



# HI-TEX SOLUTIONS ELASTIC ENGINEERING FOR AWS, AZURE, GCP, & THE VMWARE & OPENSTACK CLOUD PLATFORMS

In addition to any other terms and conditions of Customer's Agreement with Hi-Tex Solutions, these Product Terms shall apply when Customer purchases the Hi-Tex Solutions 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 Hi-Tex Solutions 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 Hi-Tex Solutions to Customer during the monthly REE Review.

**"Region"** means the AWS Region, Azure Region, the Google Cloud Region, and/or geographic locations in which Hi-Tex Solutions 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 account as applicable.

## 2. SERVICES.

**2.1. Support Services.** Hi-Tex Solutions 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 Hi-Tex Solutions. 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 Hi-Tex Solutions Elastic Engineering, however actual tasks, and the scheduling and prioritization of those tasks will be defined by Customer and Hi-Tex Solutions through creation of a backlog in Jira (Hi-Tex Solutions's project management system of record), or such other system as Hi-Tex Solutions 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 Hi-Tex Solutions 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 Hi-Tex Solutions 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.** Hi-Tex Solutions 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 Hi-Tex Solutions 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.** Hi-Tex Solutions reserves the right to reject a service request made pursuant to these Product Terms if Hi-Tex Solutions 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, Hi-Tex Solutions 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, Hi-Tex Solutions will provide an estimate

of hours necessary for Customer's Pod to provide the services within the requisite standard of care. Additionally, Hi-Tex Solutions 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 Hi-Tex Solutions in performing its obligations, Hi-Tex Solutions will not be liable for such failure or delay.

**3.1.** Customer must assign a primary point of contact with whom Hi-Tex Solutions 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 Hi-Tex Solutions is made via the appropriate engagement manager;

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

(D) Provide Hi-Tex Solutions 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 Hi-Tex Solutions 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 Hi-Tex Solutions personnel through the Hi-Tex Solutions portal or ticketing system, or as otherwise directed by Hi-Tex Solutions.

**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 Hi-Tex Solutions, to facilitate all aspects of Service delivery, and such action will not be unreasonably delayed or withheld.

**3.7.** Customer must provide Hi-Tex Solutions with ongoing administrative access, via the Hi-Tex Solutions 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 Hi-Tex Solutions.

## 4. MOBILIZATION.

**4.1. Service Commencement.** Unless otherwise notified by Hi-Tex Solutions, Customer's Services will commence following (i) return of an executed copy of Customer's Service Order to Hi-Tex Solutions, (ii) assignment of Pod resources, and (iii) Hi-Tex Solutions's good faith attempt to initiate of a kickoff call between Hi-Tex Solutions 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, Hi-Tex Solutions has not received the cooperation it deems reasonably necessary to commence Services, then Hi-Tex Solutions may, in its sole discretion, initiate setup of Customer within Hi-Tex Solutions's systems and begin billing for these Services. Following reasonable notice from Hi-Tex Solutions (but in no event less than five Business Days), if Customer has not provided requested cooperation in accordance with section 3, Hi-Tex Solutions 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, Hi-Tex Solutions will review Customer's business objectives and goals. On a regular basis thereafter, Hi-Tex Solutions 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 Hi-Tex Solutions during regular meetings and tracked in Jira. Additionally, an REE Review will be conducted between Hi-Tex Solutions and Customer on a monthly basis.

**5. COMPLIANCE FRAMEWORK.** Hi-Tex Solutions does not provide compliance certification for any portion of the Customer Configuration. Hi-Tex Solutions 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 Hi-Tex Solutions and Customer and subsequently documented, then Customer must notify Hi-Tex Solutions in writing, via ticket. Hi-Tex Solutions 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 Hi-Tex Solutions and Customer, lists additional Fees for transfer of those rights, and is properly executed by an authorized representative of Hi-Tex Solutions and an officer of Customer.

## 8. DISCLAIMERS & EXCLUSIONS.

**8.1. Generally.** Anything not otherwise agreed between Hi-Tex Solutions and Customer in these Product Terms, the REE Review Document, the Project tickets, 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. Hi-Tex Solutions 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 Hi-Tex Solutions 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 Hi-Tex Solutions's broader capabilities,

Hi-Tex Solutions will work with Customer to identify Hi-Tex Solutions's available product or service offerings which may address Customer's need. Hi-Tex Solutions 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, Hi-Tex Solutions 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 Hi-Tex Solutions's failure to meet the standard of care set out in this this section.

**8.5. Third Party Software.** Hi-Tex Solutions 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 Hi-Tex Solutions to remove, any Third Party Software which Hi-Tex Solutions installs solely to assist Hi-Tex Solutions's delivery of the Services. In the event Hi-Tex Solutions 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 31<sup>st</sup> 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 Hi-Tex Solutions via ticket submitted through the Hi-Tex Solutions 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 Hi-Tex Solutions provides Services, rounded up to the nearest half hour; 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 Hi-Tex Solutions, 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.