Dated ……. 202[ ]

BESTOUTCOME LIMITED

and

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APPLICATION SOFTWARE LICENCE AND SERVICE PROVISION AGREEMENT

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info@bestoutcome.com

BestOutcome Limited
Europa House, 11 Marsham Way, Gerrards Cross,
Buckinghamshire, SL9 8BQ, United Kingdom
+44 (0) 1753 885864

THIS AGREEMENT is made this day of 202[]

BETWEEN

- **BESTOUTCOME LIMITED** incorporated and registered in England and Wales with company number 3922318 whose registered office is at Europa House, 11 Marsham Way, Gerrards Cross, Buckinghamshire, SL9 8BQ (the **"Supplier"**)

and

- **[ ]** incorporated and registered in England and Wales with company number **[ ]** whose registered office is at **[ ]** (the **"Customer"**).

RECITALS

A. The Supplier has developed and provides a portfolio, programme and project management solution and a timesheet management solution consisting of access to and maintenance and support of application software via the internet.
B. The Customer wishes to use the Supplier's service in its business operations.
C. The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

OPERATIVE PROVISIONS:

1 Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

"Administrator"	an Authorised User of the Software who is licensed to configure the Software and create, rename, update and delete database data (if an Administrator Writer) or read only database data (if an Administrator Reader) using the Software.
"Authorised Users"	those employees and independent contractors of the Customer who are entitled to use the Software through the Hosting Services under this agreement, as further described in clause 4.2.1.
"Business Day "	any day which is not a Saturday, Sunday or public holiday in the UK, but excepting 27th December to 31st December (inclusive) in each year.
"Confidential Information"	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5.
"Configuration Support"	configuration and/or initialisation support provided or to be provided by the Supplier under this agreement.
"Contractor"	the provider of the Hosting Services engaged by the Supplier from time to time.
"Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical	as defined in the Data Protection Legislation.

and organisational measures"	
"Creator"	an Authorised User of PM3 who is licensed to create, rename, update and delete database data using the Software (subject to the Software's security rules)
"Customer's Account Team"	the individuals appointed by the Customer from time to time who shall serve as the Customer's primary contacts for the Supplier's activities under this agreement. The initial members of the Customer's Account Team are listed in Schedule 2.
"Customer Data"	the data input into the information fields of the Software by Authorised Users, or by the Supplier on the Customer's behalf.
"Customer's Project Manager"	the relevant member of the Customer's Account Team appointed from time to time in accordance with clause 7.1.3.
"Customer's Project Sponsor"	the relevant member of the Customer's Account Team appointed from time to time in accordance with clause 7.1.3.
"Data Protection Legislation"	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
"Effective Date"	the date of this Agreement.
"Fees"	the fees payable to the Supplier, as described in Schedule 1.
"Hosting Services"	the services provided by the Contractor that the Supplier procures to allow Authorised Users to access and use the Software, including hosting set-up and ongoing services, on the terms set out in Schedule 6 and as subsequently amended from time to time.
"Initial Deployment"	the initial deployment of Hosting Services and setup of initial Authorised Users.
"Initial Term"	the period of thirty six (36) months from the Effective Date.
"Maintenance and Support"	any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Software, as well as any other support or training services provided or to be provided to the Customer under this agreement, all as described in Schedule 4. Note that "Maintenance and Support" as defined in this agreement does not include maintenance and support of any software (such as reports) implemented externally to the Software, irrespective of whether such software is developed by the Supplier, the Customer or any third party.
"Normal Business Hours"	9.00am to 5.30pm local UK time, on Business Days.
"Plan"	any project or programme for which the Customer or any of its Authorised Users uses the Software.
"PM3 Administrator Training"	a 2 hour session for up to five Administrators training them how to configure, initialise and provide first-line support to the Software.

"PM3 Creator Training"	a half-day training course for every Creator in the theory and practice of using the Software to create, maintain, report, link and manage portfolios and Plans.
"Services"	the Initial Deployment and/or Software Installation and/or PM3 Administrator Training and/or PM3 Creator Training and/or Configuration Support and/or Hosting Services and/or Maintenance and Support services and/or any other services referred to in, or provided or to be provided under, this agreement, as applicable having regard to the context in which the term **Services** is used.
"Software"	the Supplier's proprietary software in machine-readable object code form only known as PM3 and PM3time including any error corrections, updates, upgrades, modifications and enhancements to it provided to the Customer under this agreement.
"Software Installation"	the installation of the Software on the Hosting Services servers.
"Supplemental Agreement"	an agreement substantially in the format set out in Schedule 7 which varies and/or supplements this agreement in accordance with clause 9.
"Software Specification"	the functional specifications for the Software, as set out in Schedule 3.
"Standard User"	an Authorised User of the PM3time timesheet tool comprised within the Software who is licensed to create, rename, update and delete database data using the Software (subject to the Software's security rules).
"Term"	the term of this agreement, being the period commencing on the Effective Date and ending on the date on which this agreement expires or is terminated in accordance with its terms.
"UK Data Protection Legislation"	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), as amended.
"Viewer"	an Authorised User of the Software who is licensed only to read database data using the Software (subject to the Software's security rules).

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Words in the singular shall include the plural and vice versa.

1.6 A reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.8 A reference to **writing** or **written** includes email.

1.9 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraph of the relevant schedule.

2 Installation Services and Hosting Services

2.1 The Customer shall be solely responsible for ensuring its software and infrastructure is sufficiently specified to enable the Software to run in accordance with the technical requirements set out in the document 'Technical Requirements of Machines to Run the Software' (Schedule 5). Please note that the Software may require the use of ActiveX Controls or popups and by entering into this agreement the Customer agrees that these browser functions will be enabled on their site sufficiently for the Software to work normally; it is not the responsibility of the Supplier to modify its Software or Services nor provide support to address local infrastructure lockdown policy.

2.2 Within twenty (20) Business Days of the date on which the Supplier's notifies the Customer that the Initial Deployment has been completed (and the Software is ready for use), the Customer shall review the Software to confirm that it functions in material conformance with the Software Specification. Subject to clause 2.1, if the Software fails in any material respect to conform with the Software Specification, the Customer shall give the Supplier a detailed description of any such non-conformance ("**Error"**), in writing, within the twenty (20) day review period.

2.3 The Supplier shall use reasonable efforts to correct any such Error within a reasonable time and, on completion, give the Customer access to the corrected Software. The provisions of this clause 2.2 shall then apply again, up to three additional times. If the Supplier is unable to correct such Error after three attempts, either party may terminate this agreement subject to the provisions of clause 14.3.5 (accrued rights and liabilities).

2.4 If the Customer does not provide any written comments in the twenty (20) Business Day period described above, or if the Software is found to conform with the Software Specification, the Software shall be deemed accepted.

2.5 The Supplier shall enter into hosting arrangements with the Contractor, the terms of which shall include terms equivalent to those set out in Schedule 6, for the provision by the Contractor of the Hosting Services to the Customer. The Supplier reserves the right at any time to change the Contractor should the Supplier deem this appropriate; in this circumstance the Supplier will endeavour to minimise any disruption to the service provided to the Customer during the transfer of service from one Contractor to another.

3 Maintenance and Support Services

The Supplier shall perform the Maintenance and Support services in accordance with Schedule 4.

4 Use of the Software

4.1 The Supplier shall enable access to the Software for the Customer's Authorised Users.

4.2 In relation to Authorised Users:

4.2.1 the Customer's access to the Software shall be limited to the named, individual Authorised Users notified by the Customer to the Supplier in accordance with this agreement, in each case being an employee or independent contractor of the Customer for whom the Customer has created and purchased the applicable type of licence set out in Part 1 of Schedule 1;

4.2.2 the Customer shall ensure that each Authorised User keeps a secure password for his use of the Software, that such password is changed no less frequently than quarterly and that each Authorised User keeps his password confidential;

4.2.3 the Customer shall ensure that each and every Authorised User is one (only) named individual and user licences, logins and passwords cannot be shared between individuals in any circumstances;

4.2.4 the Customer will permit the Supplier's representatives to audit the Customer's and Authorised Users' use of the Software including, without limitation, the licence page detailing licence types and Authorised User names and licence types and the system usage logs. The Supplier may carry out such audit no more frequently than once per annum, at its own expense, and with reasonable prior notice and in a manner so as to not substantially to interfere with the Customer's normal conduct of business. The Customer will provide reasonable access to the Customer's systems to the extent reasonably required to enable the Supplier to carry out any such audit; and

4.2.5 if such audit reveals that any user licence, login and/or password has been used by any individual other than the named Authorised User to whom such login and/or password

relates, without prejudice to the Supplier's other rights, the Supplier may at any time thereafter invoice the Customer for and the Customer shall pay, a licence Fee for the same relevant user licence type as that used by such individual, for each licence period (including, without limitation, the then current licence period) until the end of the Term.

4.3 In relation to the Software:

4.3.1 the Supplier hereby grants to the Customer, on and subject to the terms and conditions of this agreement, a non-exclusive, non-transferable licence to allow Authorised Users to use the Software solely for the Customer's business purposes during the Term.

4.3.2 the licence granted under clause 4.3.1 is granted to the Customer only and is not granted to any associate, subsidiary or holding company of the Customer; and

4.3.3 the Customer shall not, and shall procure that none of its Authorised Users shall:

4.3.3.1 attempt to duplicate, modify or distribute any portion of the Software; or

4.3.3.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any of the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or

4.3.3.3 use the Software to provide services to third parties; or

4.3.3.4 store, distribute or transmit any material through the Hosting Services that is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities; or

4.3.3.5 transfer, temporarily or permanently, any of its rights under this agreement, or

4.3.3.6 attempt to obtain, or assist others in obtaining, access to the Software, other than as provided under clause 4.3.3.2.

5 Customer data

5.1 The Supplier will require the Contractor to back up of the Customer Data, in accordance with the Hosting Services Terms set out in Schedule 6.

5.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Contractor in accordance with the back-up procedure described in Schedule 6. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

5.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 5, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

5.4 The parties acknowledge that:

5.4.1 if the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the controller and the Supplier is the processor for the purposes of the Data Protection Legislation;

5.4.2 Schedule 8 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject; and

5.4.3 the personal data may be transferred or stored outside the UK or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this agreement.

5.5 Without prejudice to the generality of clause 5.3, the Customer shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the relevant personal data to the Supplier for the duration and purposes of this agreement so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.

5.6 Without prejudice to the generality of clause 5.3, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:

5.6.1 process that personal data only on the documented written instructions of the Customer (and the Customer shall ensure that it gives the Supplier such instructions in a timely manner so as to enable the Supplier to provide the Services in accordance with this agreement) unless the Supplier is required by Applicable Laws to process personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

5.6.2 not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:

5.6.2.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

5.6.2.2 the data subject has enforceable rights and effective legal remedies;

5.6.2.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

5.6.2.4 the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

5.6.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

5.6.4 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

5.6.5 notify the Customer without undue delay on becoming aware of a personal data breach;

5.6.6 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Laws to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and

5.6.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and immediately inform the Company if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

5.7 Each party shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring

that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

5.8 The Customer consents to the Supplier appointing the Contractor as a third-party processor of personal data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the Contractor into a written agreement and in either case which the Supplier confirms reflects and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this agreement.

6 Supplier's obligations

6.1 The Supplier undertakes that the Services will be performed with reasonable skill and care.

6.2 The Supplier shall use reasonable endeavours to ensure continuity of its personnel assigned to this agreement.

6.3 The Supplier undertakes that the Software will function substantially in accordance with the Software Specification. This undertaking shall not apply to the extent of any non-conformance which is caused by use of the Software contrary to the Supplier's instructions or modification or alteration of the Software by any party other than Supplier or Supplier's agents. If the Software does not conform with the foregoing warranty, the Supplier will, at its expense, use reasonable commercial efforts to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired functions. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in this clause 6.3. Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Software and the Services will be uninterrupted or error-free.

6.4 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this agreement.

6.5 The Supplier shall provide a short presentation summary to the Customer's Authorised Users of key changes to Software present in every new release of the Software.

6.6 The Supplier will not, unless authorised in writing by the Customer, change live Customer Data using native SQL, but in the event that the Supplier makes any such changes at the Customer's request, subject to clause 13.3, the Supplier shall not be responsible or have any liability for any resultant loss or damage arising (including without limitation loss of or corruption of Customer Data).

7 Customer's obligations

7.1 The Customer shall:

7.1.1 provide the Supplier with:

7.1.1.1 all necessary co-operation in relation to this agreement; and

7.1.1.2 all necessary access to such information and premises,

as may be required by the Supplier in order to render the Services, including but not limited to Customer Data, security access information and software interfaces to the Customer's other business applications;

7.1.2 ensure that its personnel (including but not limited to the Customer's Account Team) shall provide such assistance as may be reasonably requested by the Supplier from time to time;

7.1.3 appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on all matters relating to this agreement and the Customer's Project Sponsor, who shall be a senior executive at the Customer and have overall responsibility for this agreement and the Customer's use of the Software and Services. The Customer's Project Manager and Customer's Project Sponsor and the Supplier's account manager and project sponsor equivalents, as at the date of this Agreement, are set out in the Schedule 2. Each party shall notify the other promptly of any change in these appointments. The Customer shall use reasonable endeavours to ensure continuity of the Customer's Project Manager and the Customer's Project Sponsor;

7.1.4 ensure that the relevant members of the Customer's Account Team attend the review meetings referred to in the "Governance" section of Schedule 2;

7.1.5 procure that all Administrators attend PM3 Administrator Training;

7.1.6 procure that all PM3 Creators attend PM3 Creator Training (unless otherwise agreed in writing by the Supplier);

7.1.7 procure that all PM3 Users have access on their client machines to view (and, ideally, manipulate) PNG files (e.g. Microsoft Paint, Windows Picture Viewer);

7.1.8 <not used>;

7.1.9 comply with all applicable laws and regulations with respect to its activities under this agreement; and

7.1.10 carry out all other Customer responsibilities set out in this agreement or in any of the Schedules in a timely and efficient manner. In the event of any delays in Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any timetable or delivery schedule set out in this agreement as reasonably necessary.

8 Charges and payment

8.1 The Customer shall pay the Supplier the fees and charges set out in Schedule 1, (as amended from time to time under clause 8.4 and/or clause 9) in accordance with this clause 8.

8.2 The Customer shall reimburse the Supplier for all reasonable travel expenses including, but not limited to, airfare, train fare, mileage (petrol), hotel and meals incurred by the Supplier in connection with the performance of the Services. Any such expenses will need to be pre-approved by the Customer.

8.3 All amounts and fees stated or referred to in this agreement are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

8.4 All the fees and rates set out in Schedule 1 (as amended from time to time in accordance with this agreement) shall be increased each year on each anniversary of the Effective Date by the greater of (1) an amount that would result in that increase being equivalent to twice the increase in the UK Retail Prices Index (or its replacement or equivalent as the case may be from time to time) over the previous twelve month period or (2) five percent.. The Supplier will provide an amended version of Schedule 1 to the Customer reflecting the increase and that amended version shall thereafter be treated as Schedule 1 for the purposes of this agreement.

8.5 Where fees are chargeable under this agreement by reference to a daily rate, the amount charged will be rounded up to the nearest half day.

8.6 The Supplier shall, on or around the Effective Date, invoice the Customer in advance, for the 12 month period starting on the Effective Date, for all Hosting Services fees, Software licence Fees and Maintenance and Support service Fees set out in Schedule 1. The Supplier shall on or around each anniversary of the Effective Date invoice the Customer in advance for the forthcoming 12 month period (starting on such anniversary) for all such Fees (in the amounts set out in Schedule 1, as adjusted from time to time as provided for in clause 8.4 and/or clause 9). All other types of Fees (not referred to above in this clause 8.6 will, unless stated otherwise in Schedule 1 or otherwise agreed in writing and signed by an authorised representative of the Supplier, be invoiced by the Supplier in advance. Each invoice issued by the Supplier under this agreement is due and payable within the 30 days of the invoice's date.

8.7 If the Supplier has not received payment of an invoiced amount within five days after its due date, without prejudice to any other rights of the Supplier, interest shall accrue on such due amount at the rate of 4% over the Bank of England base lending rate from time to time, commencing on the due date and continuing until fully paid, whether before or after the judgment.

8.8 The Customer acknowledges and agrees that where Maintenance and Support Services are provided under this agreement and the Supplier's investigations reveal that the root problem is attributable, not to the Software, but to the Customer's technical infrastructure or environment or user error or misuse of the Software then the Supplier's support will be charged for at the prevailing hourly rate set out in Schedule 1. Similarly, the Customer acknowledges and agrees that where infrastructure upgrades/changes are demanded of the Supplier in order to meet technical requirements that are particular to the Customer (for example, to satisfy very high security requirements) then the Supplier's

cost of such infrastructure upgrades will be invoiced to and reimbursed by the Customer and the Customer will also pay the Supplier's applicable support/consultancy fees at the prevailing rate set out in Schedule 1.

8.9 If the Customer requires development or technical services from the Supplier the cost of these Services will be at the rates set out in Schedule 1 under 'Technical Services'.

8.10 Any set up Services, configuration Services, training Services and consultancy Services ordered by the Customer, including (but not limited to) any Services referred to in the "*Consultancy and Training Fees*" section of the table at Part 2 of Schedule 1, must be taken by the Customer within, for the relevant Service days referred to in Part 2 of Schedule 1, 12 months of the date of this agreement or, for any such Services ordered by the Customer after the date of this agreement, 12 months of the Customer's order for those Services. At the expiry of the applicable 12 month period, any such Services not taken by the Customer will be deemed to have been supplied in full by the Supplier and, if any such Services have not then already been invoiced, the Supplier may invoice them and the Customer shall pay for them. If and to the extent that any delay in the Customer taking such Services is caused by the Supplier's breach of its obligations under this agreement, the relevant 12 month period shall be extended to the same extent.

8.11 Without affecting any other remedy of the Supplier, if the Customer fails to pay any amount due under this agreement on its due date and such amount (or any part of it) remains unpaid 30 days after the date on which the Supplier notifies the Customer in writing demanding its payment, the Supplier may, at its discretion:

8.11.1 disable the Customer's and its Authorised Users' access to the Software and suspend provision of the Services unless and until such amount has been received in full by the Supplier in cleared funds and the Customer has paid a reconnection charge of £3,000 + VAT. If the Supplier exercises its right under this clause 8.11, subject to clause 13.3, it shall have no liability to the Customer for any loss of Customer Data or loss of service arising due to such disabling or suspension; and/or

8.11.2 terminate this agreement on giving written notice to the Customer.

9 Change control

9.1 The Customer shall be entitled to create and grant access to additional individual Authorised Users in excess of the number stated in Schedule 1, only in accordance with this clause 9.1. The Customer shall promptly notify the Supplier of any additional Authorised Users and the parties shall enter into a Supplemental Agreement in the format set out in Schedule 7, setting out the revised number of Authorised Users and the revised charges to be applied by the Supplier and paid by the Customer from the date of the Supplemental Agreement. Where additional Authorised User licenses are created part way through a 12 month licence period the Supplier shall invoice the Customer, and the Customer shall pay, in advance at the applicable monthly licence Fee rate, for the number of months remaining in the then current 12 month licence period (including but not limited to the calendar month in which such additional licence was created) subject to a minimum charge of 3 months' licence Fees for each additional license created during that 12 month licence period. Each additional licence shall be coterminous with the Customer's other, existing licenses and shall be invoiced annually in advance for subsequent 12 month licence periods.

9.2 The Customer may not reduce the number of its Authorised User licences or downgrade any of its Authorised User licences at any time during the Term.

9.3 In the event that the Supplier or the Customer requires a change to the Contractor providing the Hosting Services, the Customer shall:

9.3.1 within one month of the date of change of Contractor, update its systems and/or software in accordance with the Supplier or the Contractor's reasonable instructions to enable the Supplier to procure the provision of the Hosting Services from the new Contractor; and

9.3.2 enter into a Supplemental Agreement in the format set out in Schedule 7, setting out the revised Hosting Fees applicable from the date of the Supplemental Agreement.

9.4 The Customer's Project Manager and the Supplier shall meet at least once every six months to discuss matters relating to this agreement. If either party wishes to change the scope of the Services (save for changes under clauses 9.1 or 9.3), it shall submit details of the requested change to the other in writing.

9.5 If either party requests a change to the scope or execution of the Services (save for changes under clauses 9.1 or 9.3), the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

9.5.1 the likely time required to implement the change;

9.5.2 any variations to the Fees arising from the change;

9.5.3 the likely effect of the change on the provision of Services; and

9.5.4 any other impact of the change on the terms of this agreement.

9.6 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it. Such change shall be at the Supplier's cost and shall be at no detriment to the Customer.

9.7 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its charges and any other relevant terms of this agreement to take account of the change in the format set out in Schedule 7.

10 Proprietary rights

10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software and Services. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services, any software (such as reports) developed by the Supplier and implemented externally to the Software, or any related documentation.

10.2 The Supplier confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

10.3 In addition to the Supplier's proprietary code, the Software includes various third party open source software tools and code libraries, some of which are subject to their own licensing terms. Where the Supplier notifies any such terms to the Customer (including, without limitation, by way of notice in the Software / tool itself), the Customer shall comply with such terms in addition to the applicable terms of this agreement. The Supplier confirms that the source code of each of these third party tools and libraries has been used in its original form (unless and to the extent the Supplier notifies the Customer otherwise including, without limitation, by way of notice in the Software / tool itself) and in accordance with the licence terms under which it was distributed by the original licensor.

11 Confidentiality

11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

11.1.1 is or becomes publicly known other than through any act or omission of the receiving party; or

11.1.2 was in the other party's lawful possession before the disclosure; or

11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

11.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

11.5 The Customer acknowledges that the Software, the results of any tests of the Software and the Services are part of the Supplier's Confidential Information disclosed to the Customer.

11.6 The Supplier acknowledges that the Customer Data is part of the Confidential Information of the Customer disclosed to the Supplier.

11.7 This clause 11 shall survive termination of this agreement, however arising.

12 Indemnity

12.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's negligent use of the Software or Services or its use in breach of this agreement (including but not limited to the Customer introducing a virus via an Excel macro into a Supplier database), provided that:

12.1.1 the Customer is given prompt notice of any such claim;

12.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

12.1.3 the Customer is given sole authority to defend or settle the claim.

12.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Software infringes any United Kingdom patent effective as of the Effective Date, copyright, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

12.2.1 the Supplier is given prompt notice of any such claim;

12.2.2 the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and

12.2.3 the Supplier is given sole authority to defend or settle the claim.

12.3 In the defence or settlement of the claim, the Supplier may obtain for the Customer the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this agreement without liability to the Customer. The Supplier shall have no liability if the alleged infringement is based on:

12.3.1 a modification of the Software by anyone other than the Supplier; or

12.3.2 the Customer's use of the Software in a manner contrary to the instructions given to the Customer by the Supplier; or

12.3.3 the Customer's use of the Software after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

12.4 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's entire obligations and liability, for patent, copyright, database or right of confidentiality infringement.

13 Limitation of liability

13.1 This clause 13 sets out the entire financial liability of the Supplier (including but not limited to any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

13.1.1 any breach of this agreement;

13.1.2 any use made by the Customer of the Services, the Software or any part of them; and

13.1.3 any representation, statement or tortious act or omission (including but not limited to negligence) arising under or in connection with this agreement.

13.2 Except as expressly and specifically provided in this agreement:

13.2.1 the Customer assumes sole responsibility for results obtained from the use of the Software and the Services by the Customer, and for conclusions drawn from such use. Subject to clause 13.3, the Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction; and

13.2.2 all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.

13.3 Nothing in this agreement excludes the liability of the Supplier:

13.3.1 for death or personal injury caused by the Supplier's negligence; or

13.3.2 for fraud or fraudulent misrepresentation.

13.4 Subject to clause 13.3:

13.4.1 the Supplier shall not be liable for any loss of profits, loss of business, depletion of goodwill and/or similar losses or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising; and

13.4.2 the Supplier's total aggregate liability in contract, tort (including but not limited to negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited the price paid for the Services during the 6 months preceding the date on which the claim arose.

14 Term and termination

14.1 This agreement shall commence on the Effective Date and, subject to the parties' rights to terminate it earlier set out in clause 8.11.2 and this clause 14, shall continue unless and until terminated by either party giving the other party at least 6 months' written notice of termination, such notice to expire on the last day of the Initial Term or on an anniversary of that day.

14.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement without liability to the other if:

14.2.1 the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

14.2.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or

14.2.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

14.2.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

14.2.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or

14.2.6 the other party ceases, or threatens to cease, to trade; or

14.2.7 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.3 On termination of this agreement for any reason:

14.3.1 all licences granted under this agreement shall immediately terminate;

14.3.2 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;

14.3.3 the Supplier may delete or otherwise dispose of any of the Customer Data in its possession in accordance with clause 5.6.6 unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data;

14.3.4 any provision which is expressly stated in the agreement, or which is by its nature intended, to continue after termination of this agreement shall continue in full force and effect; and

14.3.5 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15 Force majeure

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, in which case the Supplier shall notify the Customer of such event and its expected duration.

16 Waiver

16.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

16.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

17 Severance

17.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18 Entire agreement

18.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

18.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

19 Assignment

19.1 The Customer shall not, without the prior written consent of the Supplier, such consent not to be unreasonably withheld, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

19.2 The Supplier may at any time provide written notice to the Customer to assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

20 Announcements

The Supplier shall be entitled to refer to the fact that the Customer is a customer of the Supplier and uses the Software on the Supplier's website and in its marketing collateral and press releases.

21 No partnership or agency

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22 Third party rights

This agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

23 Notices

23.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out at the start of this agreement or sent by email to the other party's email address as set out in Schedule 2 of this agreement or sent to such other address or email address as may have been notified by that party for such purposes.

23.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9.00am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at 9.00am on the next Business Day after transmission.

24 Governing law and jurisdiction

24.1 This agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.

24.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement.

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 - Authorised Users and Fees

Part 1 – Authorised Users

PM3 licence type	Number of user licences granted at the Effective Date	Monthly price per licence type (£)	Annual fees per licence type (£)
PM3 Creator			
PM3 Administrator			
PM3 Team			
PM3 Viewer			
Total			

PM3time licence type	Number of user licences granted at the Effective Date	Monthly price per licence type (£)	Annual fees per licence type (£)
PM3time Administrator			
PM3time Standard User			
PM3time Project Manager User			
Total			

Part 2 – Fees (exclusive of VAT)

Fee types	Fees from the Effective Date
Software licence fees The Software licence Fees shall be payable annually in advance in accordance with clause 8. This amount will be reviewed as set out in clause 8.4.	£ [ ] per year
Hosting fees	Included in Software licence Fees
Maintenance and Support fees	Support for confirmed errors is included in Software licence Fees. Support for advice/guidance/assistance requests are charged on a monthly basis. All calls in the month will be charged at the hourly rate given (minimum charge 2 hours) and will be invoiced at the end of the month. A list of all the calls will be provided by the Supplier to the Customer.

Consultancy and Training Fees Where the Customer wishes initial set up, configuration, training and consultancy services: This is charged per day paid in advance, plus VAT and business expenses Data Load is charged per day paid in advance, plus VAT and business expenses.	**Service**	**No. days**	**Total (£)**
	Installation	[ ]	[ ]
	Configuration		
	Data Load	[ ]	[ ]
	Training	[ ]	[ ]
	Consultancy	[ ]	[ ]
	Business Expenses	[ ] per day	[ ]
	Overall Total	[ ]	[ ]

Part 3 – Optional Charges (exclusive of VAT)

Fee types	**Fees Applicable**		
Additional licences Where additional licenses are purchased part way through a licence year they shall be charged pro rata for the number of months remaining in the then current licence year (including but not limited to the then current month). Additional licences will run co-terminously with the existing licences.	**Licence type**	**Monthly price per licence type (£)**	**Minimum quantity**
	PM3 Administrator		
	PM3 Creator		
	PM3 Viewer		
	Licence type	**Monthly price per licence type (£)**	**Minimum quantity**
	PM3time Administrator		
	PM3time Standard User		
	PM3time Project Manager User		
Pre-Prod/Test system Fees Where the Customer requires a Test copy of the Software (to use for evaluation purposes) the test copy will be restricted to 1 Administrator licence and 4 Creator licences. No more than 100 Plans may be loaded in to the Test copy.			
Single Sign-On (SSO)			
High use surcharge Fees for an instance holding in excess of 300 Plans or 10GB of storage whichever limit is reached first			

Fee types	Fees Applicable
A surcharge is triggered when the Software contains 300 plans or more at any time during the Initial Term or subsequent years The Supplier may invoice the applicable Fee at any time after the relevant high-use Plan threshold is exceeded, and levied in subsequent years on the annual licence period renewal date (an anniversary of the Effective Date).	
Support Fees Support for confirmed errors is included in monthly support fees. No additional charge. Support for advice/guidance/assistance requests outside of the typical support requirements are charged on a monthly basis. All calls in the month will be charged at the hourly rate given (minimum charge 2 hours) and will be invoiced at the end of the month. A list of all the calls will be provided by the Supplier to the Customer.	
Report development Additional reports can be developed if required. A typical report takes 3 days to develop once the specification is approved by the Customer and the Supplier. For complex reports, where the development time will exceed 3 days, the Supplier will provide the Customer with a quote based on the specification supplied. Work on the report will begin once the quote is approved. Report developments will be invoiced at the end of the month after development is completed.	
Report logos Customer logos can be added to existing reports on request.	
Software upgrade fees Routine Software updates carried out during Normal Business Hours Routine Software updates carried out outside Normal Business Hours but on Business Days (must be agreed in advance with the Supplier) Routine Software updates carried out (in whole or in part) on any day which is not a Business Day (must be agreed in advance with the Supplier) Software updates required as a result of implementing new or changed functionality requested by the Customer	
Consultancy and Training Fees	

Fee types	Fees Applicable
Where the Customer requests consultancy, training and mentoring services. The minimum quantity is one day.	
Data Load service fees Where the Customer wishes assistance with data load. The minimum quantity is one day.	
Technical Services Where the Customer requests development or technical services. The minimum quantity is one day.	

Schedule 2 Personnel, Contact Details and Governance

Customer's Account Team

Customer's Project Manager(s): [ ]

Customer's Project Sponsor: [ ]

Customer's Support Contact: [ ]

Email address for notices (see clause 23): [ ]

Supplier's Account Team

Supplier's Account Manager(s): [ ]

Supplier's Project Sponsor: [ ]

Supplier's Support Contact: [ ]

Email address for formal contractual notices (see clause 23): [accounts@bestoutcome.com]

Email address for technical, support and other communications under the agreement: [support@bestoutcome.com]

Governance

Appropriate representatives of the Customer and Supplier shall arrange and attend periodic meetings, no less frequently than annually and on the basis set out below, for the purposes of reviewing the Customer's use of the Software and Services and with the aim of ensuring that the Customer gains the maximum benefit from such use:

- At the end of the first year of this agreement:
  - A one day review meeting between (i) the Customer's Project Manager, and/or the Customer's Sponsor and key Authorised Users nominated by the Customer; and (ii) the Supplier's Account Manager and/or the Supplier's Project Sponsor. This meeting will be charged for at the Supplier's normal Consultancy Fee rates.
- At the end of the each subsequent year of this agreement:
  - An online meeting between (i) the Customer's Project Manager, and/or the Customer's Sponsor; and (ii) the Supplier's Account Manager and/or Project Sponsor. These meetings will be free of charge.
  - A 2 hour online review session where any Authorised Users can ask questions about the use of the Software and Services. The first such review session would be free of charge. Additional sessions would be chargeable (with a minimum charge of a ½ day at the Supplier's normal Consultancy Fee rates)

Schedule 3 Software Specification

PM3 is a Portfolio, Programme and Project Management (PPM) tool.

PPM functionality that IS currently addressed in PM3:

- **Benefits/Savings Management:** The recording and reporting of the realized value/benefits of a Plan post-implementation.
- **Demand Management:** The evaluation and mapping (based on cost, benefit and risk criteria) of proposed Plan with a view to assisting the balancing of business demand for Plans and Plan developer supply capability.
- **Issue Management:** The recording and reporting of events that *have* happened and will have an adverse effect on a Plan, from a delivery point of view (i.e. impacting the delivery of the Plan to budget, schedule or quality needs) or from a benefits realization point of view (i.e. impacting the proposed realization of benefits post-implementation).
- **Milestone and Task Management:** The planning, management and control of work based on the key delivery milestones and tasks.
- **Portfolio Management:** The categorisation, management and control of programmes, projects and live systems based on certain organisational, business, value, cost, risk, time or technical criteria.
- **Programme/Project Governance:** The maintenance and reporting of information required for the ongoing appraisal of an active Plan to review and agree significant proposed changes, review significant problems (and agree any corrective action required) and to determine if the Plan should be continued, rescoped or terminated based principally on the criteria of delivery status, financial status and forecasted value.
- **Programme Management:** The planning, management and control, delivery status maintenance and progress reporting of a programme (as opposed to a project). A programme is a collection of Plans that have a common objective.
- **Project Management:** The planning, management, control, delivery status maintenance and progress reporting of a Plan. A Plan is a non-recurring, temporary endeavour undertaken to achieve particular objectives.
- **Resource/Capacity Management:** The assessment and subsequent management of the staff resourcing needs of a Plan from the point of view of numbers and availability.
- **Risk Management:** The recording and reporting of specific events that, *if* they happened, would have an adverse effect on a Plan, from a delivery point of view (i.e. impacting the delivery of the Plan to budget, schedule or quality needs) or from a benefits realization point of view (i.e. impacting the proposed realization of benefits post-implementation).

PPM functionality that IS NOT currently addressed in PM3:

- **Change/Scope Management:** The management and control of functional or technical requirements changes requested during the Plan development process; assessing their impact on the agreed budget, schedule and value and approving, deferring, prioritising or rejecting them.
- **Billing Management:** The management of purchase orders and invoices related to capital (e.g. equipment or external services purchased) and revenue expenditure (e.g. internal staff costs).
- **Document/Content Management:** The storing, tracking, versioning and cross-referencing of electronic media associated with programme/project development.
- **Quality Management:** The management and control of the processes and work products of a programme/project in order to deliver agreed standards of functional and non-functional quality.
- **Problem Management:** The management and control of functional or technical problems arising during the Plan development process; assessing their impact on the agreed budget, schedule and value and approving, deferring, prioritising or rejecting them.
- **Timesheet Management:** The reporting and tracking of manpower effort expended and estimates to complete for the tasks/activities of a programme/project. This functionality is provided in the PM3time Software product.
- **Workflow/Process Management:** Tracking and prioritizing Plan information and work tasks as they are passed from one person or department or process to the next.

PM3time is a Timesheet tool.

Timesheet functionality that is addressed in PM3time:

- **Timesheet Tracking**
  Time can be captured by day, by week in units of hours or part of a day.
- **Timesheet Approval**
  Timesheets can be approved by using email
- **Expenses**
  Expenses can be entered into PM3time
- **Reporting**
  Some basic time and expense reports can be printed out
- **Rates**
  Internal and External charges can be entered against individual contractors and / or authorised users
- **Billing** (if enabled – this is a separately chargeable feature)
  The production of invoices by the Customer against the Customer's customers
- **Utilisation setting and tracking.**
  Administrators can set utilisation targets for consultants or employees. User and Manages can then track actual utilisation against the target.

Schedule 4 Maintenance and Support

1 Help Desk

1.1 The Customer shall provide first-line support to Authorised Users. However, the Customer's "Support Representatives" in Schedule 2 (**CSRs)** may contact Supplier Technical Support in order to report problems from Authorised Users that the Customer's designated CSRs cannot resolve themselves after they have performed a reasonable level of diagnosis. All requests for technical support must be by email to support@bestoutcome.com

1.2 There is no limit on support requests that identify Software errors; however, where advice/guidance/assistance is being sought or where 'errors' are reported and it can be demonstrated by the Supplier that the Software is not in error the Supplier reserves the right to charge for subsequent support time at the prevailing rate for support services set out in Schedule 1.

2 Maintenance

2.1 Maintenance includes all regularly scheduled error corrections, software updates and those upgrades limited to improvements to features described in the Software Specification. Support for additional features developed by the Supplier, as requested by the Customer, may be purchased separately at the Supplier's then current rates.

2.2 The Supplier shall maintain and update the Software in accordance with this agreement. Should the Customer determine that the Software includes a defect, the Customer may at any time file error reports. During maintenance periods, the Supplier may, at its discretion (having given at least 5 working days' notice), upgrade versions, provide or install error corrections and provide or apply patches to the Software. The Supplier shall use all reasonable efforts to avoid unscheduled downtime for Software maintenance.

2.3 The Customer undertakes and agrees to engage the Supplier (at the rates set out in Schedule 1, if and where applicable) to deploy all Software updates and upgrades made available by the Supplier within three (3) months of the date of the relevant release note provided by the Supplier. If the Customer refuses or fails to engage or permit the Supplier to deploy any Software update or upgrade within such three (3) month period the Customer shall immediately be liable to the Supplier (and the Supplier may invoice the Customer for) a fee of £750 reflecting the increased cost to the Supplier of supporting older versions of the Software. Further fees of £750 each shall be payable every three (3) months thereafter unless and until the Customer engages the Supplier to update the Software to the latest version or until the Supplier withdraws support in accordance with paragraph 2.4 below.

2.4 The Supplier shall not be required to provide (and may at any time withdraw) technical support for any version of the Software which has been superseded by two or more updates or upgrades made available by the Supplier but not deployed due to the Customer's refusal or failure to engage the Supplier to carry out such deployment.

2.5 The Customer can request additional reports be developed, which will be charged for separately at the Supplier's rates as set out in Schedule 1. The Customer is responsible for developing the report specification and accepting the report.

3 Technical support services

3.1 The Supplier shall provide the Customer with technical support services. The CSRs shall be authorised to contact the Supplier by email for technical support services. The Supplier shall provide technical support services only to that specified set of CSRs.

3.2 The Supplier shall use reasonable endeavours to process support requests, determine the source of the problem and respond to the Customer. The Supplier technical support shall respond to all support requests from CSRs within the time periods specified below, according to priority.

3.3 The named CSRs and Supplier technical support shall jointly determine the severity of any defect, using the following guidelines:

Severity 1 (Critical)	Severity 2 (High)	Severity 3 (Medium)	Severity 4 (Low)
Business and financial exposure			
The application failure creates a critical business and financial exposure.	The application failure creates a serious business and financial exposure.	The application failure creates a low business and financial exposure.	The application failure creates a minimal business and financial exposure.
Work Outage			
The application failure causes the Customer to be unable to work or perform some significant portion of their job.	The application failure causes the Customer to be unable to work or perform some significant portion of their job.	The application failure causes the Customer to be unable to perform some small portion of their job, but they are still able to complete most other tasks. May also include questions and requests for information.	The application failure causes the Customer to be unable to perform a minor portion of their job, but they are still able to complete most other tasks.
Number of Users Affected			
The application failure affects all the Customer's users.	The application failure affects more than half of the Customer's Users	The application failure affects a small number of the Customer's Users	The application failure may only affect one or two of the Customer's Users
Workaround			
There is no acceptable workaround to the problem (i.e., the job cannot be performed in any other way).	There is an acceptable and implemented workaround to the problem (i.e., the job can be performed in some other way).	There may or may not be an acceptable workaround to the problem.	There is likely an acceptable workaround to the problem.
Target Response Time – within which the Supplier begins working on the issue.			
Within two Normal Business Hours	Within four Normal Business Hours.	Within eight Normal Business Hours or by next Business Day.	Within sixteen Normal Business Hours.

3.4 The Customer shall also provide support for data integration tools and processes developed or maintained by the Customer in order to connect the Software to the Customer's other software and databases.

3.5 Before the Supplier or the Customer makes changes to integration interfaces between the Software and the Customer's internal data stores or systems, the Supplier or the Customer shall provide notice to the other in order to ensure the continued operation of any integration interfaces affected by such changes. The Supplier shall provide the Customer CSRs, or the Customer shall provide the Supplier, with at least 60 days' advance notice of such changes. Such notice shall include at least the new interface specifications and a technical contact to answer questions on these changes. The Supplier shall also provide up to 15 days of integration testing availability at its then current daily fee rates detailed in Schedule 1 to ensure smooth transition from the previous interfaces to the new interfaces.

Schedule 5 Technical Requirements

Technical Requirements of Client Machines to Run PM3Cloud

PM3Cloud is a fully web-based product and the main requirement relates browser versions.

Recommended browsers with minimum versions

- Microsoft Edge (Chromium) version 90
- Chrome version 90

Alternative Browsers

The following browsers with these minimum versions, will generally work with PM3 but may experience issues on some pages:

- Firefox Version 88
- Safari Version MacOS 14

Other browsers are NOT recommended for PM3, including

- Internet Explorer
- Microsoft Edge Legacy (EdgeHTML)

PM3 Team Mobile Specification

For PM3 Team the minimum operating systems versions are:

- iOS 14
- Android 11

Client Computer Specification

For the more complex pages, a computer of sufficient capability is required to manage rendering and client-side processing.

Minimum recommended specification for a standard creator user:

- Monitor resolution:
  - Minimum Recommended 1280 * 1024
- CPU 2 GHz or higher
- RAM 2 GB or higher
- Disk – allow 30Mb for extracted files from pm3 to local disk
- Microsoft Office 2016 or higher
- PM3 elements can have documents of various types attached often created with tools such as Microsoft Office or Adobe Acrobat. In order to read such attachments, the client computer will need those Document tools installed. They are not part of PM3.

Since performance can be affected by other applications running on a user's PC, Administrators or Power Users would be advised to have machines of higher specification.

Schedule 6 Hosting Services Terms

1 Services Provided

1.1 The Contractor will provide the Customer with a secure, hosted virtual infrastructure.

1.2 The Supplier shall remain liable to the Customer for the Contractor's obligations.

2 Contractor Obligations

2.1 **Supply Hosted Infrastructure.** The Contractor will provide all servers, security, networking, monitoring, backup, authentication, and provisioning infrastructure necessary to support the deployment. The Contractor will also monitor and maintain the environment by replacing defective hardware, and performing other necessary maintenance activities.

2.2 **Ensure Availability.** The Contractor will employ commercially reasonable efforts to ensure that the deployment is available to users twenty four (24) hours per day, seven (7) days per week, with the sole exception of scheduled maintenance periods.

2.3 **Maintain Security.** The Contractor shall provide commercially reasonable security for the Deployment, provided, however, that in no event shall the level of security provided by Contractor with respect to the deployment fall below the level of security the Contractor provides for its own servers, equipment, software, data, and personnel or below the level generally accepted as industry standard.

2.4 **Back up the Environment.** The Contractor shall back up the deployment every night and retain 30 days of back-ups (daily) onsite and 12 weeks offsite in a secure location.

2.5 **Infrastructure Scaling.** The Supplier reserves the right for the Contractor to scale the underlying virtualization platform of the “Initial Deployment” in any direction (up, out, in or down) in proportion to the demand generated by our estimated “active user load” requirements so long as doing so does not adversely impact on the Customer’s experience of the deployment.

2.6 **Physical and Virtual Machines.** The Supplier reserves the right for the Contractor to make use of a combination of physical and virtual machines for the provisioning of all hosted infrastructure.

Schedule 7 – Supplemental agreement format

This Agreement is supplemental to an Application Software Licence and Service Provision Agreement (the "ASP Agreement") made on **[ ]** between :

- **BESTOUTCOME LIMITED** incorporated and registered in England and Wales with company number 3922318 whose registered office is at Europa House, 11 Marsham Way, Gerrards Cross, Buckinghamshire, SL9 8BQ (the "Supplier") and

- **[ ]** incorporated and registered in England and Wales with company number **[ ]** whose registered office is at **[ ]** (the **"Customer"**).

By both parties signing this Agreement, the Supplier and the Customer respectively agree to supplement and vary the terms of the ASP Agreement only in accordance with the provisions set out in this Agreement. In all other respects the ASP Agreement remains binding on its terms. In the event of conflict between the terms of the ASP Agreement and the terms of this Agreement, this Agreement shall take precedence.

The **Variation Date** from when this Agreement shall be effective is **[ ]**.

Part 1 – Authorised User licences

User type	Number of User Licences	
	Previous number	Number applicable from Variation Date
PM3 Creator		
PM3 Administrator		
PM3 Viewer		
PM3 Datamart		
PM3time Administrator		
PM3time Standard User		
PM3time Project Manager User		

Part 2 – Fees (exclusive of VAT)

Fee types	Fees applicable	
	Previous fees	Fees applicable from Variation Date
Software licence fees The Software licence Fees shall be payable yearly in advance in accordance with clause 8. This amount will be reviewed as set out in Clause 8.4.	£ [ ] per year	£ [ ] per year
Hosting fees	Included in Software licence Fees	
Maintenance and Support fees	Support for confirmed errors is included in software licence fees. Support for advice/guidance/assistance requests are charged on a monthly basis. All calls in the month will be charged at the hourly rate given (minimum charge	

	2 hours) and will be invoiced at the end of the month. A list of all the calls will be provided by the Supplier to the Customer.		
Consultancy and Training Fees Where the Customer wishes consultancy and training services. This is charged per day plus business expenses. The minimum quantity is one day.	**Service**	**No. days**	**Total (£)**
	Consultancy	[ ]	[ ]
	Training	[ ]	[ ]
	Business Expenses	[ ] per day	[ ]
	Overall Total		[ ]
Other fees Where the Customer requires additional services	£ [ ]		

Part 3 – other agreed changes

[insert any other contractual provisions agreed]

Signed by [ ]

for and on behalf of BESTOUTCOME LIMITED

Example Schedule 7

.....

Director

Schedule 7 Date

……..

Date

Signed by [ ]

for and on behalf of [ ]

Example Schedule 7

.....

Director

Schedule 7 Date

……..

Date

Schedule 8 – Processing, personal data and data subjects

1 Processing by the Supplier

Subject-matter of processing

Processing in connection with the provision of the Services under this agreement.

Purpose of processing

The fulfilment of the Supplier's obligations under this agreement; specifically, providing the Customer with access to and use of the Software and providing those Services agreed to be provided to the Customer.

Nature of processing

This includes

- *the initial deployment and installation of the PM3 Software;*
- *configuration, maintenance, support and training in respect of the PM3 Software; and*
- *hosting and backing up Customer Data.*

Duration of processing

For so long as the Services are provided to the Customer, subject to and on the terms and conditions of this agreement.

2 Types of Personal Data

This includes:

- Name
- Email address
- Role
- Mother's maiden name (for security)

3 Categories of Data Subject

This includes:

- customer's employees and consultants,
- clients, and
- third-party suppliers and contractors

ASP Agreement Signatures

Signed by

…….

for and on behalf of BESTOUTCOME LIMITED

..... ……..

Director Date

Signed by

…….

for and on behalf of ……

..... ……..

Director Date