US based. The following services are a sample of the infrastructure and engineering capabilities offered by Rackspace Elastic Engineering, however actual tasks, and the scheduling and prioritization of those tasks will be defined by Customer and Rackspace through creation of a backlog in Jira (Rackspace's project management system of record), or such other system as Rackspace may later designate:

**(A) Infrastructure Builds**. Deploy new or additional infrastructure or applications into Customer's environment; and manage infrastructure for cost, performance, and scaling optimization.

**(B) DevOps and Automation**. Management, maintenance, and enhancement to automation systems for operational effectiveness, stability or security; and changes to, or a net new build out of, automation systems.

**(C) Performance Management**. Identification of performance targets and continuous adjustment of infrastructure to deliver desired performance at an optimal cost level; and application level tuning, and detailed analysis of application-level performance problems.

**(D) Database Management**. Basic database scaling, performance management, and maintenance, from an operations perspective (note that Customer will need to purchase Rackspace DataOps for access to a Pod containing specialized data engineers and/or architects).

**(E) Application Operations**. Manage configuration patching of common, off-the-shelf applications; custom upgrades and patches of off-the-shelf applications; and build out configuration frameworks and methodologies for custom applications.

**(F) Security Management**. Maintain security of the environment to Third Party Cloud best practices; respond to security incidents identified by Customer's security team; deploy Customer-provided third-party security tools; and provide evidence during Customer's audits.

**(G) Disaster Recovery Planning**. Build out new disaster recovery solutions, extend existing solutions, and/or aid customer-directed tests of disaster recovery systems.

**(H) Planned Maintenance**. Perform all preventative maintenance required for the stable and secure operation of the infrastructure, databases, and applications; and perform optional maintenance and customer-directed changes, including regular security patching.

**(I) Cost Optimization**. Implementation of architectural changes to support cost management decisions.

**(J) Major Event Support**. Enhanced monitoring, responsiveness, and management-level support of major events (launch, etc.); and daily collaboration and task management, integrated response plan, continuous business hours engineer availability.

**2.2. Pod Hours**. Customer will have access to the Pod for the number of monthly hours purchased in the applicable Service Order. Unless stated otherwise in the applicable Service Order, Pod members are available Monday through Friday between 8 a.m. and 5 p.m. in each Pod member's local time zone, excluding federal public holidays recognized in the local time zone. Pod members will be available between 7 a.m. and 4 p.m. PDT/PST for Rackspace Elastic Engineering for Government End Users, as that term is defined in the US Public Sector Terms, excluding federal public holidays in the United States.

**2.3. Named Engagement Manager**. Rackspace will assign a named engagement manager to Customer that will facilitate long-range planning, prioritization, and overall relationship management with Customer.

**2.4. Duration**. Any project duration provided by Rackspace is only an estimate, is provided as a courtesy to Customer, and is not a warranty or a guarantee of completion time. Estimated project duration is based on the complexity of all engagements comprising Customer's Services and Customer's available balance of monthly hours. Changes to any engagement workstream and/or monthly hours availability may alter project duration.

**2.5. Support Request Limitations**. Rackspace reserves the right to reject a service request made pursuant to these Product Terms if Rackspace determines, in its sole discretion, that Customer's Pod does not have adequate knowledge, skill, or training to support Customer's request in compliance with section 8.4 of these Product Terms. Notwithstanding the foregoing, Rackspace and Customer may mutually agree to permit use of Customer's purchased tier hours to train Customer's Pod to support Customer's request in full compliance with section 8.4. In the event of such mutual agreement, Rackspace will provide an estimate of hours

necessary for Customer's Pod to provide the services within the requisite standard of care. Additionally, Rackspace may provide recommendations in accordance with section 8.3 to address a rejected request.

**3. CUSTOMER RESPONSIBILITIES**. The following Customer responsibilities are necessary for successful completion of the Services. Should Customer fail to meet the obligations of this section, changes to cost, duration, and scope may be necessary. To the extent Customer's failure to meet its responsibilities under this section results in a failure or delay by Rackspace in performing its obligations, Rackspace will not be liable for such failure or delay**.**

**3.1.** Customer must assign a primary point of contact with whom Rackspace will interface. Customer's primary point of contact is responsible for ensuring Customer's compliance with the terms of the Agreement, and will:

**(A)** Have the authority to act on Customer's behalf in all aspects of the Services, including the authority to resolve conflicting requirements;

**(B)** Ensure that any communication between Customer and Rackspace is made via the appropriate engagement manager;

**(C)** Coordinate Customer's personnel schedules and resource allocation;

**(D)** Provide Rackspace with Customer's technical points-of-contact that have a working knowledge of relevant technical requirements;

**(E)** Ensure Customer resources participate in meetings, as required; and

**(F)** Review and approve all deliverables, as necessary.

**3.2.** Customer shall provide Rackspace timely responses and access to accurate and complete information relative to the Services, as reasonably requested, and such responses and information will be communicated to appropriate Rackspace personnel through the Rackspace portal or ticketing system, or as otherwise directed by Rackspace.

**3.3.** Customer will coordinate maintenance windows for affected systems with stakeholders and/or third parties, as necessary.

**3.4.** Customer will follow the Change Management procedure set out in section 6.1 for any desired changes to the scope.

**3.5.** Customer is responsible for its own data and applications, and the support of its end-users, stakeholders, or other third parties.

**3.6.** Customer will provide prompt agreement, approval, acceptance, consent, feedback, assistance, or similar action as requested by Rackspace, to facilitate all aspects of Service delivery, and such action will not be unreasonably delayed or withheld.

**3.7.** Customer must provide Rackspace with ongoing administrative access, via the Rackspace provided cloud control panel, to all Third Party Cloud Accounts covered by this Service.

**3.8.** Additional Customer obligations may be mutually agreed upon via the change management procedure identified in section 6.

**3.9.** Customer is responsible for compliance with all applicable data privacy laws and regulations and will use only secure methods, according to the applicable data privacy laws and regulations, when transferring or otherwise making personal identifiable information available to Rackspace.

**4. MOBILIZATION**.

**4.1. Service Commencement**. Unless otherwise notified by Rackspace, Customer's Services will commence following (i) return of an executed copy of Customer's Service Order to Rackspace, (ii) assignment of Pod resources, and (iii) Rackspace's good faith attempt to initiate of a kickoff call between Rackspace and Customer, which will be scheduled at a mutually agreed time following the assignment of Pod resources. If, within five Business Days of a request to initiate a kickoff call, Rackspace has not received the cooperation it deems reasonably necessary to commence Services, then Rackspace may, in its sole discretion, initiate setup of Customer within Rackspace's systems and begin billing for these Services. Following reasonable notice from Rackspace (but in no event less than five Business Days), if Customer has not provided requested cooperation in accordance with section 3, Rackspace may, without liability, reschedule service dates, and/or re-allocate Pod resources assigned to Customer, which may result in delay, additional cost to Customer, and/or modification to the scope of services provided pursuant to these Product Terms.

**4.2. Initiation and Performance of Work**. During the kickoff call, Rackspace will review Customer's business objectives and goals. On a regular basis thereafter, Rackspace and Customer will create and maintain a backlog of tasks to be completed by the Pod, and will establish acceptance criteria for each task. The tasks will be prioritized by Customer and Rackspace during regular meetings and tracked in Jira. Additionally, an REE Review will be conducted between Rackspace and Customer on a monthly basis.

**5. COMPLIANCE FRAMEWORK**. Rackspace does not provide compliance certification for any portion of the Customer Configuration. Rackspace makes no representation or warranty as to the compliance readiness of any portion of the Customer Configuration. Customer understands and agrees that compliance readiness is a system wide endeavor and may fail if a single aspect of the Customer Configuration is not compliant.

**6. CHANGE MANAGEMENT**.

**6.1. Change Management**. If Customer wishes to make changes or modifications to any task that has been agreed upon by Rackspace and Customer and subsequently documented, then Customer must notify Rackspace in writing, via ticket. Rackspace and Customer will discuss requested changes and/or modifications, and reprioritize the identified task during the next scheduled meeting, or such earlier time as the parties may mutually agree.

**6.2. Acceptance & Rejection**. During each REE Review, the Pod will identify the tasks previously completed. If an identified task meets the agreed acceptance criteria, then it will be marked complete. If the identified task does not meet the agreed upon acceptance criteria, it will be marked as incomplete and will be added to the backlog for later completion.

**7. INTELLECTUAL PROPERTY**. Any transfer of Intellectual Property that is contrary to the terms of the Master Services Agreement shall be void unless it is made in writing, conspicuously identifies the specific rights transferred between Rackspace and Customer, lists additional Fees for transfer of those rights, and is properly executed by an authorized representative of Rackspace and an officer of Customer.

**8. DISCLAIMERS & EXCLUSIONS**.

**8.1. Generally**. Anything not otherwise agreed between Rackspace and Customer in these Product Terms, the REE Review Document, the JIRA backlog, or in Customer's Service Order is out of scope for the Services.

**8.2. Service Exclusions**. These Services are remote only, and the Pod will not provide any on-site services. Rackspace may be prevented from providing Services in certain Regions. If Customer has a question as to availability of the Services in a specific Region, Customer may contact Rackspace support.

**8.3. Out of Scope Tasks**. If Customer requires implementation of a task that is out of scope for or cannot otherwise be met by these Services, but is still within Rackspace's broader capabilities, Rackspace will work

with Customer to identify Rackspace's available product or service offerings which may address Customer's need. Rackspace does not guarantee it will be able to address all service requests made by Customer.

**8.4. Standard of Care**. The Pod is comprised of cloud infrastructure generalists, and performance of these Services will be consistent with a person having the same knowledge, skill, training, and care in the same or similar circumstance. Subject to the limitations in section 2.5, if the personnel comprising Customer's Pod fail to perform in a manner consistent with this section, Rackspace will reperform the Services (following written agreement of both parties) at no additional cost to Customer. This is Customer's sole and exclusive remedy for Rackspace's failure to meet the standard of care set out in this section.

**8.5. Third Party Software**. Rackspace may provide Third Party Software for Customer's use as part of the Services and/or Deliverables, or to assist the delivery of the Services. Unless otherwise permitted by the terms of the applicable license, Customer may not: (i) assign, grant, or transfer any interest in Third Party Services or Third Party Software to another individual or entity; (ii) reverse engineer, decompile, copy, or modify the Third Party Software; (iii) modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Third Party Software; or (iv) exercise any of the reserved Intellectual Property rights provided under the laws governing the Agreement. Customer shall not be permitted to access, and shall permit Rackspace to remove, any Third Party Software which Rackspace installs solely to assist Rackspace's delivery of the Services. In the event Rackspace distributes to Customer, or otherwise provides for Customer use, any Open Source Software as part of the Services and/or Deliverables then such Open Source Software is subject to the terms of the applicable open source license. To the extent there is a conflict between the Agreement and the terms of the applicable open source license, the open source license shall control.

**9. FEES & SERVICE CHANGES**.

**9.1. Fees**. Unless otherwise stated in the Service Order, Customer shall be invoiced in arrears, on a monthly, recurring basis, in accordance with the tier identified in Customer's applicable Service Order, or as modified by a tier schedule. Each tier corresponds to the total number of hours Customer may use in a given month with its assigned Pod. Hours are only sold in tiers and may only be purchased by selecting the corresponding tier in Customer's Service Order. Hours not consumed during the applicable monthly period do not accrue, cannot be used for any subsequent period, and are forfeit. Customer is not entitled to any cash, credit, or other compensation, or item of value for forfeit hours.

**9.2. Upgrades & Downgrades**. Customer may request an upgrade to a higher tier at any time, and such upgrade will be effective beginning on the first day of the second full calendar month after Customer's upgrade request. Customer may not request downgrade to a lower tier within 30 days of a tier upgrade taking effect. Any notice received within this 30-day downgrade moratorium will be considered received on the 31st day following downgrade, and downgrade will be effective beginning on the first day of the second full calendar month after a request is considered received. Tier change requests must be communicated to Rackspace via ticket submitted through the Rackspace provided customer portal. Notwithstanding the foregoing, Customer cannot downgrade its applicable Tier for the first 90 days of its Services.

**9.3. Tier Hours Consumption**. Tier hours consumed by Customer each month will be tracked in real time as Rackspace provides Services, rounded up to the nearest minute; however, usage reports provided to Customer will be rounded to the nearest hour. Tier hours are consumed by the Pod on a per-capita basis, thus simultaneous use of more than one Pod resource will have a multiplier effect on actual tier hours consumed. By way of example, if three Pod resources are engaged with Customer during an REE Review, actual tier hours consumed during that meeting will be three times the length of that engagement.

**10. TERM & TERMINATION**. The Initial Term for these Services shall be identified in Customer's applicable Service Order, and thereafter shall renew in accordance with the terms of Customer's Agreement. Any partially billed month will not count toward a Customer's Initial Term. Notwithstanding anything to the contrary contained in Customer's Agreement, following expiration of the Initial Term for these Services, Customer may terminate these Services on 60 days' prior written notice to Rackspace, in accordance with the notice requirements of Customer's Agreement.

If notice of termination is given mid-month, such termination shall be effective 60-days from the end of the month in which the notice of termination is given.

**11. RACKSPACE PUBLIC CLOUD TERMS**. By creating a Rackspace account for these Services, Customer shall have the ability to use the Rackspace Cloud Services through the Rackspace provided cloud control panel. By making use of any Rackspace Cloud Services, Customer automatically agrees to the Rackspace Cloud Terms of Service, a copy of which can be found at: http://www.rackspace.com/information/legal/cloud/tos. Rackspace Cloud Services shall be invoiced separately from Customer's Services Fees. For avoidance of doubt, Customer's use of these Services is not subject to the Rackspace Cloud Terms of Service.

**12. NON-SOLICITATION.** To the fullest extent permitted by applicable law, during the term of the Service Order and for twelve months following expiry or termination, if Customer or its Affiliate solicits any Rackspace personnel as a full-time or part-time employee or independent contractor, Customer shall pay Rackspace a placement fee for each such hire equal to the hired individual's annual salary, plus any bonus(es) paid over the preceding twelve months. Customer acknowledges that: (i) its hiring of any Rackspace personnel shall cause Rackspace to invest substantial time and money to locate, hire and train a replacement; (ii) each of Rackspace's personnel perform concurrent services for multiple Rackspace customers, so Rackspace shall be required to cover its other customers and Rackspace may lose one or more of its other customers; and (iii) the nature of Rackspace's business model shall create additional risks and expenses for Rackspace if Customer hires any Rackspace personnel. Therefore, it is agreed these amounts accurately reflect reasonable placement fees and the reasonable value of Rackspace's time, costs, and other financial considerations, are an exclusive remedy, and are not a penalty. Nothing in this provision shall prevent Customer from (i) soliciting or hiring Rackspace personnel whose employment has been terminated for a period of six months or longer; (ii) conducting general recruiting activities, such as participation at job fairs or advertisements in publications or on websites intended for general circulation that are not directed specifically at Rackspace personnel; or (iii) use of a staffing agency, provided that Customer has not provided the staffing agency with names or other information to facilitate solicitation of the Rackspace personnel.

**13. AI PRODUCTS AND SERVICES.** Notwithstanding anything in the Agreement, where the Services under a Service Order include AI Product Offerings (as defined in the AI Product Terms), the AI Product Terms at https://www.rackspace.com/information/legal/ai-product-terms, and the Responsible AI Policy at https://www.rackspace.com/information/legal/rap (as applicable to all Rackspace Services) are hereby incorporated into these Product Terms, and shall prevail over any conflicting provision in the Agreement or these Product Terms. Customer's indemnification obligations under the Agreement shall include any third-party claim to the extent arising from Customer's violation of such terms.