

# Service Schedule – Managed Infrastructure as a Service

## 1 Definitions and Interpretation

- 1.1 In this Service Schedule the words, expressions and rules of interpretation set out in the Master Products and Services Terms and the Agreement generally will apply and mean the same when used in this Service Schedule.
- 1.2 The following words and phrases will, unless the context otherwise requires, have the following meanings:

<b>“EULA”</b>	means end user licence agreement.
<b>“Limited Microsoft Warranty”</b>	shall have the meaning given to it in paragraph 3.2.
<b>“Microsoft Products”</b>	Microsoft software, which may include associated software, media, printed materials, and “online” or electronic documentation (individually and collectively).
<b>“Microsoft Remedies”</b>	shall have the meaning given to it in paragraph 3.3.
<b>“SPLA”</b>	means the Services Provider License Agreement between Microsoft and Telefónica Tech (or an affiliate of Telefónica Tech) from time to time which permits Telefónica Tech to provide access to Microsoft Products as part of the Services.

## 2 Customer Obligations

- 2.1 The Customer will, in addition to its other obligations under the Agreement:
- 2.1.1 be bound by (and ensure that all individuals who have access to software are aware of and agree to be bound by) any end user licence agreement imposed upon the Customer by any third-party provider of software to Telefónica Tech for the provision of the Services.
- 2.1.1.1 Software licence terms provided by a third party may include:
- 2.1.1.1.1 Microsoft Products;
- 2.1.1.1.2 the terms imposed by the following:  
<https://info.telefonicatech.uk/termsconditions>;
- 2.1.1.1.3 the owner or licensor of any operating system installed on a virtual machine;
- 2.1.1.1.4 the owner or licensor or any antivirus products installed on a virtual machine.
- 2.1.1.2 Third party software licences will be enforceable by the relevant software licensor;
- 2.1.2 subject to the Copyright, Designs and Patents Act 1988, not reverse engineer, decompile or disassemble any third-party software including, without limitation, Microsoft Products;

- 2.1.3 not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on third party software including, without limitation, Microsoft Products;
- 2.1.4 not use Microsoft Products in any application or situation where the Microsoft Product(s) failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage;
- 2.1.5 report its usage of Microsoft Products provided under SPLA by the third working day of the calendar month after the usage occurred. If the Customer fails or fails to accurately report such usage, the Customer will indemnify Telefónica Tech and its Group Companies in respect of any penalties, fines, costs, contractual or other charges or expenses levied by Microsoft in respect of any such failure.

### **3 Telefónica Tech Warranties**

- 3.1 Where Telefónica Tech supplies any goods manufactured or software licensed by a third party in connection with the provision of the Services, Telefónica Tech does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but will, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the person supplying the goods. Subject to paragraphs 3.2 to 3.5 an assignment (if any) be the only warranty given to the Customer, unless otherwise agreed in writing.
- 3.2 The Customer acknowledges that Microsoft provides Telefónica Tech with limited warranties under the SPLA, namely that Microsoft Products will perform substantially as described in the applicable Microsoft Product documentation for a period of one year from the date that Telefónica Tech is first licensed for that version (“the Limited Microsoft Warranty”). The Limited Microsoft Warranty is subject to the following limitations:
  - 3.2.1 the Limited Microsoft Warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement or inconsistent with any end user licence agreement;
  - 3.2.2 the Limited Microsoft Warranty does not apply to components of Microsoft Products that Telefónica Tech is permitted to redistribute;
  - 3.2.3 the Limited Microsoft Warranty does not apply to free, trial, pre-release, or beta products; and
  - 3.2.4 the Limited Microsoft Warranty does not apply to problems caused by the failure to meet minimum system requirements.
- 3.3 If Microsoft fails to meet the Limited Microsoft Warranty set out and upon being notified within the warranty term, Microsoft has agreed at its option, to either: (1) return the price paid; or (2) repair or replace the Microsoft Products (“Microsoft Remedies”).
- 3.4 Telefónica Tech will use its reasonable endeavours to notify Microsoft within the warranty term to enable Microsoft to effect the Microsoft Remedies. Telefónica Tech will allow Microsoft to repair or replace the Microsoft Product or will pay to the Customer the price returned by Microsoft (or such proportion of the price as relates to the Microsoft Product(s) purchased by the Customer).
- 3.5 Paragraph 3.4 sets out Telefónica Tech’s sole obligation (and the Customer’s sole remedy) for a failure of the Microsoft Products to conform to the Limited Microsoft Warranty.

- 3.6 Save as set out in paragraphs 3.2 to 3.5, Telefónica Tech provides no other express or implied warranties or conditions in relation to the Microsoft Products. Telefónica Tech disclaims any implied representations, warranties, or conditions, including warranties of merchantability, fitness for a particular purpose, satisfactory quality, title or non-infringement in relation to the Microsoft Products.

#### **4 Charges and Payment**

- 4.1 In addition to the fees and charges set out in the Order Documents and the Agreement, the Customer will pay Telefónica Tech its market rates for the licensing of Microsoft Products under the SPLA for the products used.
- 4.2 Telefónica Tech's right to pass onto the Customer, increments in Fees for the Managed Services incurred from third party providers will include, inter alia, increases the fees for Microsoft Products under the SPLA.

#### **5 Indemnities**

- 5.1 The Customer will indemnify Telefónica Tech against all damages, losses and expenses arising from any action or claim arising from a breach of the SPLA (or penalty payment levied thereunder) which is caused by any act or omission of the Customer.
- 5.2 The indemnity in paragraph 5.1 is subject to the Indemnity Conditions in the Agreement.

#### **6 Further Limitation of Liability**

- 6.1 For the purposes of the Liability Provisions in the Agreement the following further limits of Liability will apply:
- 6.1.1 In respect of Liability for loss or damage arising out of or in connection with the operation of Microsoft Products, in respect of each Microsoft Product the amount the Customer was required to pay for that Microsoft Product under the SPLA;
- 6.1.2 In respect of Liability for loss or damage arising out of or in connection with the operation of any third-party software, such limit of liability as may be agreed between Telefónica Tech and the licensor of that third-party software;