

ZESTY

TERMS & CONDITIONS

May 2018

**This document will be tailored for Simply Zesty Cloud Software Managed Services.
Simply Zesty use Tibus as their G-Cloud delivery Platform.**

1. Overview

This document describes the services to be provided and the metrics for establishing compliance with the SLA. It also documents the conditions under which the service levels will be maintained as well as the procedures for solving problems. The review process is also specified.

2. Scope / Service Description

2.1 Service Hours

Tibus will provide this service 24 hours per day, 365 days a year.

All issues will be initially logged to one of several available contact numbers. Issues will be accepted within 15 minutes of fault occurrence.

The Client's website will be available 24 hours a day, 365 days a year, with core business hours of Monday – Friday between hours 8 am and 6 pm.

2.2 Location of Service Delivery

Service will be provided to the Client at the following locations:

Service monitoring and support: Tibus Limited

City Quays 2, 2 Clarendon Road, Belfast, United Kingdom, BT1 3YD

Physical environment hosting: TBA

2.3 Responsibilities

FUNCTION	TIBUS	CLIENT
Hosting	Tibus shall provide rack-space, cabling and adequate UPS dual power provision for each of the servers that comprise the Clients' platform.	
Website	Tibus will monitor the availability of defined websites and report any issues. Tibus will respond to any detected issues and report them immediately to the Client.	Client will develop, support and troubleshoot code related issues.
Hardware Support	Tibus will manage the monitoring, reporting, escalation and closure of all vendor hardware related issues. Tibus will respond to any detected issues and report them immediately to the Client.	
Environment changes	Update monitoring with any agreed changes to client environment. All changes must be managed through change control.	Discuss any changes to monitored environment with Tibus prior to implementation.
Firewall	Firewall and security devices will be monitored and managed by Tibus. Tibus will respond to any detected issues and report them immediately to the Client.	
Security	Tibus will keep Clients services secured at a hardware and Operating system level. This includes firewall and traffic monitoring and breach prevention (including but not limited to DDoS attacks). Tibus will review 3 rd party security scans reports to make sure all possible hardware and OS vulnerabilities are removed	Client will arrange 3 rd party to perform vulnerability and penetration tests on regular basis and share reports with Tibus. Client will be responsible for security of it application (including but not limited to SQL injections etc.)
OS Monitoring	Tibus will monitor the client environment at an OS level as determined in the agreed monitored objects. Tibus will respond to any detected issues and report them immediately to the Client. Tibus will make real time monitoring available to the Client.	

Backup Procedure	Tibus will ensure that a backup is performed and verified daily. Data will be backed up to onsite storage device. The backup content is the site source code, media files, database content and schemas.
IP Bandwidth Monitoring	Tibus will ensure IP connectivity for client with continuous monitoring across its suppliers.
Website Performance	Tibus will monitor the performance metrics of key hardware, operating systems, databases and application software. Tibus will respond to any detected issues and report them immediately to the Client. Tibus will make real time monitoring available to the Client.
Web Server Monitoring	Tibus will monitor the web server software to ensure correct serving of web pages and interconnectivity with database servers. Tibus will respond to any detected issues and report them immediately to the Client. Tibus will make real time monitoring available to the Client.
SQL Server Monitoring	Tibus will monitor the database environment to ensure system health and operation. Tibus will respond to any detected issues and report them immediately to the Client. Tibus will make real time monitoring available to the Client.
Domain Names	Tibus can look after Clients' registered domains on behalf of the Client. Tibus will be responsible for creating additional records and managing existing ones, as per Client requests as well as transferring existing ones when necessary.

2.4 Exceptions to Areas of Responsibility

Tibus shall have no liability or responsibility in the event that:

1. The service was shown to be available during the period in question from outside of Tibus network.

2. There was an instance of force majeure that causes unforeseen damage to both Tibus Data Centre facilities simultaneously. Force majeure shall not be invoked by Tibus where damage occurs only to the primary Data Centre facility.

- In this instance charges will not be incurred during the period of service interruption. If the service interruption leads to termination under the criteria defined in Section 8, then sample is not liable for any further charges.

3. The service unavailability was caused by Client or one of Client suppliers.

Definition: Force Majeure

Neither party shall be held responsible for any delay or failure in performance of any part of this Agreement (other than a payment obligation) to the extent such delay or failure is caused by: fire; flood; lightning; explosion; war; strike; embargo; labour dispute; government requirement; civil or military authority; act of God or nature; inability to secure materials or transportation facilities; act or omission of carriers or suppliers; acts or failures to act of any governmental authority, or any other causes beyond its reasonable control, whether or not similar to the foregoing; provided, however, that sample by reasonable of such cause shall not be relieved of its obligation to make any required payments that are due to Tibus.

2.5 Connectivity

As the Client equipment is physically hosted by Tibus, connectivity relates to the ability to serve content at an acceptable speed from the Tibus Network. Acceptable speed is a minimum of 10 Mbps. Tibus also guarantees bandwidth burst up to 1 Gbps at any given time. Such provision defines compliance within this Service Level Agreement.

Tibus guarantees to provide 99.999% availability on connectivity measured over a calendar month. If Tibus fail to meet this level of availability, Client is entitled to claim service rebate from Tibus.

- Figures in this section will be updated following the first quarterly service review.

3 Support

In the event of a problem occurring during the business day, within hours 8 am – 6 pm, Client support staff should contact the Tibus technical support team in the first instance via email and telephone call to.

For issues occurring outside of normal business hours the Client is entitled to access the Tibus 24x7 telephone support facility.

You are welcome to use the support facility for your technical queries under this SLA and Tibus encourage Client to do so.

All problems/issues will be raised within the Tibus Managed Support Desk or the Client Account Manager.

Where problems necessitate that third-party suppliers are to be contacted, Tibus will manage this.

Tibus will update the Client on all outstanding issues as detailed in section 3.3.

Tibus will meet the Client as requested by agreement with the Client and Tibus to discuss any outstanding support calls or issues arising.

3.1 Problem Resolution Process

All problems are initially logged with the Tibus Support Team and Ticketing system.

All Hardware faults will be logged with the appropriate hardware vendor by Tibus.

All problems will be immediately assessed by, and escalated within, the Tibus technical team, where all System, Database, Routing and Firewall problems are addressed.

Once a fault has been logged it will be classed according to the priority codes in Section 3.2 and escalated appropriately until its successful resolution.

Where any such problems are occurring on a regular basis, and the solution can be exactly defined, these problem/resolution steps will be discussed at a scheduled review meetings.

3.2 Fault Response and Resolution Times

When a fault is detected or reported, Tibus, in discussion with Client, will assign a priority to the problem as follows:

PRIORITY	DESCRIPTION
1	Client service non-functional with high impact on client operations.
2	Client service functional but with impact on client operations. Possible unavailable to large amount of users or experiencing performance issues.
3	Minor problems with very low impact on client operations.
4	Cosmetic and documentation errors.
5	Change request.

In the event of dispute as to the classification of a problem, the matter shall be escalated immediately to the senior technical contacts, and the Tibus Account Manager informed.

Faults are not resolved unless both parties agree that is so

3.3 Fault/Issue Acceptance and Reporting

Tibus will accept all faults/issue requests within 15 minutes of fault being reported to Tibus, or Tibus becoming aware of fault.

Tibus will report progress to the Client on the following basis:

- Priority 1: every 15 minutes
- Priority 2: twice per hour
- Priority 3: twice per day
- Priority 4: once per day
- Priority 5: as agreed

Outside working hours, Priority 1&2 faults can be logged through the 24x7 support facility. Response times for Priority 1&2 issues apply at all times. Response times for priority 3, 4, and 5 issues apply to working hours only.

3.4 Fault Resolution

Tibus will commence working towards a resolution of the problem once accepted and will use all reasonable endeavours to resolve faults.

PRIORITY	RESPONSE TIMES	TARGET TIME FOR RESOLUTION
1	15 minutes	1 hour
2	15 minutes	1 hour
3	15 minutes	4 hours
4	60 minutes	24 hours
5	Request dependent	Agreed with Client

All Fault Report Documents where requested are due for delivery within 24 hours of resolution.

3.5 Fault Escalation

Call Priority	Escalation Level	Outage Duration exceeding	Tibus Contact	sample Contact
1	level 1	15 minutes	Senior Engineer	TBC
	level 2	1 Hour	Director of Network Services	TBC
2	level 1	1 hours	Senior Engineer	TBC
	level 2	2 hours	Account Manager	TBC
3	level 1	4 hours	Lead Technical Support	TBC
	level 2	8 hours	Senior Engineer	TBC
4	level 1	2 day	Lead Technical Support	TBC
	level 2	4 days	Senior Engineer	TBC

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Tibus will provide Internet Security for the Clients' platform using its shared perimeter firewalls and managing the firewall provision service.

4.2 Remote Access Connectivity

Remote access is provided via remote access software from the client's offices to the Tibus hosting facility.

4.3 Breaches

All security breaches must be reported to the Client within 24 hours of the incident. Following any such incident a risk analysis would be conducted and remedial steps carried out depending on the nature of the breach. In the

event of a security breach Tibus would hold a face-to-face briefing with the affected Client to review the problem and any corrective action performed.

5 Service Level Agreement Review

This Service Level Agreement will be operative for a minimum period of 36 months.

Quarterly review meetings or conference calls will be held by the Tibus Account Manager and Account Director and the Client contact at Client.

The review meeting will look at all issues raised since previous meeting.

Reports detailing all of the above will be provided to client in advance of the review meeting.

Tibus and Client will also review the Service Level Agreement during the quarterly review.

6 Server Availability Commitment

6.1 Server Availability Commitment Scope

Tibus' Service Availability Commitment for any Node (as defined below) is to assure Customer's Array availability to equal or above than 99.999%. A Node is defined as two (2) or more Servers (including firewalls) which are configured for redundant functionality.

6.2 Scheduled Maintenance Scope

Scheduled Maintenance shall mean both;

- (i) any maintenance in the Tibus data centre at which Customer's Node is located (a) of which Customer is notified at least 5 working days in advance and (b) that is performed during a standard maintenance window to be scheduled outside of normal business hours to the applicable data centre and;
- (ii) any maintenance (a) of which Customer is notified at least 24 hours in advance if the Array may not be accessible to the Internet and that is either (b) performed during a standard maintenance window or (c) performed during a nonstandard maintenance window at a time approved by the Client. Notice of Scheduled Maintenance will be provided to the Client's designated point of contact.

Scheduled Maintenance and/or Planned Outages shall be performed by Tibus at a time acceptable to sample and where practicable, outside of Business Hours. Major Scheduled Maintenance shall be performed at weekends. All maintenance will be conducted in order to minimise disruption to services as much as possible. Scheduled maintenance does not affect service credit calculations.

6.3 Server Availability Commitment Process

If Customer opens a trouble ticket with the Tibus technical team as well as Account Manager within thirty (30) days of Customer's Server(s) unavailability, that outage will be used to calculate Server or Node unavailability for the remedies provided below. Server or Node shall be deemed unavailable if Tibus' standard hardware, software, operating system or network is functioning in a manner that prevents HTTP, HTTPS, or SQL access, if applicable, to the Server or Node. Unavailability shall not be deemed to occur as a result of maintenance

activities; acts or omissions of Customer or its agents; failure of Customer supplied content or code; failure of any non-standard hardware or software installed by Tibus or Customer; or events of Force Majeure (as defined). Periods of unavailability during which the customer is in breach of its agreement with Tibus, including, but not limited to, violation of the Policy or payment default, shall not be used to calculate Server or Node unavailability to determine the remedies provided below.

6.4 Server Availability Commitment Remedy

If the Customer's Node was unavailable for over 0.001% time within a month, Tibus, upon the Customer's request, will credit the Customer's account the pro-rated cost for one-day's charges for each hour of unavailability, up to a maximum of 1 week's charges within any one month. For the purpose of this Service Availability Commitment Remedy, a Week shall mean the period from 12:00:01 AM Monday, until 12:00:00 AM the following Sunday.

7 Contract Clauses

7.1 Dispute Resolution

Any dispute between the parties with respect to interpretation of any provision of this Agreement or with respect to performance by Tibus or Customer shall be resolved as specified in this Section.

1. Upon the request of either party, each party will appoint a designated representative whose task it will be to meet for the purpose of endeavouring to resolve such dispute. The designated representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
2. If the designated representatives do not resolve the dispute within fourteen (14) days after the request to appoint a designated representative is delivered to a party, then the dispute shall escalate to the Network Services Director of TIBUS and the Chief Executive Officer of Customer, for their review and resolution within the next thirty (30) days. During such time, the amount subject to dispute shall be placed in a mutually agreed escrow account and held there pending resolution of the dispute. All other applicable fees not affected by the dispute are due as specified within this Agreement.
3. If the dispute is not resolved by the parties under Section 1) or 2), the parties may initiate formal proceedings. Where the controversy or claim is of a predominantly technical nature (including resolution of scope of services) and arises out of or relating to this Agreement, or the performance or interpretation thereof, it shall be settled by binding arbitration in Ireland by one arbitrator as set out below. Judgment upon any arbitration award may be entered in any court having jurisdiction thereof.
4. The parties agree to continue performing their respective obligations under this Agreement while a dispute is being resolved. The parties hereby agree that if any dispute or controversy proceeds to arbitration;
 - (i) The dispute or controversy shall be referred to a single arbitrator agreed between the parties or on failure to agree shall be referred to single arbitrator appointed at the request of the first party applying to the President for the time being of the Incorporated Law Society of Northern Ireland who shall be required to choose a suitably qualified and experienced arbitrator for the dispute in question.

- (ii) Within fourteen days after the arbitrator has accepted the appointment the arbitrator and the parties shall meet, at which time the parties shall submit a written report on the dispute and afford the arbitrator all necessary assistance which the arbitrator requires to consider the dispute.
- (iii) The arbitrator shall set a date for a hearing, which shall be no later than thirty days after the submission of written proposals pursuant to Clause(ii), to discuss each of the issues identified by the parties.
- (iv) The arbitrator shall use his best efforts to rule on each disputed issue within thirty days after the completion of the hearings set out in Clause (iii). The determination of the arbitrator as to the resolution of any dispute shall be binding and conclusive upon all parties. The rulings of the arbitrator shall be in writing and shall be delivered to the parties. In deciding matters the arbitrator shall be bound by the terms and conditions of this Agreement.
- (v) The costs, charges and expenses incurred in connection with the arbitration, including the legal costs of each of the parties, shall be the discretion of the arbitrator.
- (vi) The parties agree that any reference to an arbitrator pursuant to this Clause shall be confidential between the parties

7.2 Data Protection

The Parties agree that for the purposes of the Data Protection Acts 1998 and 2003 all related and subordinate legislation as amended or re-enacted from time to time (together the "DPA") Tibus shall at all times be a Data Processor and the Customer shall be a Data Controller.

To the extent that Tibus acts as a Data Processor under the DPA, in relation to any Personal Data processed by Tibus pursuant to this Agreement on behalf of the Customer, Tibus agrees:-

- (i) to put in place and maintain appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of or damage to Personal Data and nothing shall oblige Tibus to put in place measures which are any more robust or onerous than those which it implements in respect of its own data at any given time, unless the requirements of DPA insist on further measures in order to be compliant with legislation; and,
- (ii) to process Personal Data for and on behalf of the Customer for the purpose of performing and in accordance with this Agreement and only to use such Personal Data in accordance with the instructions of the Customer. The Customer will ensure that any Personal Data which it supplies or discloses to Tibus has been obtained fairly and lawfully and that it has obtained all necessary consents and otherwise complied with the DPA to enable it to supply or disclose such Personal Data to Tibus and for Tibus to process such Personal Data in accordance with this Agreement. Each party shall indemnify the other against all costs, claims, damages, liabilities and expenses incurred by the other as a result of a breach by the indemnifying party of its obligations under this Clause or under the DPA.

For the purposes of this Clause the terms "Data Controller" and "Data Processor" shall have the meanings prescribed under the DPA and the term "Personal Data" shall mean any and all personal data from which a living individual may be identified and which is either supplied by the Customer to Tibus for the purpose of providing the Support Services or Consultancy Services or which is collected and held by Tibus on behalf of the Customer in the course of providing the Support Services or Consultancy Services.

7.3 Change Control

All Change Requests, including increased charges, shall be logged and managed through the Tibus Change Control Portal promptly and professionally.

7.4 General

Tibus shall not assign, novate, dispose of, sub-licence, sub-contract or otherwise transfer this Agreement nor any or all of their rights and obligations hereunder to any third party without the prior written consent of the Customer.

8 Contractual Periods and Termination

8.1 Contract Term and Termination

The sample platform is subject to an initial 36 month minimum term. Tibus will continue to supply all services under this framework to the Client after the initial period on the terms agreed in this SLA, unless you instruct us in writing no later than ninety (90) days before the date you wish to terminate the service. You can terminate any individual service within the applicable initial term but remain liable for all monies due within the initial term. Notice to terminate within the initial term must also be given in writing.

8.2 Chronic Service Termination

sample may cancel the Service, at its option and without penalty, if: (i) there are three (3) or more of the same occurrence, during any thirty (30) day measuring period, in which Tibus fails to meet any metric as detailed in this SLA ; or (ii) a single outage lasting 1 Day or more. Should the Customer wish to use the right to cancel the services under this clause, sample shall provide a thirty (30) day written termination notice to Tibus within forty-eight (48) hours after the occurrence of the outage or repeat incident on which this right is based on. Upon the first repeat incident in the same month of a failed metric for the Service, Tibus will provide sample with a remedial plan of action that will prevent the problem from becoming chronic.

8.3 Ownership Clause

At any time during term of the contract as well as on its termination, Client can choose to purchase hardware and software being leased out to Client by Tibus. That includes, but is not limited to, servers, switches, routers, other network devices and software licensing.

9. Agreement

Tibus Signatory	
PRINT NAME	_____
POSITION	_____
SIGNATURE	_____
DATED	_____
 sample Signatory	
PRINT NAME	_____
POSITION	_____
SIGNATURE	_____
DATED	_____