

**PEOPLEFLUENT**  
**SOFTWARE-AS-A-SERVICE AGREEMENT**  
**FOR NETDIMENSIONS TALENT SUITE**  
**Standard Terms and Conditions Schedule**

This PeopleFluent Software-as-a-Service for NetDimensions Talent Suite Agreement is between the PeopleFluent group company identified in the Commercial Terms (“PeopleFluent”) and the entity that wishes to use PeopleFluent’s Software-as-a-Service (as identified in the Commercial Terms) (“Client”), either for itself or to host content and to manage solutions for its customers, and describes the terms and conditions pursuant to which PeopleFluent or another PeopleFluent Group Company will provide the Software-as-a-Service to the Client. By use of the Services described herein, the Client agrees to be bound by the terms and conditions of this Agreement. For the avoidance of doubt, effective October 2018, the NetDimensions group of companies has become part of the PeopleFluent group of companies, and all current and former NetDimensions entities are now doing business under the name PeopleFluent, provided that the products NetDimensions Talent Suite and NetDimensions Analytics shall continue to be used by PeopleFluent under their current names.

**1 Definitions and Interpretation**

1.1 In this Agreement, unless the context otherwise requires, the following words have the following meanings:

<b>“Agreement”</b>	this Software-as-a-Service Agreement to which the Client is required to agree before using the Services comprising, where appropriate, an order form and/or a signature section (in either case incorporating the Commercial Terms) and this Standard Terms and Conditions Schedule;
<b>“Application”</b>	PeopleFluent’s proprietary software application NetDimensions Talent Suite in machine readable form used in the Services provision (as identified in the Commercial Terms and as (may be) further described on PeopleFluent online client pages), including any applicable error corrections, updates, upgrades, modifications and enhancements to it, but excluding any Third Party Software;
<b>“Charges”</b>	the charges payable by the Client for the Services and other charges falling due in accordance with this Agreement;
<b>“Client”</b>	the Client who has purchased the Services, whether directly through PeopleFluent or indirectly through a Reseller;
<b>“Client Data”</b>	the information, data and content input into or used in the Software-as-a-Service by the Client or Users;
<b>“Commercial Terms”</b>	the main commercial terms set out in the order form and/or signature section of this Agreement;
<b>“Confidential”</b>	all materials and/or information, whether or not marked or otherwise identified as confidential, whether written, oral,

<b>Information”</b>	graphic or ascertainable by inspection of tangible objects, including without limitation: specifications, formulae, samples, prototypes, devices, techniques, processes, methods, discoveries, inventions, ideas and improvements (whether or not patentable), data, compilations, algorithms, studies, computer programs, code, research, reports, patterns, designs, sketches, plans, drawings, photographs, know-how, trade secrets, marketing plans, business plans, financial information, commercial information, technical information, pricing information, market information, information relating to relationships with third parties, information relating to business models and/or business methods, customer, supplier and distributor lists, and any other subject matter which by its nature would be reasonably known to be confidential or proprietary, and all copies of such materials and information;
<b>“Initial Term”</b>	a period of three (3) years from the Services Commencement Date or such other period as may be specified in the Commercial Terms. The Initial Term may also be referred to in the Commercial terms as “Commitment” or “Multi-year Commitment”;
<b>“Intellectual Property Rights”</b>	any patent, right to patent, copyright, design rights (registered and unregistered), trade mark and service mark (whether or not registered), trade and business names (including internet domain names and e-mail address names), database rights, know-how, trade secrets, unpatented inventions and any other intellectual property rights in any relevant jurisdiction;
<b>“PeopleFluent Group Company”</b>	PeopleFluent and any party that, directly or indirectly, partially or fully controls, is partially or fully controlled by, or is under partial or full common control with, PeopleFluent, including but not limited to direct and indirect subsidiaries of an ultimate parent holding company, including any companies in the (former) NetDimensions group of companies or otherwise part of the Learning Technologies Group, and such PeopleFluent Group Company may provide any or all of the Services;
<b>“Renewal Term”</b>	the meaning set out in Clause 2;
<b>“Reseller”</b>	an authorised reseller of PeopleFluent;
<b>“Service Level Terms”</b>	the service level terms specified in Exhibit A applicable to the Services under this Agreement;
<b>“Services”</b>	the Software-as-a-Service provision, Support and other related services, as agreed, to be provided by PeopleFluent under this Agreement, unless otherwise specified in the Commercial Terms;
<b>“Services Commencement Date”</b>	the date specified as the Services Commencement Date in the Commercial Terms or, if earlier or in the absence of a date being specified, the date from which PeopleFluent starts providing any of the Services;

<b>“Scheduled Maintenance Down-Time”</b>	the meaning set out in Exhibit A;
<b>“Software-as-a-Service”</b>	the services provided under this Agreement that PeopleFluent provides to allow Users to access and use the Application;
<b>“Support”</b>	the standard maintenance and support services provided by PeopleFluent in relation to the Application pursuant to Exhibit A;
<b>“Third Party Software”</b>	where specified in the Commercial Terms, software provided by PeopleFluent to the Client, which is non-proprietary to PeopleFluent but which PeopleFluent is authorised to make available to the Client.
<b>“User”</b>	unless otherwise specified in the Commercial Terms, means any employee, agent or contractor of the Client or, where applicable, of a customer of the Client, authorised by the Client in accordance with this Agreement to access and use the Software-as-a-Service and/or Third Party Software under this Agreement. A User can have an active (identified in the Application as ‘Active’ or ‘Suspended’) or non-active (all user status categories in NTS other than ‘Active’ or ‘Suspended’) status in the Application.

- 1.2 In this Agreement words importing the singular include the plural and vice versa and words importing gender include any other gender.
- 1.3 The headings of Clauses are for ease of reference and will not affect the construction of this Agreement.
- 1.4 The Commercial Terms take priority over the terms and conditions set out in this Standard Terms and Conditions Schedule. Where an express, written amendment is made in the Commercial Terms to the terms and conditions set out in this Standard Terms and Conditions Schedule, the terms and conditions set out in the said Standard Terms and Conditions Schedule will be deemed amended, as appropriate. If there is any inconsistency between any provision contained in this Standard Terms and Conditions Schedule and any provision contained in any other part of this Agreement (other than the Commercial Terms), the provisions contained in this Standard Terms and Conditions Schedule will prevail to the extent necessary to resolve the inconsistency. Except as set out in the Commercial Terms and this Standard Terms and Conditions Schedule, no other terms shall apply, even where specified in Client’s PO or otherwise.

## **2 Commencement and Duration**

- 2.1 This Agreement will commence on the Services Commencement Date and will continue for the Initial Term and will renew automatically for subsequent twelve (12) month periods or such other period as agreed in the Commercial Terms (each a “Renewal Term”) until it expires or terminates pursuant to this Agreement or until terminated by either party per the end of the Initial Term or subsequent Renewal Term on serving not less than two (2) months’ written notice to the other party.

## **3 Provision of Software-as-a-Service and Third Party Software**

- 3.1 PeopleFluent will provide the Services to the Client. Where a Reseller is providing any related services, it will provide those services on terms agreed between the Client and the Reseller, and PeopleFluent shall have no liabilities or obligations to the Client (and, for the avoidance of doubt, a Reseller has no authority to bind PeopleFluent).
- 3.2 The Client will promptly report to PeopleFluent all identified attempts (whether successful or not) by unauthorised persons (including unauthorised persons who are employees of the Client) either to gain access to or to interfere with the Software-as-a-Service.
- 3.3 PeopleFluent will not be responsible for supplying any line access, hardware or any other equipment on the Client's premises.
- 3.4 PeopleFluent reserves the right at all times without prior notice to suspend the Client's access to, and/or the provision of, any of the Services for such period as is necessary to carry out emergency system maintenance, emergency upgrading, emergency testing and/or repair, but it shall endeavour to give prior notice to the Client where reasonably practicable.
- 3.5 PeopleFluent reserves the right at all times without prior notice at its sole discretion to suspend, remove or refuse to host (but is under no obligation to monitor) certain kinds of content (including, but not limited to, content that requires unsafe write access to PeopleFluent's servers or requires PeopleFluent to install system software that it does not usually use or support) and any other content that causes harm or may in PeopleFluent's sole opinion cause harm to PeopleFluent's servers or to the provision of Services or which is defamatory, obscene, offensive, blasphemous or infringes third party Intellectual Property Rights, and the Client shall not store, distribute or transmit any such content on, to or through the Application. PeopleFluent will not be liable to the Client for any loss or damage caused as a result of it suspending, removing or refusing to host material or content pursuant to this Clause. In exercising its rights under this Clause 3.5 PeopleFluent shall exercise due caution.
- 3.6 The Client will not be entitled to any form of access to PeopleFluent's servers (either read or write access), databases, software or hardware other than the access provided by and through the Application itself.
- 3.7 PeopleFluent hereby grants to the Client, on and subject to the terms and conditions of this Agreement, a non-exclusive, non-transferable, non-sublicensable licence to allow Users to access the Application through the Services and to use the Services and Application solely for the Client's legitimate business purposes and in accordance with this Agreement. The licence is granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client. PeopleFluent acknowledges, however, that where specified in the Commercial Terms, a subsidiary or holding company, affiliated and/or client company of the Client may be supplying Users in accordance with the User definition.
- 3.8 The Client shall not, and warrants that its Users shall not:
  - 3.8.1 (attempt to) copy, duplicate, modify, create derivative works from or distribute all or any portion of the Application; or
  - 3.8.2 (attempt to) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Application; or

- 3.8.3 access all or any part of the Application or Services in order to build a product or service which competes with the Application and/or the Services; or
- 3.8.4 save as expressly provided in Clause 3.7, use the Application or Services to provide services to third parties or attempt to obtain, or assist third parties in obtaining, access to the Application.
- 3.9 PeopleFluent may as part of the Services anonymize the Client's Users' Application usage data to create reports showing general usage statistics of its clients for research and analytics purposes, for sharing on an individualized basis with the Client or on a generalized basis with other PeopleFluent clients. The Client agrees to the anonymizing and inclusion of its usage data in such reports. All Intellectual Property Rights in such reports shall at all times remain with and vest in PeopleFluent.
- 3.10 If the Commercial Terms state "GXP Software as a Service", PeopleFluent will use commercially reasonable efforts to procure that the Services shall conform with the standards of GXP, will respond promptly to any requests from the Client for information about or discussions relating to GXP in relation to the Services and will, at reasonable time and on reasonable notice, allow the Client at the Client's cost to conduct onsite audits in relation to the Services, subject to agreement in advance of the cost, scope, timing and manner of the audit.
- 3.11 If the Commercial Terms provide that PeopleFluent will provide access to Third Party Software as part of the Services, such access will be provided subject to the licence and/ or terms and conditions of use of the applicable third party licensor, as may be specified in the Commercial Terms, and Client is responsible for requesting a copy and familiarising itself with such terms and conditions and for ensuring compliance with such terms and conditions. No warranty, representation or other statement is made or given concerning such Third Party Software.

#### **4 Service Level Terms and Support**

- 4.1 PeopleFluent shall provide support in accordance with Exhibit A.

#### **5 Client's Obligations**

- 5.1 The Software-as-a-Service is provided subject to an agreed disk space (permitted use is for training and learning content only) as specified in the Commercial Terms and subject to reasonable bandwidth use (as elaborated on below). The Client will not exceed this agreed disk space without the prior written consent of PeopleFluent and any agreed additional disk space shall be subject to paying additional charges as indicated in the Commercial Terms or as may be agreed. Any additional disk space required or used will be provided in increments of the same amount and subject to an additional annual charge per increment as shown in the Commercial Terms, or where this is not so specified, at PeopleFluent's then current list price, payable in advance (and where an increment is provided part way through a year, the initial payment will be pro rata to the next anniversary). If the amount of disk space is not specified in the Commercial Terms, the Client will be entitled to use a maximum of 50 gigabytes at no additional charge.
- 5.2 The Client will, without prejudice to its obligation not to exceed the agreed disk space or reasonable bandwidth, within five (5) business days of receipt of a written notice from PeopleFluent, reduce its content so as to operate within the amount of disk space agreed with PeopleFluent (or, alternatively, agree to increased disk space available upon payment of an applicable charge within the said five (5) Business Days). PeopleFluent will be entitled to suspend the Services forthwith without serving notice

on the Client if the Client exceeds the agreed disk space and/or reasonably allowed bandwidth (bandwidth usage is deemed not reasonable if it causes harm or in PeopleFluent's sole opinion may cause harm to PeopleFluent's systems).

5.3 The Client will:

- 5.3.1 use the Services in accordance with PeopleFluent's reasonable operating instructions as made available to the Client in writing (including via email, wiki and support channels such as zendesk) from time to time and the terms of this Agreement;
- 5.3.2 comply with any restrictions contained in this Agreement regarding the content or courseware that may be used with the Software-as-a-Service, the identity and number of Users and any bandwidth limitations;
- 5.3.3 be responsible for ensuring that the Software-as-a-Service is not used for the sending, recording or storage of any defamatory, offensive, abusive, derogatory, blasphemous, racist, obscene or menacing material or in a manner which infringes the rights of any person (including rights of data privacy, copyright and confidentiality);
- 5.3.4 be responsible for complying with its obligations under any applicable statutory provisions in any relevant jurisdiction in respect of data privacy or information processed and stored;
- 5.3.5 be responsible for the acts and omissions of the Users;
- 5.3.6 ensure that any User authorised to use the Services (as specified in the Commercial Terms) is bound by the terms of this Agreement prior to accessing the Services and complies with the same; and
- 5.3.7 in a timely manner inform PeopleFluent if Client is planning to materially change its usage behaviour (which could affect the provision of the Services).

5.4 The Client will ensure that no one other than Users, and no more than the permitted number of Users in accordance with the Commercial Terms, access the Services. Without prejudice to the foregoing, the Client may add and switch Users in accordance with the following:

- 5.4.1 Adding Users/Overages: If the Client wishes to increase the number of Users accessing the Services, Client must request prior written consent from PeopleFluent (which will not be unreasonably withheld or delayed) and such increase will be subject to additional charges as may be agreed. Additionally, Users can be added at any time throughout the Initial Term or a Renewal Term for the remainder of the Initial Term or such Renewal Term in minimum blocks of fifty (50) active Users at a prorated amount per-active-User-per-year without PeopleFluent's prior consent. Where active Users are added throughout a year, PeopleFluent shall be entitled to invoice the Client immediately for the first year of adding such Users on a pro-rated basis and for subsequent years, if any, in advance, on a Net thirty (30) days' basis. Client shall notify PeopleFluent of any increase in the number of Users greater than the applicable quantity specified in the relevant ordering document and PeopleFluent may monitor Customer's use.
- 5.4.2 Archiving Users: The Client is permitted to archive up to fifty (50)% of active Users during each year of this Agreement (by changing the status of (former)

active Users to non-active Users and adding an equivalent number of new active Users) provided that the total number of named Users in the Application (the sum of all active and non-active Users) shall not be higher than three (3) times the agreed permitted number of active Users in the Commercial Terms. Once this maximum is reached, no additional active Users can be changed to non-active status unless other non-active Users are first permanently deleted or additional Users are added in accordance with this Agreement and/ or the applicable PeopleFluent purchasing process. For the avoidance of doubt, no reassignment of a User's account or use of an account by another User is permitted except in as far as permitted pursuant to this Clause. The Client will not allow or suffer any User account to be used by more than one individual authorized User, except to the extent that reassignment of a User account is permitted pursuant to this Clause.

- 5.4.3 The Client shall at all times maintain a written, up-to-date list of Users (active and non-active), and provide this, fully anonymized, to PeopleFluent within five (5) Business Days of PeopleFluent's request at any time.
- 5.5 PeopleFluent may at any time, at its own expense, audit the Client's usage of the Application and Services and compliance with this Agreement (including with regard to the number of Users accessing the Services and/or registered on the Application), and such audit shall be exercised in a manner so as to not substantially interfere with Client's normal conduct of business. If an audit reveals that the number of Users exceeds the number specified in the Commercial Terms, allowed under this Agreement or otherwise agreed with PeopleFluent (and paid for) or the bandwidth or disk space used, PeopleFluent is entitled to immediately invoice Client for the additional Users (regardless of the active or non-active status) or the additional bandwidth or disk space used for the remainder of the Initial Term or applicable Renewal Term in accordance with its current per User list price or such pricing as may be agreed with Client.
- 5.6 The Client will be responsible for maintaining the confidentiality of its Application/Services passwords and for procuring that all Users keep their own Application/Services passwords confidential. If the Client becomes aware of any unauthorised access to the Services by any person who uses a password without the Client's or PeopleFluent's authorisation, the Client will immediately notify PeopleFluent and disable such password.
- 5.7 With the Client's prior written approval, PeopleFluent and any Group Company may refer to the Client in PeopleFluent's websites and marketing materials.
- 5.8 Where the Client wishes to dispute an invoice or part of an invoice it will do so as soon as reasonably practicable and in any event within fifteen (15) working days of issuance of the applicable invoice.

## **6 Security**

- 6.1 PeopleFluent will maintain and enforce commercially reasonable physical and logical security methods and procedures to protect Client Data and to secure and defend the Software-as-a-Service against "hackers" and others who may seek to access the Software-as-a-Service without authorization. PeopleFluent will use commercially reasonable efforts to remedy any breach of security or unauthorized access. PeopleFluent reserves the right to suspend access to the Services in the event of a suspected or actual security breach.

## **7 Warranties and Indemnification**

- 7.1 PeopleFluent hereby warrants to the Client that it will provide the Services:

- 7.1.1 with reasonable skill and care;
  - 7.1.2 using appropriately qualified and experienced personnel; and
  - 7.1.3 in accordance with current industry standards.
- 7.2 PeopleFluent warrants that it owns or otherwise has sufficient rights in the Application to grant to the Client the rights granted under this Agreement.
- 7.3 The parties warrant that the persons executing this Agreement are authorised to do so on behalf of the relevant parties and that the execution, delivery and performance of this Agreement does not in any way conflict with any other agreement including, but not limited to, any policy or guidelines binding on those persons.
- 7.4 The Client warrants that:
- 7.4.1 it will use reasonably commercial endeavours, including using up-to-date virus-checking routines, to ensure that its data and content transmitted to the Services remain free from viruses and other malicious code;
  - 7.4.2 in using the Services it will comply with all applicable laws;
  - 7.4.3 it will not upload any material or content through the Application to the Software-as-a-Service which causes or may cause harm to PeopleFluent's servers or to the provision of the Services.
- 7.5 Save to the extent that any claim arises solely from the actions of PeopleFluent or its other clients, and such actions were neither at the Client's request nor required under this Agreement, the Client will indemnify PeopleFluent and any other PeopleFluent Group Company, as appropriate, and their respective directors, officers, employees, agents and sub-contractors, from and against any claims made against any of them by a third party arising in connection with:
- 7.5.1 the Client's use of the Services or use of Client Data in violation of this Agreement;
  - 7.5.2 liability resulting directly or indirectly from Client Data;
  - 7.5.3 any claimed violation by PeopleFluent of such laws, rules, policies and procedures which is or are a consequence of the Client failing to inform PeopleFluent that the Client's content or data transmission requires PeopleFluent to obtain licences, permits and/or approvals; or
  - 7.5.4 any breach of the Client's obligations under Clauses 3.7 and 3.8 or of any warranties under this Agreement;
- provided that PeopleFluent: (1) notifies the Client in writing as soon as is reasonably possible and in any event within thirty (30) days of becoming aware of any such claim; (2) makes no admission or settles the claim, or otherwise does anything to prejudice Client's conduct of the claim without Client's prior written consent; and (3) provides all reasonable assistance in conducting all negotiations and litigation, if required to do so by Client.
- 7.6 The Client will indemnify PeopleFluent against all loss and damage sustained by PeopleFluent as a result of or in connection with any breach by the Client or its Users of PeopleFluent's or its licensors' Intellectual Property Rights.



7.7 PeopleFluent will indemnify Client from and against any third party claim made against the Client that the use of the Application through the Services in accordance with this Agreement infringes the copyright, trademarks or rights in confidential information of that third party, provided the Client: (1) notifies PeopleFluent in writing as soon as is reasonably possible and in any event within 30 days of becoming aware of any alleged applicable infringement; (2) makes no admission or settles the claim, or otherwise does anything to prejudice PeopleFluent's conduct of the claim without PeopleFluent's prior written consent; and (3) provides all reasonable assistance in conducting all negotiations and litigation, if required to do so by PeopleFluent. PeopleFluent is authorised, at its own expense, to defend or, at its option, to settle such claims. In the defence or settlement of any claim, PeopleFluent will, at its own cost and sole option, either obtain the right for the Client to continue using the Services, or replace or modify the Services so that they are no longer infringing, or terminate this Agreement and reimburse the Client for the charges paid under this Agreement without any additional liability to the Client.

7.8 In no event shall PeopleFluent, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:

7.8.1 a modification of the Services by anyone other than PeopleFluent; or

7.8.2 the Client's use of the Services in a manner contrary to the instructions given to the Client by PeopleFluent; or

7.8.3 the Client's use of the Services after notice of the alleged or actual infringement from PeopleFluent or any appropriate authority.

## **8 Charges and Payment**

8.1 In consideration of PeopleFluent providing the Services under this Agreement, the Client will pay the Charges to PeopleFluent (or, where applicable, a Reseller) prior to the commencement of each year of this Agreement. Payment of all additional charges falling due under this Agreement shall be made within thirty (30) days of the date of PeopleFluent's invoice. If Customer requires a purchase order (P.O.), it shall be provided when the Order Form or SOW is signed. In no event shall Customer's failure or delay in providing a P.O. alter its payment obligations under the relevant Order Form or SOW.

8.2 All charges quoted by PeopleFluent are exclusive of any Value Added Tax and any other applicable local, regional or national taxes, levies or charges, for which the Client will be additionally liable at the rate applicable at the date of PeopleFluent's invoice.

8.3 Payment of all amounts due to PeopleFluent will be made by the Client in the agreed currency by wire transfer or by such other method as may be agreed or specified from time to time by PeopleFluent. The Client will be responsible for payment of all its bank charges. The Client and any Reseller shall agree their own payment provisions.

8.4 Payment of all sums due to PeopleFluent must be made by the Client in full without any set-off (whether at common law or otherwise), deductions or withholding for or on account of any taxes, fees, levies, imposts, duties or charges of any nature imposed by any governmental authority on any payment due hereunder, except as required by law.

8.5 If the Client fails to make a payment (which has not been disputed in accordance with Clause 5.8) to PeopleFluent in accordance with this Clause 8, PeopleFluent will be entitled to (i) charge interest on the overdue amount at a rate of 1.5% per month

compounded monthly from thirty (30) days after the invoice date until the date of payment, and (ii) recover on demand from the Client the costs (including attorneys' costs) incurred by PeopleFluent in collecting or recovering the payment due from the Client.

- 8.6 PeopleFluent may increase per the end of the Initial Term or applicable Renewal Term the Charges with at least ninety (90) days' notice in writing before the end of the Initial Term and before the end of each subsequent Renewal Term.
- 8.7 Pricing and applicable terms for any services other than the Services shall be as may be agreed by the parties.

## **9 Intellectual Property Rights**

- 9.1 The Intellectual Property Rights in the Application used to provide the Services, accompanying reference manuals and written materials and any other software accessible by the Client in connection with the provision of the Services (including any modifications or alterations or additions made at the request of the Client to the Application used to provide the Services) will be owned by PeopleFluent (or its licensors, as applicable). The Client will not, and will ensure that Users do not, copy, modify or adapt any of such Application, manuals or written materials.
- 9.2 PeopleFluent reserves the right to use any marks and/or promotional slogan used by it on the Application used to provide the Services, accompanying reference manuals and written materials, on any Web pages or browser title bar provided by the Client to the Users and any other software provided by PeopleFluent and accessible by the Client in connection with the provision of the Services.
- 9.3 All Intellectual Property Rights and all other right, title and interest in and to the Client Data shall be owned at all times by the Client and the Client shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data. The Client gives PeopleFluent, any other PeopleFluent Group Company, as appropriate, and/or the Reseller (as the case may be) a non-exclusive right to use such content and data solely in connection with this Agreement and for the purpose of the provision of the Services and Support in accordance with this Agreement.
- 9.4 All Intellectual Property Rights and all other right, title and interest in and to the Third Party Software shall be owned at all times by the applicable third party licensor or its licensors.

## **10 Confidentiality**

- 10.1 Each party to this Agreement (the "Receiving Party") agrees to keep confidential and not copy, adapt, alter or divulge to any third party any and all Confidential Information supplied to or observed by its agents, employees or subcontractors in the course of performing this Agreement which belongs to or relates to the other party (the "Disclosing Party") or the other party's business, organisation, work methods, know-how, clients, programs or products, or which belongs to or relates to any member of the other party's group.
- 10.2 Each party will immediately inform the other if it becomes aware of the possession, use or knowledge of, or attempts to gain access to, any of the Confidential Information by any person not authorised to possess, use or have knowledge of the Confidential Information and will at the request of the other party provide such reasonable assistance at its own expense as is required by such other party to deal with such event.
- 10.3 The provisions of Clauses 10.1 and 10.2 will not apply to any information which:

- 10.3.1 is in or enters the public domain other than by breach of Clauses 10.1 and 10.2; or
- 10.3.2 is obtained from a third party who is lawfully authorised to disclose such information; or
- 10.3.3 is independently developed without reference to the Confidential Information of the Disclosing Party and such independent development can be proved to the reasonable satisfaction of the Disclosing Party; or
- 10.3.4 is authorised for release by written consent of the Disclosing Party; or
- 10.3.5 is required to be disclosed by law or order of a court of competent jurisdiction, provided the Receiving Party uses reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and has given the Disclosing Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause, it takes into account the reasonable requests of the other party in relation to the content of this disclosure.

## **11 Limitation of Liability and Disclaimers**

- 11.1 This Clause 11 sets out the entire aggregate financial liability of PeopleFluent (including any liability for the acts or omissions of its employees, agents and sub-contractors (PeopleFluent Group Companies included) to the Client:
  - 11.1.1 arising under or in connection with this Agreement;
  - 11.1.2 in respect of any use made by the Client of the Services, the Application, any Third Party Software or any part of them; and
  - 11.1.3 in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 11.2 Except as expressly and specifically provided in this Agreement:
  - 11.2.1 the Client assumes sole responsibility for results or other output obtained from the use of the Application, Third Party Software and the Services by the Client and the Users;
  - 11.2.2 PeopleFluent shall have no liability for any damage caused by errors or omissions in any Client Data or any other information, instructions or content provided to PeopleFluent by the Client in connection with the Services, or any actions taken by PeopleFluent at the Client's direction; and
  - 11.2.3 ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND ALL OTHER TERMS OF ANY KIND WHATSOEVER IMPLIED BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED FROM THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THAT THE SERVICES WILL BE UNINTERRUPTED OR VIRUS OR ERROR FREE, THAT ANY NETWORK OR OTHER SERVICES SUPPLIED BY ANY OPERATOR OTHER THAN PEOPLEFLUENT WILL BE UNINTERRUPTED OR VIRUS OR ERROR FREE OR THAT THE SERVICES WILL MEET THE CLIENT'S REQUIREMENTS OTHER THAN AS STATED IN THIS AGREEMENT, OR OPERATE IN COMBINATIONS WITH HARDWARE, SOFTWARE, PLATFORMS, SYSTEMS OR DATABASES USED BY OR ON

BEHALF OF THE CLIENT. FOR THE AVOIDANCE OF DOUBT, NO WARRANTY, REPRESENTATION, CONDITION OR OTHER TERM IS GIVEN CONCERNING OR IN RELATION TO THE THIRD PARTY SOFTWARE.

- 11.3 Nothing in this Agreement excludes the liability of either party:
- 11.3.1 for death or personal injury caused by that party's negligence; or
  - 11.3.2 for fraud or fraudulent misrepresentation; or
  - 11.3.3 for any damages resulting from that party's wilful misconduct or gross negligence.
- 11.4 Subject to Clause 11.3, the Service Level Terms state the Client's full and exclusive right and remedy, and PeopleFluent's only obligation and liability in respect of, the performance and/or availability of the Services, or their non-performance and non-availability.
- 11.5 Subject to Clause 11.3:
- 11.5.1 PEOPLEFLUENT SHALL NOT BE LIABLE WHETHER IN CONTRACT, TORT (INCLUDING FOR NEGLIGENCE BREACH OF STATUTORY DUTY), MISREPRESENTATION (WHETHER INNOCENT OR NEGLIGENT), RESTITUTION OR OTHERWISE FOR (I) ANY LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR CONTRACTS, LOSS OF ACTUAL OR ANTICIPATED SAVINGS, DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES OR LOSS OF OR CORRUPTION TO DATA OR INFORMATION, OR PURE ECONOMIC LOSS, OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS, COSTS, DAMAGES, CHARGES OR EXPENSES HOWEVER ARISING UNDER THIS AGREEMENT, OR (II) ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THE THIRD PARTY SOFTWARE OR THE CLIENT'S USE OF IT, IN EACH CASE EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME; AND
  - 11.5.2 PEOPLEFLUENT'S TOTAL AGGREGATE LIABILITY IN CONTRACT (EXCLUDING IN RESPECT OF ANY INDEMNITY, IN RESPECT OF WHICH PEOPLEFLUENT'S AGGREGATE LIABILITY SHALL BE AT THE LIMIT SPECIFIED IN CLAUSE 11.5.3), TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION (WHETHER INNOCENT OR NEGLIGENT), RESTITUTION OR OTHERWISE, ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THIS AGREEMENT SHALL BE LIMITED TO THE CHARGES PAID BY CLIENT FOR THE SERVICES DURING THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE; AND
  - 11.5.3 PEOPLEFLUENT'S TOTAL AGGREGATE LIABILITY UNDER OR IN RESPECT OF ANY INDEMNITY UNDER THIS AGREEMENT SHALL BE LIMITED TO US\$100,000.

## **12 Suspension and Termination**

- 12.1 Either party may (without prejudice to its other rights) terminate this Agreement by notice in writing to the other if the other party:
- 12.1.1 defaults in due performance or observance of any material obligation under this Agreement and (in the case of a remediable breach) fails to remedy the default within thirty (30) days of receipt of the terminating party's notice so to do, and such termination will take effect either immediately or at a date specified

in the notice provided that this provision will not apply to a failure to pay any sum by the due date; or

12.1.2 becomes bankrupt or insolvent, or if the other party's business is placed in the hands of a receiver or trustee, whether voluntarily or otherwise, and such termination will take effect either immediately or at a date specified in such notice.

12.2 PeopleFluent will have the right to terminate this Agreement on serving written notice with immediate effect if the Client does not pay any sum within ten (10) days of receiving a written reminder from PeopleFluent provided that the sum has not been disputed in good faith in accordance with Clause 5.8.

12.2.1 PeopleFluent may also suspend the provision of the Services under this Agreement on giving not less than two (2) Business Days' notice in writing if circumstances arise in respect of which it has the right to terminate this Agreement under Clause 12.1 or 12.2,

and may continue the suspension until the relevant payment has been made or the relevant default has been cured.

12.3 Client may suspend its payments under this Agreement on giving no less than two (2) Business Days' notice in writing if circumstances arise in respect of which it has a right to terminate this Agreement under Clause 12.1.

### **13 Consequences of Termination**

13.1 On termination of this Agreement for any reason:

13.1.1 all licences granted under this Agreement shall immediately and automatically cease; and

13.1.2 the Client will immediately stop accessing the Services, Application and Third Party Software, as applicable; and

13.1.3 each party shall return and make no further use of any equipment, property, materials, Confidential Information (excluding Client Data) and other items (including all copies of them) belonging to the other; and

13.1.4 PeopleFluent may destroy or otherwise dispose of the Client Data in its possession unless it receives, no later than fourteen (14) days after the effective date of termination of this Agreement, a written request from Client to allow it to download the Client Data from PeopleFluent's servers. In such case, PeopleFluent shall allow the Client to download its data within ten (10) business days of such request, provided that the Client has, at that time, paid all Charges outstanding.

13.2 Termination of this Agreement will not affect the obligation of the Client to pay PeopleFluent or the Reseller, as the case may be, any charges or other payments which are due and unpaid at the date of termination.

13.3 Any termination of this Agreement will not affect any accrued rights or liabilities of either party nor will it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

## **14 Force Majeure**

- 14.1 Neither PeopleFluent nor the Client will be liable to the other under this Agreement for any failure to perform its obligations hereunder other than payment obligations or for any loss or damage which may be suffered by the other party due to any circumstances beyond its reasonable control including, without limitation, any Act of God, failure or shortage of power supplies, flood, lightning or fire, strike or other industrial action, the act or omission of Government or other competent regulatory authority, war, military operations, epidemic, quarantine restrictions or riot. PeopleFluent bears no responsibility for any adverse effect on the Services (including, but not limited to, server failure or slow response time) caused by any acts of the Client in violation of this Agreement.
- 14.2 If either the Client or PeopleFluent wishes to rely upon this Clause 14 it will send written notice to the other party explaining the relevant force majeure circumstances as soon as reasonably possible.

## **15 General**

- 15.1 This Agreement is personal to the Client and may not be assigned to any third party in whole or in part, including by sale of assets, merger, consolidation or otherwise, without the prior written consent of PeopleFluent, not to be unreasonably withheld.
- 15.2 PeopleFluent has the right to assign the Services, this Agreement or any part of this Agreement or the Services to a PeopleFluent Group Company. In the event of such assignment, PeopleFluent warrants that such PeopleFluent Group Company shall comply with the applicable terms of this Agreement. PeopleFluent has the right to subcontract any part of the Services to a PeopleFluent Group Company or such third party service provider it deems appropriate in the event of any such subcontracting, PeopleFluent shall remain responsible for all acts and omissions of the applicable PeopleFluent Group Company and/ or third party service provider.
- 15.3 The terms of this Standard Terms and Conditions Schedule will not be varied or amended unless such variation or amendment is agreed by separate agreement specifically drafted for purpose and executed by duly authorised representatives from the Client and PeopleFluent.
- 15.4 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, the provision will be severed and the remainder of the provisions of this Agreement will continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Client and PeopleFluent will immediately commence good faith negotiations to remedy such invalidity.
- 15.5 No failure or delay on the part of either of the parties to this Agreement to exercise any right or remedy under this Agreement will be construed or operate as a waiver nor will any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.
- 15.6 This Agreement constitutes the entire understanding between the parties relating to the subject matter hereof unless any representation or warranty made about this Agreement was made fraudulently and, save as may be expressly referred to or

referenced in this Agreement, supersedes all prior representations, writings, negotiations or understandings with respect hereto.

## **16 Notices and Communications**

- 16.1 Any notice or other document to be given under this Agreement will be in writing and will be deemed to have been duly given if left at or sent by hand or by registered post, or by facsimile or such other electronic media (including email) to a party at the address or facsimile number set out in the signature section of this Agreement or such other (email) address or facsimile number as one party may from time to time designate by written (email) notice to the other.
- 16.2 Any such notice or other document will be deemed to have been received by the addressee three (3) working days following the date of dispatch if the notice or other document is sent by registered post, or simultaneously with the delivery or transmission if sent by hand or if given by facsimile, or at the moment of receipt of a confirmation for receipt in the case of email or other electronic means.

## **17 Anti-Corruption**

The Client has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of PeopleFluent's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If the Client learns of any violation of the above restriction, it will use reasonable efforts to promptly notify PeopleFluent's Legal and Compliance Department.

## **18 Governing Law and Disputes**

- 18.1 This Agreement shall be governed by and interpreted in accordance with the laws of New York, without regard to its conflicts of law principles or to the United Nations Convention on the International Sale of Goods. Each Party irrevocably consents to the exclusive jurisdiction, forum and venue of the United States District Court for the Southern District of New York over any and all claims, disputes, controversies or disagreements between the Parties or any of their respective subsidiaries, affiliates, successors and assigns under or related to this Agreement or any document executed pursuant to this Agreement or any of the transactions contemplated hereby. This Agreement, and any communications or disputes concerning this Agreement shall be in the English language.



## EXHIBIT A SERVICE LEVEL SCHEDULE

This Service Level Schedule outlines PeopleFluent's corporate-wide Support and Service Level policy and is subject to change at PeopleFluent's discretion, but in no event shall the service level be less than as outlined herein. All terms contained herein and not otherwise defined shall have the meaning set forth in the Master Agreement.

1. Contacting Support. Support requests should be submitted to PeopleFluent's Customer Support Center by telephone or web, as provided below. The Customer's internal helpdesk will provide first line support to its internal users, and all initial support requests will be first received and addressed by Customer's helpdesk. PeopleFluent will provide second line support to a reasonable number of designated Customer representatives.

2. Support.

2.1 General. Customer has primary responsibility for administering the Subscription Services, Software and Hosting Services, and PeopleFluent will provide assistance as specified herein. Customer is responsible for ensuring that its hardware and software used to access the Subscription Services, Software and Hosting Services meet the minimum requirements required by PeopleFluent in the applicable Documentation. In addition to services otherwise excluded in this Support and Service Level Schedule, excluded from Support and the Availability Commitment (defined below) are: Professional Services, infrastructure configurations that are outside of the then-standard product configuration, access to the Subscription Services or Hosting Services via private network, custom report creation, staging environment, technical and/or functional user training, database schema changes, modifications to data feed, on-site services, translation services, and any and all other requirements and/or services not specifically described herein.

Tier 1 Level Support means upon an initial support request or any user of the system that should be addressed by Customer's designated System Administrator for the relevant PeopleFluent Product, the System Administrator will perform at least the following:

- (i) receives incoming support request;
- (ii) addresses administrative or end user requests (i.e. lockouts, password changes, how do I,...);
- (iii) completes initial troubleshooting efforts of the issue before raising a ticket with PeopleFluent; and
- (iv) in the event a new System Administrator is onboarded, they shall be fully trained as a System Administrator for the relevant PeopleFluent product.

For the sake of clarity, PeopleFluent support does not include Tier 1 Level Support, how to, training, or administrative requests. These should be addressed by the System Administrator for the relevant PeopleFluent product, or Customer may contact their Account Manager, if PeopleFluent assistance is required.

2.2 Support for Subscription Services, Software and Hosting Services includes:

- Access to the Customer Support Center website for submission of support requests (24/7).
- After hours support (24/7) for all Severity 1 Issues (defined below).
- Excluding NetD LMS, Helpdesk support for customers shall occur during normal business hours of Monday through Friday (8am-8pm Eastern U.S. Time), excluding PeopleFluent holidays ("**Business Hours**"), for all Severity 2, 3, 4 Issues (defined below).
- For NetD LMS, Helpdesk support for customers shall occur during normal business hours starting weekly on Sunday 7pm through Friday 7pm Eastern U.S. Time), excluding PeopleFluent holidays ("**Business Hours**"), for all Severity 2, 3, 4 Issues (defined below).

2.3 Support for Subscription Services and Hosting Services includes:

- Standard control data integrations (including inbound data, such as Customer Data and organizational data) and validation of successful imports. Support does not include support for or resolution of Customer or third party data errors or problems. Additional integrations and associated support are billable separately pursuant to the terms of a mutually agreed upon SOW.
- Maintenance of the PeopleFluent's standard single sign on ("SSO") user authentication method. Customer is responsible for its own SSL certificates.

2.4 Updates and Upgrades –Applicable only to Subscription Services and PeopleFluent-Hosted Software.

- From time to time, PeopleFluent will upgrade the Subscription Services and PeopleFluent-hosted Software at no cost to Customer. Customer agrees to accept the general distribution updates, upgrades, enhancements and/or new releases that are provided to the general customer base.
- PeopleFluent will install general distribution updates to the Subscription Services and PeopleFluent-hosted Software during regularly scheduled maintenance, which is currently provided on weekends, with advance notice.
- In the event Customer elects to have PeopleFluent change its specific configuration of the Subscription Services or PeopleFluent-hosted Software at any time, there will be a charge for such change pursuant to the terms of a mutually agreed upon SOW.
- From time to time, PeopleFluent may offer optional additional content for an additional fee. Customer is not required to accept or use such optional additional content.

**2.5 Updates and Upgrades – Applicable only to Customer-Premises Software under Support & Maintenance.**

- From time to time, PeopleFluent will provide Customer with copies of any standard updates and upgrades to the Software that are released by PeopleFluent on a general basis at no additional charge. All such updates and upgrades shall be subject to the terms and conditions of the applicable Order Form. Customer agrees to accept and install such updates and upgrades within ninety (90) days of receipt.
- Customer is responsible for the installation of such updates and upgrades to the Software. Installation and consulting services can be purchased from PeopleFluent at the then current consulting rates pursuant to the terms of a mutually agreed upon SOW.
- From time to time, PeopleFluent may offer optional additional content for an additional fee. Customer is not required to license or install such optional additional content.

**3. Response Guidelines for Support.** Support requests will be logged and tracked in PeopleFluent’s support tracking system. When submitting a support request, Customer must provide PeopleFluent with all information necessary for PeopleFluent to process the request and must respond promptly to PeopleFluent with any information reasonably requested to clarify the support request. Provided the requirements of this Section 3 are met, upon receipt of the support request, PeopleFluent will work with Customer to set expectations regarding the completion times for all support requests. PeopleFluent will acknowledge the request and determine the appropriate priority level based on the classifications specified below.

An “**Acknowledgement**” is PeopleFluent’s initial confirmation to Customer that PeopleFluent has received Customer’s support request; a “**Resolution**” is a workaround or action plan for addressing the problem; an “**Issue**” is a failure of the Subscription Services or Hosting Services to operate in accordance with its then-current Documentation.

<b>Response Expectations</b>	<b>Acknowledgement</b>	<b>Resolution and/or Action Plan</b>	<b>Criteria*</b>
Severity 1 –	Within one (1) Hour	Work will start immediately upon Acknowledgement and will continue until a Resolution is in place. Status will be communicated every hour, unless the parties agree otherwise.	Critical issue where the system is unavailable. No workaround available.
Severity 2 –	Within four (4) Business Hours	Work will start immediately upon Acknowledgement and will continue until a Resolution or agreed to action plan is in place.  A Resolution or action plan will be communicated within	Major functionality is impacted or significant performance degradation is experienced. No workaround available. Issue is persistent.

		twelve (12) Business Hours.	
Severity 3 –	Within sixteen (16) Business Hours	The Issue will be researched and Resolution or action plan will be communicated within twenty-four (24) Business Hours.	<i>If a defect:</i> System performance issue or bug, whereby a short-term workaround is available, but cannot be scaled. <i>If not a defect:</i> Functionality request or data issues.
Severity 4-	Within thirty-two (32) Business Hours	The Issue will be researched and Resolution or action plan will be communicated within ninety (90) days of notification.	<i>Indicates a perceived shortcoming in the application that has no significant impact to usage and/or availability. Such issues would include the following: minor spelling errors, minor usability issues, usage and design issues.</i> <i>Severity 4 code Issues that are agreed to be fixed will be resolved during a subsequent product release. Minor Severity 4 items reported requiring a code fix may be deemed to not be corrected with consultation and input from Customer.</i>

\*Note: PeopleFluent’s obligations to meet the steps for each of the above Severity Issues are dependent and contingent upon a Customer contact being available to provide information required for problem diagnosis and to test/confirm the Resolution.

#### 4. Availability Commitment for Subscription Services and Hosting Services.

The Subscription Services or Hosting Services will be Available (as defined below) 99.5% of each calendar month (the “**Availability Commitment**”). This commitment does not apply to Support and Maintenance for Customer-Premises Software.

If PeopleFluent fails to meet the Availability Commitment for three (3) consecutive calendar months, then within thirty (30) days from the conclusion of the third consecutive calendar month, Customer may terminate the applicable Order Form by giving PeopleFluent thirty (30) days’ prior written notice of termination, without liability for any cancellations fees, penalties or other damages associated with such termination, and PeopleFluent will refund to Customer all prepaid fees for Subscription Services applicable to the remainder of the term of the applicable Order Form. Notwithstanding any other term or provision in the Master Agreement, the remedies stated in this section 4 are Customer’s sole and exclusive remedies for failure to meet the Availability Commitment specified herein.

“**Available**” means the Subscription Services or Hosting Services are available (following Activation, defined below) 24 hours per day x 7 days a week, measured on a calendar month, subject to the exclusions set forth in section 2.1, less actual downtime for (a) scheduled maintenance performed during the regular planned maintenance window as PeopleFluent may reasonably designate from time to time (“Scheduled Maintenance Down-Time”); (b) acts or omissions of Customer or anyone gaining access through Customer’s passwords or equipment; (c) Customer’s use of hardware and network services, which components are controlled by Customer and their performance or failure to perform can impair Customer’s connections to the Internet and the transmission of data; (d) Events beyond PeopleFluent’s Immediate Control (defined below).

“**Activation**” means the date that the last of the following is completed and PeopleFluent has provided notice of the same to Customer: (i) hardware is setup; (ii) application software is installed with its default configuration (i.e., pre-configured); and (iii) access is provided by PeopleFluent.

“**Events beyond PeopleFluent’s Immediate Control**” include (i) the flow of data to or from PeopleFluent’s network and other portions of the Internet which depends on the performance of Internet services provided or controlled by third parties other than the PeopleFluent data center facility; (ii) a service interruption caused by a security threat until such time as the security threat has been eliminated; (iii) reasons of a Force Majeure Event (as defined in the Master Agreement) and (iv) emergency maintenance, of which PeopleFluent will notify Customer of as soon in advance as is practicable but will first endeavor to remedy the emergency.