



G-Cloud 15
TERMS AND CONDITIONS
ZEAL SOLUTIONS
PROCLUS Platform
Lot 2 Cloud Software

Zeal Solutions Limited, Antenna Creative Centre, 15 Beck Street, Nottingham, NG1 1EQ,
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Company number: 05895359 | **VAT registration number:** 856493385

Terms and conditions overview

PARTIES:

- (1) **Zeal Solutions Limited** (registered number 05895359), a company registered in England and Wales whose registered office is at 15 Beck Street, Nottingham, NG1 1EQ (“**Zeal**”); and
- (2) The “**Client**”

WHEREAS:

- (A) Zeal has agreed to provide the Client with access, via the Internet, to certain software on the terms and conditions set out in this Agreement.
- (B) The provision of access to the software and any additional services shall be conditional upon the timely payment of the applicable charges by the Client in accordance with Clause 7.

IT IS AGREED as follows:

1. Definitions and interpretation

1.1 In this Agreement the following words and expressions shall have the meanings set out below:

“**Acceptable Fault**” means a Fault which the parties agree does not need to be corrected;

“**Acceptance**” or “**Accepted**” means that the Software Service has successfully completed the Acceptance Tests in accordance with the provisions herein;

“**Acceptance Tests**” means the tests conducted by the Client to test whether the Software Service complies with the applicable Requirements (and “**Acceptance Testing**” shall be construed accordingly);

“**Acceptance Test Scripts**” means the written scripts defining the Acceptance Tests;

“**Additional Services**” means any additional services to be supplied by Zeal to the Client, as set out in a Statement(s) of Work;

“**Agreement**” means this Software as a Service Agreement including all Statement(s) of Work;

“**Change Note**” means a note setting out agreed changes to the Services or any of the terms of this Agreement in a format agreed between the parties;

“**Charges**” means the charges payable by the Client to Zeal for Use of the Software Service and the provision of the Support and any Additional Services, as set out in each Statement(s) of Work;

“**Client Material**” means all information data and material (including any personal data) which is provided by the Client to Zeal for use in the performance of the Services, or the data of the Client and/or the Users which is processed by the Software Service, including any update, developments or modification of such information data and material;

“**Customisation and Implementation Services**” means the development of the Initial

Requirements and their implementation into the Software Service by Zeal, as specified in the applicable Statement of Work;

“Data Protection Laws” means as applicable and binding on the Client, Zeal and/or the Services:

- (a) in the United Kingdom:
 - (i) the Data Protection Act 1998 and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive); and/or
 - (ii) the GDPR, and/or any corresponding or equivalent national laws or regulations;
- (b) in member states of the European Union: the Data Protection Directive or the GDPR, once applicable, and all relevant member state laws or regulations giving effect to or corresponding with any of them; and
- (c) any applicable laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;

“Data Subject Request” means a request made by a data subject to exercise any rights of data subjects under Data Protection Laws;

“Development Services” means the development of additional Requirements by Zeal in accordance with an accepted Change Note;

“Documentation” means the training guides and other materials provided by Zeal to assist the Client with the use of the Software Service, as specified in the Statement of Work;

“Effective Date” means the date of this Agreement;

“Error” means any material or reproducible failure of the Software Service to operate in accordance with the Documentation;

“Fault” means the non-compliance of the Software Service with the expected Acceptance Test results which does not constitute an Acceptable Fault;

“Force Majeure” means acts of God, war, hostilities, riot, fire, explosion, accident, flood, sabotage, lack of adequate power, raw materials or labour, strike, lock-out or injunction compliance with governmental laws, regulations or orders, sickness or indisposition of key Zeal employees, or any other cause whether or not of the class or kind enumerated which affects performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the party affected;

“GDPR” means the General Data Protection Regulation (EU) 2016/679;

“GDPR Date” means from when the GDPR applies on 25 May 2018;

“Go Live Date” means the estimated launch date specified in the applicable Statement of Work or otherwise agreed between the parties for the “live” use of the Software Service by the Client or any subsequent additional Requirements;

“Initial Requirements” means the Client’s Requirements to be delivered for the Go Live Date as part of the Customisation and Implementation Services, as specified in the applicable Statement of Work

“Intellectual Property Rights” means all intellectual property rights, including patents, utility models, trade and service marks, trade names, domain names, right in designs, copyrights, moral rights, topography rights, rights in databases, trade secrets and know-how, in all cases whether or not registered or registrable and including registrations and applications for registration of any of these and rights to apply for the same, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world;

“Personal Data Breach” means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;

“Protected Data” means personal data received from or on behalf of the Client in connection with the performance of Zeal's obligations under this Agreement;

“Portal” means the software and hardware infrastructure of which certain access, as described herein, is made available to the Client via the website located at the following URL: <https://CBRN.pro-clus.co.uk> or such other URL(s) as may be notified to the Client by Zeal from time to time and all software and technology created by Zeal through the provision of any Additional Services;

“Requirements” means the Client's functionality requirements in respect of the Software Service as agreed between the parties;

“Response Time” means the elapsed time during the Support Hours between (i) Zeal's logging of a problem reported by the Client and (ii) a Zeal technical support analyst capable of understanding the problem speaking to Client's support contact about the problem;

“SCC” means the standard contractual clauses for the transfer of personal data to processors established in third countries, set forth in the European Commission Decision of 5 February 2010, or any such standard contractual clauses amending or replacing the SCC;

“Sub-processor” means another data processor engaged by Zeal for carrying out processing activities in respect of the Protected Data on behalf of the Client;

“Services” means the Software Service, Customisation and Implementation Services, Development Services, Support and any Additional Services;

“Severity: Blocker” means a catastrophic problem with the Software Service which renders the Client unable to use the whole Software Service;

“Severity: Critical” means a severe problem with the Software Service and which renders the Client unable to use part of the Software Service and causing serious disruption;

“Severity: Major” means a moderate problem with the Software Service causing the Software Service not to operate as intended but which does not prevent the Client from continuing the Use the Software Service;

“Severity Minor” means a minor problem with the Software Service which has little or no impact on the Client's use of the Software Service;

“Service Levels” means the service levels at Schedule 2;

“Software” means the software to which Zeal will provide access to the Client, as set out in the Statement(s) of Work;

“Software Service” means the provision, by Zeal to the Client, of a service permitting the Users to access and Use the Software via the Portal, together with the Support and which is in

accordance with the Statement of Work;

“Statement(s) of Work” means the Statement(s) of Works executed by the Client and Zeal, substantially in the form of Schedule 1 to this Agreement;

“Support” means the support and maintenance services in respect of the Software Service described at clause 7 provided by Zeal to the Client;

“Support Hours” means between 9.00am and 5.30pm (UK time), Monday to Friday (excluding bank and public holidays);

“Test Observations” means Client recorded observations whilst conducting the Acceptance Tests;

“Use” means use for the Client’s own internal business purposes and only to the extent necessary to receive the benefit of the Services as expressly contemplated hereunder;

“Users” means the Client’s employees who are authorised to Use the Software Service in accordance with this Agreement.

- 1.2 The headings are included for convenience only and shall not affect the interpretation or construction of this Agreement.

2. Provision of the services

- 2.1 In consideration of payment of the Charges, and subject to the terms and conditions hereof, Zeal shall:
- (a) perform the Customisation and Implementation Services in accordance with clause 4 and the applicable Statement of Work;
 - (b) grant the Client a licence to the Software Service in accordance with clause 5;
 - (c) provide the Development Services in accordance with the applicable accepted Change Note; and
 - (d) perform the Support Services in accordance with clause 7.
- 2.2 The Services shall be performed with reasonable skill and care in a manner consistent with generally accepted standards for identical or similar Services.

3. Additional services

- 3.1 Subject to the payment of the relevant Charges, Zeal may provide Additional Services to the Client from time to time and in accordance with the relevant Statement of Work.
- 3.2 The Client acknowledges that any estimated start date(s) and estimated completion date(s) given for the commencement and completion of any Additional Services are estimates and are provided

for information only, and are dependent on the Client's performance of its obligations in accordance with this Agreement.

4. Customisations and implantation services, requirements

- 4.1 Zeal shall use reasonable endeavours to provide the Customisation and Implementation Services and develop any Requirements before the Go Live Date.
- 4.2 The Client acknowledges that provision of the Customisation and Implementation Services and development of any Requirements are subject to the Client's performance of its own obligations under this Agreement. Any start dates and/or completions dates are estimates and are provided for information only.
- 4.3 If Zeal discovers that it is reasonably likely to fail to provide the Customisation and Implementation Services or develop any Requirements by the Go Live Date, Zeal shall provide prompt notice to the Client of such fact. The parties shall meet as soon as practicable to discuss (without limitation) issues/concerns, cause for any delay, possible mitigating actions, estimated length of any delay and next steps. Zeal shall provide such reports and both parties shall attend such meetings as agreed between the parties to ensure continual review of the timescales and deliveries.

5. Software service

- 5.1 Subject to the payment of the Charges by the Client in accordance with Clause 8, Zeal hereby grants to the Client the non-exclusive, non-assignable, non-sub-licensable right to Use the Software Service and the Documentation and to permit Users to Use the Software Service and the Documentation for the term of this Agreement.
- 5.2 Zeal will use reasonable endeavours to ensure up time of the Software Service is in accordance with the Service Levels.
- 5.3 The Client shall and shall procure that each User shall use the Software Service and the Documentation only in accordance with the terms of this Agreement. The Client shall be responsible for all use of the Software Service by Users and shall be liable for breach of this Agreement by a User as if it were a breach by the Client.
- 5.4 The Client shall not, and shall procure that Users shall not, except as expressly permitted in this Agreement (i) modify, translate, create or attempt to create derivative copies of or copy the Software Service, the Software, the Portal and/or the Documentation in whole or in part; (ii) reverse engineer, decompile, disassemble or otherwise reduce the object code of the Software Service, the Software and/or the Portal to source code form; (iii) distribute, sub-licence, assign, share, timeshare, sell, rent, lease, transmit, grant a security interest in or otherwise transfer the Software Service, the Software, the Portal and/or the Documentation or the Client's right to use the Software Service, the Software, the Portal and/or the Documentation.
- 5.5 All customisations, enhancements and other bespoke development to the Software Service created and/or delivered shall be deemed to be part of the Software Service licensed hereunder, and ownership thereof shall vest in Zeal absolutely upon creation. For the avoidance of doubt, the Client shall not carry out any such activities without Zeal's prior written consent.

6. Acceptance

- 6.1 On completion of the Customisation and Implementation Services or the development of any Requirements, Zeal shall complete its internal tests. Once delivered and installed in the testing environment, Zeal will notify the Client that it is ready for Acceptance Tests.
- 6.2 Acceptance Tests and Acceptance Test Scripts will be developed by Zeal. The Client shall within seven (7) days of Zeal's notification of completion of the Customisation and Implementation Services or Requirements (as applicable), conduct the Acceptance Tests and record Test Observations where the results of the Acceptance Tests do not appear to match the expected results.
- 6.3 Zeal will promptly review and classify those Test Observations as Faults, new requirements or Acceptable Faults. Other than in respect of Acceptable Faults, Zeal will correct all Faults notified to it as soon as reasonably possible after the notification of them. New requirements will only be undertaken in accordance with clause 20.
- 6.4 If Zeal is asked by the Client to investigate any Test Observation which is a Fault for which Zeal is proved not to be responsible, Zeal shall be entitled to charge the Client for such investigation at its then daily rate for such work.
- 6.5 Following correction of the Faults pursuant to clause 6.4, Zeal shall resubmit the Software Service to the Client for further Acceptance Tests. On the resubmission of the Software Service to the Client, both parties shall comply with the provisions of clauses 6.2, 6.3, 6.4 and this clause 6.5 until no Faults remain outstanding, at which time the Software Service shall be Accepted.
- 6.6 Unless the Client has notified Zeal of one or more Test Observations within the period of time referred to at clause 6.2 above, Acceptance shall be deemed to have occurred on expiry of such period.
- 6.7 Acceptance of the Software Service shall be deemed on any live use of it.

7. Support

- 7.1 Throughout the term of this Agreement, subject to payment of the relevant Charges in accordance with Clause 8, Zeal shall provide the following support services during the Support Hours.
- (a) advice by e-mail on the use of the Software Service; and
 - (b) the diagnosis of Errors in the Software Service and instructions as to the rectification of such Errors by email or by remote access.
- 7.2 As soon as practicable after the Client becomes aware of an Error, it shall:
- (a) notify Zeal by telephone of the circumstances in which it arose and provide all additional available information to Zeal regarding such Error; and
 - (b) if required, provide Zeal with all access to the Client's system and audit logs necessary to enable Zeal to rectify such Error.
- 7.3 The table below shows the Response Times during the Support Hours in respect of the Severity Levels:

Error Severity Level	Response Time
Blocker	within 1 hour
Critical	within 4 hours
Major	Within 24 hours
Minor	within 48 hours

- 7.4 Zeal will log all problems with the Software Service reported by Client and notify Client as soon

as possible if it determines that no Error exists. If Zeal determines that an Error does exist, it shall notify the Client of the Error Severity Level, which it shall determine acting reasonably, and shall use all reasonable endeavours to correct such Error in the Software Service, with a level of effort commensurate with the Error Severity Level.

- 7.5 Client acknowledges that it will be solely responsible for all support of its own software, data and equipment it is using in conjunction with the Software Service. Zeal shall have no liability for any loss or corruption of any such software, data and equipment, however caused.
- 7.6 The support shall not include the diagnosis and rectification of any Error resulting from:
 - (a) the improper use, operation or neglect of the Software Service, the Software or the Portal;
 - (b) the use of the Software Service, the Software or the Portal for a purpose for which it was not designed;
 - (c) a fault in the equipment or in Client or third party software or applications or any upgrade or new release in respect thereof;
 - (d) loss or damage caused directly or indirectly by operator error or omission; or
 - (e) rectification of lost or corrupted data arising from the Client's own negligence.
- 7.7 Zeal may, at its option, offer to provide Support in respect of the matters described in clause 7.6 at its then current professional services rates provided details of such rates are disclosed to the Client prior to any Services being carried out. Client shall reimburse Zeal, at Zeal's then current professional services rates, for time spent troubleshooting an Error that Zeal determines was caused by one of the conditions set forth in clause 7.6, but was not identified as such until after Zeal began troubleshooting the Error.
- 7.8 Provision of Support as described in this clause 7 is Zeal's sole obligation, and Client's sole remedy, with respect to Errors in the Software Service. Zeal shall have no other liability or obligation to the Client with respect to any Errors with the Software Service.
- 7.9 All e-mail contact with Zeal should be to the following e-mail address unless Client is notified to the contrary by Zeal: support@zealsolutions.co.uk or support@pro-clus.co.uk.

8. Charges

- 8.1 In consideration for the provision of the Services, the Client shall pay the Charges as set out in this Clause 8 and Statement of Work.
- 8.2 The Client shall pay Zeal the Charges in accordance with payment terms set out in the Statement(s) of Work or otherwise within 28 days of receipt of the invoice (the "Due Date").
- 8.3 All payments made or to be made under this Agreement shall be made in full, without any deduction, withholding, set-off or counterclaim on account of any taxes or otherwise.
- 8.4 Zeal reserves the right to charge the Client interest on any payment not made by the Due Date. Interest will be calculated on a daily basis, both before and after any judgement, at the rate of 4 per cent per annum above the base rate from time to time of Lloyds TSB Bank plc, for the period from the Due Date until the date on which it is actually paid, compounded quarterly and payable on demand.
- 8.5 In the event of a bona fide dispute regarding any invoice or other request for payment, the Client shall immediately notify Zeal in writing and the parties shall attempt promptly and in good faith to resolve any dispute regarding amounts owed. The Client shall pay all undisputed amounts on the Due Date.
- 8.6 All Charges are exclusive of any applicable value added tax (or any successor tax) and any other applicable tax of any nature whatsoever, which will be added and shall be payable by the Client in accordance with the law applicable from time to time against receipt of an appropriate invoice.
- 8.7 Charges in respect of the Software Service may be increased by Zeal from time to time upon not

less than 90 days prior notice to the Client, such notice to take effect on any anniversary of the Effective Date save that no increase may be made during the first year following the Effective Date, or for any period in respect of which the Client has made an advance payment.

9. Duration and Termination

- 9.1 This Agreement came into force on the Effective Date and shall remain in force until terminated in accordance with clauses 9.2, 9.3 or 9.4 as set out below.
- 9.2 Either party may terminate this Agreement (which, for the avoidance of doubt, shall terminate all Statements of Work in effect) for any reason by providing the other no less than three (3) months notice in writing.
- 9.3 Either party (the “Terminating Party”) may terminate a Statement of Work or part thereof or this Agreement with immediate effect by written notice to the other party (the ‘Defaulting Party’) on or at any time after the occurrence of a material breach by the other Party of any of its obligations in the Statement of Work or this Agreement which (if the breach is capable of remedy) the Defaulting Party has failed to remedy within 30 days after receipt of notice in writing from the Terminating Party requiring the Defaulting Party to do so. For the avoidance of doubt, failure to pay Charges shall be a material breach.
- 9.4 The Terminating Party may terminate this Agreement with immediate effect by notice to the other party on or at any time after the occurrence of any of the events specified below in relation to the Defaulting Party:
 - 9.4.1.1.1 the Defaulting Party goes into liquidation either compulsorily or (except for the purpose of reconstruction or amalgamation) voluntarily;
 - 9.4.1.1.2 a receiver is appointed in respect of the whole or any part of the assets of the Defaulting Party;
 - 9.4.1.1.3 a provisional liquidator is appointed to the Defaulting Party or the Defaulting Party enters into a voluntary arrangement or any other composition or compromise with the majority by value of its creditors; or
 - 9.4.1.1.4 the Defaulting Party threatens to do any of the things listed in Clauses 9.4 (a) to (c) or an administration order is made against the Defaulting Party or any similar occurrence under the laws of any jurisdiction affects the Defaulting Party.
- 9.5 On termination of this Agreement or any Statement of Work (or any part thereof) for any reason:
 - 9.5.1.1.1 all rights and licences to use the Software Service granted hereunder shall cease;
 - 9.5.1.1.2 Zeal shall be entitled to be paid all sums due (including sums due for services performed but which have not yet been invoiced);
 - 9.5.1.1.3 Within thirty (30) days after the effective date of termination of the Agreement Zeal shall deliver the Client Material (or a copy of the Client Material) to the Client and, at the Client’s request, shall destroy all other copies of the Client Material;
 - 9.5.1.1.4 Zeal shall reimburse the Client such Charges paid by the Client in advance and representing any unused portion of the period to which the advanced payment relates, calculated on a pro-rata basis; and
 - 9.5.1.1.5 termination shall not affect the rights of either party accruing or accrued prior to the termination of this Agreement or the relevant Statement of Work as applicable.
- 9.6 On termination of this Agreement for any reason this Agreement shall continue in force to the extent necessary to give effect to those of its provisions which expressly or impliedly have effect after termination, including but not limited to clause 8 (to the extent of any unpaid obligations), 9.5, 9.6, 10, 11, 14, 17 and 18, and all other provisions necessary for their interpretation.

10. Intellectual property

- 10.1 Zeal has sole and exclusive ownership (or licence to use) all right, title, and interest in and to the Software, the Portal and Documentation, including all copyright and any other Intellectual Property Rights therein. Nothing in this Agreement will serve to transfer from Zeal to the Client any of the Software, the Portal or the Documentation, and all right, title and interest in and to the Software, the Portal and the Documentation will remain exclusively with Zeal and/or Zeal's licensors. All rights in and to the Software, the Portal and the Documentation not expressly granted to the Client are reserved by Zeal and the relevant third party licensors.
- 10.2 Except for the rights expressly granted in this Agreement, nothing in this Agreement will serve to transfer from the Client to Zeal any of the Client Material, and all right, title and interest in and to the Client Material will remain exclusively with the Client.
- 10.3 The Client grants to Zeal a non-exclusive, worldwide, non-assignable, royalty-free licence to use the Client Material for the sole purpose of performing its obligations under this Agreement.
- 10.4 Nothing in this Agreement shall prevent Zeal from using any know-how, methods, techniques or procedures owned or developed by Zeal in the course of providing the Services for any purpose.
- 10.5 All third party Intellectual Property Rights required by the Client to enable them to Use the Software Service shall be procured by the Client. Zeal shall not be liable for any delay or failure of the Client to procure such third party Intellectual Property Rights.

11. Warranties, exclusions and limitations of liability

- 11.1 Zeal cannot guarantee and does not warrant or represent that any specific results will be produced by the Software Service except as expressly set out in the Agreement. To the maximum extent permitted by law, Zeal expressly excludes any and all implied representations, warranties, obligations and liabilities in connection with the Services, the Software, the Portal and the Documentation, including but not limited to any implied warranties of merchantability, non-infringement of intellectual property, accuracy, completeness, fitness for a particular purpose, and any implied warranties arising by statute or otherwise in law or from course of dealing, course of performance, or use of trade are hereby excluded and disclaimed.
- 11.2 Subject to clause 11.5, to the maximum extent permitted by law, Zeal shall not be liable for any loss, injury, expenses, costs or damage caused in whole or part by, or resulting from:
- (1) any failure, delay, interruption or otherwise of the provision of the Services;
 - (2) the Client's actions taken as a result of the use of or reliance on the Software Service.
- 11.3 Subject to clause 11.5, the maximum aggregate liability of Zeal (including its respective agents and sub-contractors) under, arising from or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, shall not exceed in aggregate the Charges paid by the Client to Zeal under this Agreement.
- 11.4 Subject to clause 11.5, in no event shall Zeal be liable for:
- (1) any loss of profits, loss of business or business benefit, business interruption, loss of use, loss of contracts, loss of opportunity, loss of goodwill (whether direct or indirect); or
 - (2) any special, indirect, incidental or consequential losses of any nature whatsoever, whether or not caused by or resulting from its negligence or a breach of its statutory duties or a breach of its obligations hereunder, howsoever caused even if it is advised of the possibility of such loss.
- 11.5 For the avoidance of doubt, nothing in this Agreement shall be deemed to exclude, restrict or limit liability of either party (or their respective agents or sub-contractors) for death or personal injury resulting from their negligence or any liability for fraud or fraudulent misrepresentation.
- 11.6 Both parties accept that the limitations and exclusions set out in this Agreement are reasonable having regard to all the circumstances.

11.7 This clause 11 shall survive the termination of this Agreement for whatever cause.

12. Insurance

12.1 Zeal shall take out and maintain, throughout the period of this Agreement, professional indemnity insurance with a reputable UK-based insurance company to a limit of not less than £5 million per claim.

12.2 Zeal shall, upon request of the Client:

- (1) provide the Client with evidence that such insurance policies are fully paid up and in force;
- (2) allow the Client to inspect its insurance policies; and
- (3) provide the Client with copies of the full policy document for its insurance policies (if requested).

13. Force majeure

13.1 If either party is prevented or delayed from or in performing any of its obligations under this Agreement by Force Majeure, then:

- (1) its obligations under this Agreement (or, where the Force Majeure only affects some of the Services, such obligations as relate to those Services) shall be suspended for so long as the Force Majeure continues and to the extent that that party is so prevented, hindered or delayed;
- (2) the parties shall, without prejudice to the other provisions of this Clause 13.1 consult with a view to taking such steps as may be appropriate to mitigate the effects of such Force Majeure;
- (3) that party shall use all reasonable efforts to mitigate the effects of the Force Majeure upon the performance of its obligations under this Agreement.

13.2 If any Force Majeure prevails for a continuous period in excess of 2 months, either party shall be entitled to terminate this Agreement in its entirety (if all Services are affected by Force Majeure) or in part (insofar as it relates to the Services affected by Force Majeure) by giving not less than 10 working days' notice in writing to the other party.

14. Confidentiality

14.1 Each party (the "Receiving Party") shall use its reasonable endeavours to keep confidential the provisions of this Agreement and all information and documentation disclosed by the other party (the "Disclosing Party"), before or after the date of this Agreement, to the Receiving Party or of which the Receiving Party becomes aware which in each case relates to any software, operations, products, processes, dealings, trade secrets or the business of the Disclosing Party (including without limitation all associated software, specifications, designs and graphics) or which is identified by the Disclosing Party as confidential (the "Confidential Information") and will not use any Confidential Information for any purpose other than the performance of its obligations under this Agreement. The Receiving Party shall not disclose Confidential Information to any third party without the prior written consent of the Disclosing Party.

14.2 During the term of this Agreement the Receiving Party may disclose the Confidential Information to its employees and sub-contractors (any such person being referred to in this Clause as the "Recipient") to the extent that it is reasonably necessary for the purposes of this Agreement. The Receiving Party shall procure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.

14.3 The obligations contained in Clauses 14.1 and 14.2 shall not apply to any Confidential Information which is:

- (1) at the date of this Agreement already in, or at any time after the date of this Agreement comes into, the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;
- (2) furnished to the Receiving Party or any Recipient without restriction by a third party having a bona fide right to do so; or
- (3) required to be disclosed by the Receiving Party by law or regulatory requirements of any stock exchange, provided that the Receiving Party shall give the Disclosing Party as much notice as reasonably practicable of the requirement for such disclosure, but this Clause 14.3 shall not apply to Confidential Information which must not be disclosed pursuant to Clause 16.

14.4 All tangible forms of Confidential Information, including, without limitation, all summaries, copies, excerpts of any Confidential Information whether prepared by the Disclosing Party or not, shall be the sole property of the Disclosing Party, and shall be immediately returned by the Receiving Party to the Disclosing Party or destroyed upon the Disclosing Party's request or the termination of this Agreement (whichever is earlier). The Receiving Party shall not copy, reproduce, publish or distribute in whole or in part any Confidential Information without the prior written consent of the Disclosing Party.

15. Client's obligations

15.1 The Client shall perform its obligations as set out herein and in the Statement(s) of Work, including, without limitation to provide Zeal promptly with all necessary co-operation, Client Material and access to staff and timely decision making which may be reasonably required by Zeal for the performance of the Services.

15.2 The Client hereby acknowledges and agrees that it is responsible for issuing user names and passwords to the User(s). Zeal shall not be liable for (i) any delay or failure by the Client or User to issue or accept such user names and passwords; or (ii) verifying whether the usernames and passwords are sufficiently secure.

15.3 The Client hereby acknowledges and agrees that it and the Users are solely responsible for procuring and paying for access to the internet to enable them to use the Services.

15.4 The Client hereby represents, undertakes and warrants that, and shall procure that each User represents, undertakes and warrants that:

- (1) the Client and/or the User owns all rights in the Client Material necessary to grant Zeal the right to carry out its obligations pursuant to this Agreement;
- (2) the Client Material does not and will not infringe any Intellectual Property Rights or other rights of any person, nor are they obscene, defamatory, libellous or slanderous, nor will it cause injury to, invade the privacy of or otherwise violate other rights of any person;
- (3) all information supplied by the Client for the purpose of registering the User(s) is true, complete and accurate in all respects and it shall notify Zeal as soon as reasonably practicable of any changes to such information;
- (4) it shall keep and, where relevant, shall procure that all its employees and/or agents keep confidential the usernames and passwords;
- (5) it shall procure that no unauthorised access to and/or use is made of the Software Service;
- (6) it shall be liable for all access to and Use of the Software Service whether authorised by the Client or any User or not; and

- (7) it shall inform Zeal immediately if it has any reason to believe that the username and password has become known to any individuals not authorised to use them or if the Software Service is being or is likely to be used in an unauthorised way.
- 15.5 Client shall use its reasonable endeavours to ensure that all information contained in the Client Material shall be true, accurate and complete prior to its provision to Zeal. For the avoidance of doubt, Client hereby acknowledges and agrees that Zeal shall bear no responsibility or liability for checking the accuracy of the Client Material as provided to it prior to or during its use by Zeal pursuant to this Agreement.
- 15.6 In the event that the Client is in breach of this clause 15, Zeal, without prejudice to any other rights it may have in respect of such breach, may suspend the provision of the Services without notice and shall not be liable for any such suspension of the Services.
- 15.7 Zeal shall not be liable for any delay or failure to perform its obligations hereunder which arise as a result of a failure by the Client to comply with this Clause 15.

16. Data protection

- 16.1 The parties agree that, for the Protected Data, the Client shall be the data controller and Zeal shall be the data processor.
- 16.2 When used in this Agreement, the following terms shall have the same meaning as in the Data Protection Laws:
 - 16.2.1 personal data;
 - 16.2.2 data controller;
 - 16.2.3 data processor;
 - 16.2.4 data subject;
 - 16.2.5 processing; and
 - 16.2.6 supervisory authority.
- 16.3 Zeal shall process Protected Data in compliance with:
 - 16.3.1 the obligations of data processors under Data Protection Laws in respect of the performance of its obligations under this Agreement; and
 - 16.3.2 the terms of this Agreement.
- 16.4 The Client shall comply with:
 - 16.4.1 all Data Protection Laws in connection with the processing of Protected Data, the Services and the exercise and performance of its respective rights and obligations under this Agreement, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws; and
 - 16.4.2 the terms of this Agreement.
- 16.5 The Client warrants, represents and undertakes, that:

- 16.5.1 all data sourced by the **Client** for use in connection with the **Services** shall comply in all respects, including in terms of its collection, storage and **processing** (which shall include the **Client** providing all of the required fair **processing** information to, and obtaining all necessary consents from, **data subjects**), with **Data Protection Laws**;
- 16.5.2 all instructions given by it to Zeal in respect of **personal data** shall at all times be in accordance with **Data Protection Laws**; and
- 16.5.3 it is satisfied that:
 - 16.5.3.1 Zeal's **processing** operations are suitable for the purposes for which the **Client** proposes to use the **Services** and engage Zeal to process the **Protected Data**; and
 - 16.5.3.2 Zeal has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of **Data Protection Laws**.

Instructions and details of processing

16.6 Insofar as Zeal processes Protected Data on behalf of the Client:

- 16.6.1 unless required to do otherwise by **applicable law**, Zeal shall (and shall take steps to ensure each person acting under its authority shall) **process** the **Protected Data** only on and in accordance with the **Client's** documented instructions as set out in this clause 16, as updated from time to time by agreement between the parties (**see Processing Instructions**);
- 16.6.2 notwithstanding any other provision of this Agreement, if the law in any EU or EU member state requires Zeal to conduct processing of the **Protected Data** other than in accordance with the **Client's Instructions**, such processing shall not constitute a breach of this Agreement;
- 16.6.3 if **applicable law** requires it to process **Protected Data** other than in accordance with the **Processing Instructions**, Zeal shall notify the **Client** of any such requirement before **processing** the **Protected Data** (unless **applicable law** prohibits such information on important grounds of public interest); and
- 16.6.4 Zeal shall promptly inform the **Client** if it becomes aware of a **Processing Instruction** that, in Zeal's opinion, infringes **Data Protection Laws**, provided that:
 - 16.6.4.1 this shall be without prejudice to clauses 16.4 and 16.5;
 - 16.6.4.2 to the maximum extent permitted by mandatory law, Zeal shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities arising from or in connection with any **processing** in accordance with the **Client's Processing Instructions** following the **Client's** receipt of that information; and
 - 16.6.4.3 this clause 16.6.4 shall only apply from the **GDPR Date**.

Technical and organisational measures

Zeal Solutions Limited, Antenna Creative Centre, 15 Beck Street, Nottingham, NG1 1EQ,
Telephone: 01159 932 324 **Email:** support@zealsolutions.co.uk
Company number: 05895359 | **VAT registration number:** 856493385

- 16.7 Zeal shall implement and maintain appropriate technical and organisational measures so as to ensure a level of security in respect of Protected Data processed by it that is appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Protected Data transmitted, stored or otherwise processed.

Using staff and other processors

- 16.8 Zeal shall ensure that Zeal personnel authorised to process the Protected Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 16.9 The Client hereby gives Zeal a general consent to engage Sub-processors for processing of Protected Data on behalf of the Client. Zeal shall inform the Client before transferring any Protected Data to a new Sub-processor. Following receipt of such information the Client shall notify Zeal if it objects to the new Sub-processor. If the Client does not object to the Sub-processor within seven days of receiving the information, the Client shall be deemed to have accepted the Sub-processor. If the Client has raised a reasonable objection to the new Sub-processor, and the parties have failed to agree on a solution within reasonable time, the Client shall have the right to terminate this Agreement and the Services with a notice period determined by the Client, without prejudice to any other remedies available under law or contract. During the notice period, Zeal shall not transfer any Protected Data to the Sub-processor.
- 16.10 Zeal shall enter into appropriate written agreements with all of its Sub-processors on terms substantially similar to this Agreement, including without limitation the Client's right to conduct audits at the Sub-processor in accordance with clause 16.17 and 16.18, or ensure that the Sub-processor will conduct audits using external auditors at least once per year. Zeal shall remain primarily liable to the Client for the performance or non-performance of the Sub-processor's obligations.
- 16.11 Upon the Client's request, Zeal is obliged to provide information regarding any Sub-processor, including name, address and the processing carried out by the Sub-processor.

Assistance with the Client's compliance and data subject rights

- 16.12 Zeal shall refer all Data Subject Requests it receives to the Client within *three* business days of receipt of the request, provided that if the number of Data Subject Requests exceeds three in any *calendar month*, the Client shall pay Zeal's charges calculated at Zeal's then prevailing time and materials rates for professional services or such other charges as may, at the relevant time, be agreed by the parties in writing, for recording and referring the Data Subject Requests in accordance with this clause 16.12.
- 16.13 From the GDPR Date, Zeal shall provide such reasonable assistance as the Client reasonably requires (taking into account the nature of processing and the information available to Zeal) to the Client in ensuring compliance with the Client's obligations under Data Protection Laws with respect to:
- 16.13.1 security of processing;
 - 16.13.2 data protection impact assessments (as such term is defined in Data Protection Laws);
 - 16.13.3 prior consultation with a supervisory authority regarding high risk processing; and
 - 16.13.4 notifications to the supervisory authority and/or communications to data subjects by the Client in response to any Personal Data Breach,

provided the Client shall pay Zeal's charges calculated at Zeal's then prevailing time and materials rates for professional services or such other charges as may, at the relevant time, be agreed by the parties in writing for providing the assistance in this clause 16.13.

International data transfers

- 16.14 If the processing carried out by Zeal includes the transfer of personal data to a country outside of the EEA which is not recognised by the European Commission to have an adequate level of protection in accordance with Data Protection Law, the Client and Zeal shall enter into a supplementary agreement containing the SCC. This will not apply if all such transfers are made to Sub-processors as described in the following paragraph.
- 16.15 If processing of personal data under this Agreement includes the transfer of personal data to a Sub-processor located in a country outside of the EEA which is not recognised by the European Commission to have an adequate level of protection in accordance with Data Protection Law, Zeal shall be entitled and obligated to enter into a supplementary agreement with the Sub-processor containing the SCC, in the name and on behalf of the Client or on behalf of all Zeal's Clients, before any Personal Data is transferred to such Sub-processor. Zeal shall provide the Client with a copy of such signed SCC agreement. The agreement with the Sub-processor need not include the SCC if the Sub-processor is a Privacy Shield participant, and as long as the EU-US Privacy Shield Framework has not been adjudged, by any relevant court or supervisory authority, not to provide an adequate level of data protection.
- 16.16 If and to the extent this Agreement and the SCC are inconsistent, the provisions of the SCC shall prevail.

Records, information and audit

- 16.17 Zeal shall maintain, in accordance with Data Protection Laws binding on Zeal, written records of all categories of processing activities carried out on behalf of the Client.
- 16.18 Zeal shall, in accordance with Data Protection Laws, make available to the Client such information as is reasonably necessary to demonstrate Zeal's compliance with its obligations under Article 28 of the GDPR (and under any Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Client (or another auditor mandated by the Client) for this purpose, subject to the Client:
- 16.18.1 giving Zeal reasonable prior notice of such information request, audit and/or inspection being required by the Client;
 - 16.18.2 ensuring that all information obtained or generated by the Client or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the supervisory authority or as otherwise required by applicable law);
 - 16.18.3 ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to Zeal's business, the Sub-Processors' business and the business of other Clients of Zeal; and
 - 16.18.4 paying Zeal's reasonable costs for assisting with the provision of information and allowing for and contributing to inspections and audits.

Breach notification

- 16.19 In respect of any Personal Data Breach involving Protected Data, Zeal shall, without undue delay:

16.19.1 notify the Client of the Personal Data Breach; and

16.19.2 provide the Client with details of the Personal Data Breach.

Deletion or return of Protected Data and copies

16.20 Zeal shall, at the Client's written request, either delete or return all the Protected Data to the Client in such form as the Client reasonably requests within a reasonable time after the earlier of:

16.20.1 the end of the provision of the relevant Services related to processing; or

16.20.2 once processing by Zeal of any Protected Data is no longer required for the purpose of Zeal's performance of its relevant obligations under this Agreement,

and delete existing copies (unless storage of any data is required by applicable law and, if so, Zeal shall inform the Client of any such requirement).

17. Non-solicitation of employees

During the period this Agreement is in effect and for a period of 6 months thereafter, neither party shall solicit or to offer employment to any employees of the other or any sub-contractors used by the other hereunder without the prior written consent of the other.

18. General

18.1 This Agreement hereto constitutes the entire agreement and understanding of the parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement.

18.2 Each of the parties acknowledges that in entering into this Agreement on the terms set out herein it has not relied on or been induced to enter into this Agreement by any representation, warranty, undertaking, promise or assurance made or given by any other party or any other person, whether or not in writing, at any time prior to the execution of this Agreement other than those expressly set out in this Agreement or any applicable Statement of Work.

18.3 If any part of any provision of this Agreement shall be invalid or unenforceable, then the remainder of such provision and all other provisions of this Agreement shall remain valid and enforceable.

18.4 No amendment or variation of the terms of this Agreement shall be effective unless it is made or confirmed in a written document signed by both parties.

18.5 No delay in exercising or non-exercise by either party of any of its rights under or in connection with this Agreement shall operate as a waiver or release of that right. Rather, any such waiver or release must be specifically granted in writing signed by the party granting it.

18.6 Nothing in this Agreement or any document referred to in it or any arrangement contemplated by it shall be construed as creating a partnership between the parties for any purpose whatsoever and neither party shall have the power or authority to bind the other party or impose any obligations on it to the benefit of any third party.

18.7 The parties do not intend any term of this Agreement to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999.

18.8 Neither party shall assign any of its rights under this Agreement without the prior written consent of the other party.

18.9 This Agreement shall be construed in accordance with English law and the parties irrevocably

submit to the exclusive jurisdiction of the English courts to settle any disputes, which may arise in connection with this Agreement.

18.10 Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be:

- (1) delivered in person; or
- (2) sent by registered mail return receipt requested; or
- (3) sent by overnight air courier; or
- (4) transmitted by facsimile

in each case forwarded to the appropriate address set forth herein. Either Party may change its address for notice by written notice to the other Party. Notices will be considered to have been given at the time of actual delivery in person, or three (3) business days after posting, or one (1) day after (i) delivery to an overnight air courier service or (ii) the moment of transmission by facsimile with receipt of such facsimile confirmed by telephone by the intended recipient.

19. Change control

19.1 Client may request, and Zeal may recommend, changes to the Services by issuing a Change Note to the other Party. Zeal shall not implement any change unless the authorised representatives of both parties have agreed the proposed changes and associated costs in writing by signing a Change Note. For the avoidance of doubt, Zeal will continue to supply the Services as previously agreed unless and until a Change Note has been signed.

19.2 Each Change Note will contain the reason for the change, full details of the change, costs associated with the change, the revised charges, if any, of the change and a timetable for implementation.

19.3 Where, pursuant to this clause 19, Client has requested Zeal to state in writing the effect of a proposed change, Client shall within twenty-eight (28) days of receipt of Zeal's submission or such other period as is reasonable in the circumstances, inform Zeal in writing whether or not it accepts Zeal's submission and intends to proceed with such change. In the event that, for whatever reason, Client decides not to proceed with such change, Zeal shall have the right to be reimbursed by Client for its costs and expenses necessarily incurred in the preparation of its submission, provided that Zeal shall have provided details of such costs within thirty (30) days, or such other period as may be agreed, of the date of Client's letter informing Zeal that it did not intend to proceed with the change.

EXECUTION

For and on behalf of

Zeal Solutions Limited

Signed.....

Print Name.....

Title.....

Date.....

For and on behalf of

THE CLIENT

Signed.....

Print Name.....

Title.....

Date.....

SCHEDULE 1
PRO FORMA STATEMENT OF WORK¹

This Statement of Work forms part of and is subject to the Software as a Service Agreement dated [] between Zeal Solutions Ltd and the Client and is in addition to all other Statement of Work between Zeal and the Client.

1. Software Service:

PROCLUS software. The licence fee that is chargeable is associated with access for the number of Users shown to the following software provision and services:

PROCLUS APPLICATION	NUMBER OF USERS
1.	
2.	

Each module is designed to meet the specific needs of the Client, this therefore entails meeting with clients on a regular basis to enhance the functionality of each module in line with needs.

As part of the licence fee, Client is also provided with: dedicated hosting arrangements on a secure server, user and technical support and training. In addition, Client is provided with dedicated account/project management support, regular updates and involvement at user engagement events.

User Training

All Users are offered training on the PROCLUS system. Familiarisation training is provided within a licence period, prices are shown in the pricing document.

All users receive a training manual/access to help guidance and have access to the support service. In addition, training guides and other materials may be provided to users. Wherever appropriate, bespoke training materials are produced to support the user experience.

Whenever a new component is added to a module or a new module is requested, users can request training on the new component and/or new module in line with the cost model outlined above.

Support

See clause 7 of the Agreement.

User Engagement

PROCLUS is a dynamic system that evolves in line with user requirements. To ensure the system is developed in line with user requirements the following engagement activities are completed following successful implementation of the system:

- Each client site is visited at least once in every licence period to determine local needs.
- Each client site has access to a dedicated account manager to raise any specific issues.

- Each client site is invited to attend a PROCLUS user design group events that are held throughout the year either at client sites or at the Zeal head office.
- Each client site receives regular support updates or messages as necessary.

Account Management

As a bespoke service, Client is provided with access to a dedicated account/project manager. The account/project manager is available to the Client to provide any necessary day to day support and ensure system implementation and use is in line with requirements. Account managers are available during normal business hours (09:00 to 17:00). Out of office hours account/project management support is also available and will be considered and charged on a needs basis.

Bespoke Developments (additional Requirements)

Bespoke developments (e.g. additional modules, features, developments or software change requests) are not covered by the annual licence fee. Any such developments will need to follow a standard business case process which must outline the business need, requirement gathering, system analysis, system design, programming/development, system testing, user acceptance, system deployment, user training and user support. Confirmation of any bespoke developments will be subject to Client acceptance of costs against budget agreements

2. Additional Services:

Any additional services other than those specified in the work statement above will be estimated and outlined in a formal proposal to the Client.

3. Client Obligations

Payment of the PROCLUS licence in accordance with paragraph 5 below.

Use of the system in accordance with the SaaS terms.

4. Charges:

The parties have agreed upon the provision of access to the following number of Users to the following systems:

PROCLUS APPLICATION	NUMBER OF USERS
1.	
2.	

The annual fee for access to these systems for X users is : £ + VAT per annum and is the total amount to be paid on the effective date and on each anniversary of the effective date thereafter, unless increased by Zeal in accordance with the Agreement.

Fees are charged in line with the licence fee for up to 49 users for a single application which is £8.00 per user /per month.

For the avoidance of the doubt the Client will not be liable for any additional charges under this Agreement connected to the provision of the Services, subject to Additional Services being agreed in accordance with clause 3 and clause 7.7.

5. Payment Terms

The first payment of the Software Service Charge referred to at paragraph 4 above shall be due and payable on the Effective Date. Thereafter, such Software Service Charges shall be due and payable annually in advance on each anniversary of the Effective Date.

For and on behalf of

Zeal Solutions Limited

For and on behalf of

THE CLIENT

Signed.....

Signed.....

Print Name.....

Print Name.....

Title.....

Title.....

Date.....

Date.....

SCHEDULE 2
UPTIME LEVELS

1. Definitions

“Exclusion” means an outage, disruption or other connectivity issue referred to in paragraph 3.1;

“Maintenance Event” means maintenance of the Software Service, installation of updates and/or making modifications to the Software Service that in each case requires interruption of the Software Service;

“Scheduled Maintenance” means a Maintenance Event in respect of which Zeal has given the Client: (i) at least twenty-four (24) hours prior notice; or (ii) less than twenty-four hours notice but which takes place outside of the Support Hours; and

“Unavailable” means, subject to paragraph 3.1, that the Client is unable to log into and access the Software Service (and “Unavailability” shall be construed accordingly).

2. Service Availability

2.1 Zeal shall meet the agreed Software Service connectivity target of 99.5% for each calendar month (**“Uptime Connectivity Target”**).

2.2 Availability measurement shall be carried out by Zeal and is based on the monthly average percentage availability, calculated at the end of each calendar month as the total actual uptime minutes divided by total possible uptime minutes in the calendar month where (i) "actual uptime minutes" is the number of minutes during which the Client is able to log into and access the Software Service; and (ii) any minute during which the Software Service was Unavailable (other than as a result of any Exclusions) is not considered to be an “actual uptime minute”.

3. Exclusions

3.1. For the avoidance of doubt, the Software Service shall not be considered Unavailable during any outages, disruptions or other connectivity issues caused by:

3.1.1. Scheduled Maintenance;

3.1.2. any Force Majeure event;

3.1.3. Client or third party hardware or software, including Client's own network infrastructure, internet connectivity and available bandwidth;

3.1.4. Client's use of the Software Service after Zeal advised Client to modify its use of the Software Service, if Client did not modify its use as advised;

3.1.5. the acts or omissions of Client or its Users or such other third party gaining access to the Software Service by means of Users' passwords or equipment; or

3.1.6. any breach by the Client of its obligations under this Agreement.

4. Monitoring and Reporting

Zeal may provide access to reports of monthly availability data on request by the Client including information relating to the potential number of availability minutes within the reporting month; minutes of Unavailability and any period that did not meet or exceed the Uptime Connectivity Target.

Schedule 3

Data processing details

Under Data Protection Law, Zeal shall only process Protected Data in accordance with the Client's documented instructions, as regulated in the Agreement. This Schedule 3 forms part of the Client's Processing Instructions, directing Zeal on the scope, nature, and purpose when processing Protected Data on behalf of the Client.

1. SCOPE OF PROCESSING

Zeal shall process the Protected Data hereunder exclusively within the scope of the provision of the Services.

2. PURPOSE OF PROCESSING.

Zeal shall only process customer data to provide the agreed PROCLUS services. We use information held about you in the following ways:

- To provide you with our services.
- To administer our Software Product and to ensure that content are presented in the most effective manner for you and for the device(s) you use to access, view and interact with the Product;
- To carry out our obligations arising from any contracts entered into between you and Us.
- To allow you to participate in interactive features of our service, when you choose to do so.
- To notify you about changes to our service.

3. CATEGORIES OF DATA SUBJECTS

Zeal shall collect the following data subjects to enable secure user access and to provide the services associated with the PROCLUS system:

First name	Surname
Organisation	Email
Security clearance (where <i>applicable</i>)	Job role

4. DURATION OF PROCESSING

Protected Data shall not be processed for a period longer than is necessary for serving its purpose. In respect of all processing activities other than storage of the Protected Data, the processing shall cease on expiry or termination of the Services. In relation to storage of the Protected Data, the processing shall cease within 6 years or what is required by applicable UK tax law, following termination or expiry of the Services.

5. PROCESSING LOCATION

Processing takes place in the following country/countries: *United Kingdom*