

HOSTING SERVICES AGREEMENT FOR NETDIMENSIONS ANALYTICS

Standard Terms and Conditions Schedule

This Hosting Services Agreement for NetDimensions Analytics is between the PeopleFluent group company identified in the Commercial Terms (“PeopleFluent”) and the entity that wishes to use PeopleFluent’s hosted Application Services (as identified in the Commercial Terms) (“Client”), either for its own or its customers’ analytics purposes, and describes the terms and conditions pursuant to which PeopleFluent or another PeopleFluent Group Company will provide the hosted Application Services 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 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:

“Agreement”	this Hosting Services 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;
“Application”	PeopleFluent’s software application NetDimensions Analytics, based on Tibco Jaspersoft Corporation’s JasperReports Server, in machine readable form used in the Services provision (as identified in the Commercial Terms and as (may be) further described on PeopleFluent’s online client pages, as updated from time to time), including any applicable error corrections, updates, upgrades, modifications and enhancements to it;
“Charges”	the charges payable by the Client for the Services and other charges falling due in accordance with this Agreement;
“Client”	the Client that has purchased the Services directly from PeopleFluent;
“Client Data”	the information, data and content input into or used in the hosted Application Services by the Client or Users;
“Commercial Terms”	the main commercial terms set out in the order form and/or signature section of this Agreement;
“Confidential Information”	all materials and/or information, whether or not marked or otherwise identified as confidential, whether written, oral, 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;

“Custom Database”	the database that stores Client’s customized data, tables, and SQL scripts, in each case that are created to enable the Client’s development of customized reports, also referred to as “Data Warehouse”;
“Data Protection Laws”	All applicable data protection and privacy laws and regulations which might apply to the parties in the provision of the Services including but not limited to the General Data Protection Regulation (EU Regulation 2016/679) (the “GDPR”)
“Data Warehouse”	the database that stores Client’s customized data, tables, and SQL scripts, in each case that are created to enable the Client’s development of customized reports, also referred to as “Custom Database”;
“Initial Term”	a period of 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”;
“Intellectual Property Rights”	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;
“PeopleFluent Group Company”	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;
“Renewal Term”	the meaning set out in Clause 2;

“Replicated Database”	the database which is a mirror of the Client’s licensed production instance of the NetDimensions Talent Suite database, with a default data update interval as set by PeopleFluent or as otherwise specified in the Commercial Terms;
“Service Level Terms”	the service level terms specified in Clause 4 applicable to the Services under this Agreement;
“Services”	the hosted Application Services provision, Support and other services, as agreed, to be provided by PeopleFluent under this Agreement as specified in the Commercial Terms;
“Services Commencement Date”	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 to the Client;
“Scheduled Maintenance Down-Time”	the meaning set out in Clause 4.5;
“Support”	the standard maintenance and support services provided by PeopleFluent as defined in Clause 4.1;
“System”	the meaning set out in Clause 4.5;
“User”	Client users with Application organization level access as authorised by the Client in accordance with this Agreement to access the Application and Services to develop and distribute reports, or as otherwise specified in the Commercial Terms. For the avoidance of doubt, “superuser” access to the Application and System shall solely be held by PeopleFluent.

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 Anything agreed in the Commercial Terms takes priority over the terms and conditions set out in this Standard Terms and Conditions Schedule. Except as set out in this Agreement, no other terms shall apply, even where specified in the Client’s purchase order 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 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 hosted Application Services

- 3.1 PeopleFluent will provide the Services to the Client on the terms of this Agreement. Any locally installed applications that may be made available to the Client by PeopleFluent to be used in conjunction with the Application will be subject to separate supplier terms and will comprise third party software, for which PeopleFluent shall not be responsible.
- 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 Services.
- 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 the Services (but is under no obligation to monitor) and/or to remove or refuse to host material or content where there is any content that causes harm or may in PeopleFluent's sole opinion cause harm to PeopleFluent's servers or to the provision of Services, and the Client shall not store, distribute or transmit any such content on, to or through the Application or the Services. 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 and Services itself. For the avoidance of doubt, "superuser" access to the Application and System shall solely be held by PeopleFluent, and the Client shall only be provided with Application organization level access for use by its Users. Any requested non-standard, or Client-specific, system level configurations beyond the standard Client-granted Application and System access and/or outside of the PeopleFluent provided Analytics environment, (as determined on each occasion by PeopleFluent in its sole discretion), shall require prior feasibility and technical scoping and assessment by PeopleFluent, may in PeopleFluent's sole discretion either be accepted or not, and may be subject to additional charges as agreed with the Client.
- 3.7 PeopleFluent hereby grants to the Client, on and subject to the terms and conditions of this Agreement, a non-exclusive, non-transferable licence to allow Client's authorised Users to access and use the Services solely in conjunction with the Client's production instance of NetDimensions Talent Suite and 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. Use of the Services to generate reports shall be limited to Client's Users, but for the avoidance of doubt, all active Users authorized to access NetDimensions Talent Suite SaaS services provided to Client shall be entitled to view any reports so generated by Client's Users. The Client's Users point of access for developing reports and the said active Users' point of access for viewing the reports will be defined by the parties during any Services set-up/implementation process (which shall be subject to a separate agreement between the parties).

- 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 Where the Commercial Terms state that the Application is for NetDimensions Analytics Business, this hosted Application Services shall be for a shared service, meaning that the Services are delivered from one hosted instance of Client's NetDimensions Talent Suite licensed under Client's existing Software-as-a-Service Agreement, and one (multiple client) shared instance of the Application where one analytics domain will be allocated to the Services for the Client. In such case, Client acknowledges that not receiving its own separate hosted instance of the Application could mean that the security settings and performance may not be of the same standards as is the case for a separate instance of the Application.
- 3.10 All Services shall be provided in the English language.

4 Service Level Terms and Support

- 4.1 As part of the Services, PeopleFluent will provide limited maintenance and technical support as stated below and as (may be) further described in the support policies on PeopleFluent's online client pages (which PeopleFluent may in its sole discretion amend from time to time). Telephone and on-site support do not form part of the support provided hereunder. PeopleFluent will not be obliged to provide any support for any release of the NetDimensions Analytics application in use by the Client other than the release based on the most current version of *Tibco JasperSoft Corporation's JasperReports Server* and such other releases as may be specified at its online client pages (as may be amended by PeopleFluent at its sole discretion from time to time). For the avoidance of doubt, the only support services included in standard support are as described in this Clause 4. This is PeopleFluent's standard support for NetDimensions Analytics ("Support"). PeopleFluent may provide additional technical support services to the Client upon terms and charges to be agreed.
- 4.2 Subject to Clause 4.1, limited maintenance for the Application as specified below is included as part of the Services ("Maintenance"). Maintenance includes the provision of Application software upgrades, as well as major, critical bug-fixes, patches, error corrections and enhancements (so, for the avoidance of doubt, does not apply to Client scripts, contents, reports or dashboards, or to minor and/or non-critical bug-fixes, patches, error corrections and enhancements), at no additional charge, when any of them are at PeopleFluent's sole discretion made available, without customisation, to PeopleFluent's clients generally at no additional cost, and any such upgrades, bug fixes, patches, error corrections and enhancements shall become part of the Application, the Intellectual Property Rights in which shall remain with and vest in PeopleFluent or its licensors, as applicable. Any Application or System maintenance requested and provided in addition to or separate from the Maintenance described in

this Clause 4.2 will be considered professional services work and shall be subject to a separate agreement or statement of work and additional charges shall apply. For the avoidance of doubt, any upgrade related work by PeopleFluent shall also be considered professional services work and shall be subject to a separate agreement or statement of work and additional charges shall apply.

- 4.3 For the avoidance of doubt, the only included support services for the Application and the Services are as defined in this Clause 4. Any other support requests related to the Application are subject to acceptance by PeopleFluent and may require additional charges as applicable.
- 4.4 PeopleFluent reserves the right to amend the Service Level Terms at any time upon 60 days' written notice to the Client to the extent that such amendment does not have a material adverse effect on the Client. The Service Level Terms are limited to those events and service levels within PeopleFluent's commercially reasonable control and do not include events or Services/services or security failures resulting from any actions or inactions of the Client or any third parties not under PeopleFluent's direct control (including but not limited to Client or third party equipment and internet or telecommunications providers).
- 4.5 Service availability is defined as the amount of time the relevant PeopleFluent's system ("System") is available to the Client's Users and capable of performing operations, excluding Scheduled Maintenance Down Time (as defined below). Non-availability is the amount of time (excluding Scheduled Maintenance Down-Time) that the System (hence not (an) individual report(s) or dashboard) is either not available or not capable of performing operations. The Client's Application services will be available 95% of the time on a calendar year basis. Non-availability caused by the actions or inactions of the Client or Client's Users (including the Client's equipment, internet access, browsers and/or specific or non-standard Client System configurations), or as a result of non-standard iReports or dashboards, or by a point of entry other than that agreed at implementation (pursuant to Clause 3.7) will not be included when calculating the System's availability. If the Client's hosted Application Services are unavailable for five or more hours in any 24-hour period at PeopleFluent's fault, the Client will be credited with a total of one week's free Application hosting at the end of the Initial Term or applicable Renewal Term.
- 4.6 The Client accepts that PeopleFluent will require scheduled down-time periods from time to time to perform System maintenance, backup and upgrade functions for the hosted Application Services ("Scheduled Maintenance Down-Time"). Scheduled Maintenance Down-Time will usually consist of a periodic weekly three-hour maintenance window to take place at the weekend. The weekly maintenance window is required to allow PeopleFluent (or its third party contractors) to maintain and improve server or storage space and other facilities. The timing of the weekly maintenance window will be communicated in writing to the Client from time to time. Additional periods of Scheduled Maintenance Down-Time may be required by PeopleFluent to perform system maintenance, back up and upgrade functions. Such additional periods will be scheduled in advance by e-mail message or telephone call to the Client, and PeopleFluent will use its reasonable endeavours to schedule Scheduled Maintenance Down-Time at times and for periods which minimise inconvenience to the Client. The measurement for Scheduled Maintenance Down-Time is the time elapsed from when the Services become unavailable to perform operations to the time when the Services become available to perform operations again.
- 4.7 The Client may designate up to two Users as technical support contacts for the Services hereunder. Each technical support contact may document a technical support issue via

PeopleFluent’s customer support web-based tool (zendesk or such other tool used by PeopleFluent from time to time). Support will be provided at the times specified in this Agreement, as otherwise agreed between PeopleFluent and the Client or as may be reasonably communicated to Client by PeopleFluent from time to time. The Client may change the technical support contacts up to twice in any year of this Agreement free of charge.

4.8 Client shall promptly communicate bugs or errors in relation to the Application and PeopleFluent supplied standard iReports and dashboards via email to PeopleFluent or via the web-based tools described in Clause 4.7. Subject to Clause 4.1, PeopleFluent will provide support in relation to the Application and PeopleFluent supplied standard iReports and dashboards (if any) as follows:

PRIORITY **	DESCRIPTION	INITIAL RESPONSE TIME	TARGET RESOLUTION TIME ie the timeframe in which PeopleFluent shall aim, using commercially reasonable endeavours to rectify the reported problem. This commences on receipt by PeopleFluent of the necessary information and data to enable it to replicate the error.*
1.	Critical problem. System is down.	1 hour	12 hours
n/a	Major, critical bugs or errors in the hosted Application not being Priority 1 issues (and not related to (individual/non-standard) reports or dashboards).	2 Business Days from communication being made through PeopleFluent’s online support tool about the error or bug.	As soon as reasonably practicable
n/a	System availability/performance issues not being Priority 1 issues (and not related to	2 Business Days from communication being made through PeopleFluent’s online support tool in regard	As soon as reasonably practicable

	(individual/non-standard) reports or dashboards).	to the availability/performance issues.	
n/a	Bugs or errors in PeopleFluent's supplied standard iReports and dashboards (if any).	2 Business Days from communication being made through PeopleFluent's online support tool about the error or bug	As soon as reasonably practicable
n/a	Minor and non-critical Bugs or errors in non-standard reports and dashboards	Not included (to be addressed in applicable statement of work(s))	Not included (to be addressed in applicable statement of work(s))

*Response Time and Target Resolution Time shall be calculated on a 24x5 (Hong Kong SAR business days) basis

** PeopleFluent shall determine in its sole discretion in which Priority category a raised ticket falls

“Initial Response Time” refers to the targeted response time by which PeopleFluent will communicate (by email, online case management system or telephone) with the Client in respect of the reported problem. It does not refer to the time in which the reported problem will be resolved by PeopleFluent.

“Target Resolution Time” refers to the time frame in which PeopleFluent shall aim, using commercially reasonable endeavours, to rectify the reported problem. Until the necessary information, data and documents are provided to PeopleFluent to enable it to reasonably assess and/or replicate the error, and/or having the Client demonstrate the error by showing PeopleFluent the error occurring on its systems, the Target Resolution Time shall not commence.

- 4.9 PeopleFluent will use commercially reasonable efforts to prevent unauthorised access to the Client Data, and PeopleFluent will notify the Client of any known material Services or Application security breaches or holes. The Client acknowledges that the Services and data transmitted to the Services are provided via the internet, a publicly-available computer network, and that such networks are susceptible to failure, attack and hacking.
- 4.10 PeopleFluent will also have no obligation to provide the Support and/or Services, where faults arise from:
- 4.10.1 misuse, incorrect use of or damage to the Application or Services from whatever cause (other than any act or omission by PeopleFluent or any party under its control);
 - 4.10.2 Client's failure to maintain the necessary environmental conditions for use of the Application or Services;
 - 4.10.3 modification to the Application or Services by any person other than PeopleFluent or any party under its control;
 - 4.10.4 breach of the Client's obligations under this agreement; or

4.10.5 Client's operator error.

5 Client's Obligations

- 5.1 The hosted Application Services are provided subject to a maximum agreed storage space for the Custom Database and Replicated Database of 50GB for each or as otherwise specified in the Commercial Terms. Storage space for the Custom Database may only be used for storing output from the Application services. The Client will not exceed this storage space without the prior written consent of PeopleFluent and any agreed additional storage space shall be subject to paying additional charges as indicated in the Commercial Terms or as specified in PeopleFluent's then current list price, unless otherwise agreed. PeopleFluent shall use reasonable endeavours to inform Client when storage space utilised by the Client reaches 80% of the agreed level.
- 5.2 The Client is entitled to use reasonable bandwidth in using the Services and shall not exceed this without PeopleFluent's prior written consent. Bandwidth 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 only use the Services in combination with Client's existing NetDimensions Talent Suite SaaS production instance;
 - 5.3.3 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;
 - 5.3.4 be responsible for complying with any third party terms and conditions applicable to locally installed applications to be used in conjunction with the Application and Services;
 - 5.3.5 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
 - 5.3.6 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.
- 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 Client Users accessing the reports and the amount of bandwidth or storage space used), and such audit shall be exercised in a manner so as to not substantially interfere with Client's normal conduct of business.
- 5.6 The Client will be responsible for maintaining the confidentiality of its passwords and for procuring that all Users keep their own 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 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 15 working days of issuance of the applicable invoice.

6 Data Protection

- 6.1 If PeopleFluent processes any personal data, as defined in the Data Protection Laws on the Client's behalf, when performing its obligations under this Agreement, the Parties record their intention that the Client will be the data controller and PeopleFluent will be the data processor and the following provisions shall in such case apply.
- 6.2 The nature and purpose of the personal data processing by PeopleFluent hereunder shall comprise the storage of Client personal data in or through the Application as stated in this Agreement, and such further processing as reasonably required for the Client to use and operate, and for PeopleFluent to support the Application for the Term of, and in accordance with this Agreement. Support to the Client's authorised support contacts as outlined in this Agreement may comprise PeopleFluent accessing Client personal data to the extent reasonably required to provide the Support.
- 6.3 The categories of personal data which may be processed under this Agreement may include, depending on the Client's use of the Application, User's names, email addresses, job titles, assessment results, as well as other e-learning and performance related User personal data.
- 6.4 The Client, as data controller;
- 6.4.1 confirms that it has processed and will continue to process the relevant personal data in accordance with the relevant provisions of the applicable Data Protection Laws and the processing does not violate those laws;
- 6.4.2 will reasonably instruct PeopleFluent throughout the duration of this Agreement to process the relevant personal data exclusively on the Client's behalf and in accordance with the applicable Data Protection Laws and PeopleFluent shall promptly comply with any request from the Client requiring PeopleFluent to amend, transfer or delete the relevant personal data insofar as that is under PeopleFluent' control;
- 6.4.3 will ensure that it is entitled to transfer the relevant personal data to PeopleFluent so that PeopleFluent may lawfully process the personal data in accordance with this Agreement on the Client's behalf; and
- 6.4.4 shall take and maintain throughout the term of the Agreement appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage, including, but not limited to ensuring that it keeps the Application up to date through the (procured) application of Application upgrades.
- 6.5 PeopleFluent, as data processor shall:
- 6.5.1 at the Client's reasonable request, provide to the Client a copy of all relevant personal data held by it in the format and on the media agreed, provided that a

reasonable use policy shall apply (beyond which, PeopleFluent shall be entitled to charge its relevant professional services charges);

- 6.5.2 promptly inform the Client if any of the relevant personal data are lost or destroyed or become damaged, corrupted or unusable. Where reasonably possible, PeopleFluent will restore such personal data at its own expense;
- 6.5.3 process any Client personal data (including any personal data which comprises Client Data) only on the written instructions of the Client. The Parties agree that the documented instructions are set out in this Agreement or may otherwise be agreed in connection with the performance of this Agreement, such as pursuant to any Support requests raised by the Client;
- 6.5.4 ensure that any of its staff authorised to process the Client personal data are bound by obligations of confidentiality;
- 6.5.5 not engage any other processor without the written consent of the Client (not to be unreasonably withheld or delayed) and only on terms which reflect the provisions of this Clause 6.5 provided that the Client hereby provides its general consent to PeopleFluent's engagement of:

- 6.5.5.1 any other processor that is also a PeopleFluent Group Company (PeopleFluent currently uses its group companies NetDimensions Limited (Hong Kong), NetDimensions Asia Limited (Hong Kong) NetDimensions Asia Services Limited (Philippines), NetDimensions (UK) Limited (UK), NetDimensions Inc. (USA) Leo Learning Inc. (USA), and Leo Learning Limited (UK) in the performance of the Services);

- 6.5.5.2 any third party hosted infrastructure provider it may require in the performance of the Services (PeopleFluent currently uses Amazon Web Services (www.aws.amazon.com) in Frankfurt));

- 6.5.5.3 any processor involved in the provision of a client support ticketing system to register any support queries relating to the Application (PeopleFluent currently uses Zendesk (www.zendesk.com)); and

where any change in the aforementioned subprocessors is planned, PeopleFluent shall inform the Client in advance and where the Client objects to such a change (acting reasonably), the Client shall be entitled to terminate the Agreement on no less than 30 days' written notice;

- 6.5.6 implement appropriate technical and operational measures to ensure a level of security appropriate to the general risks involved in the Services as required by Article 32 of the GDPR;
- 6.5.7 taking into account the nature of the processing, assist the Client by implementing appropriate technical and organisational measures, in so far as this is reasonably possible, for the fulfilment of the Client's obligation to respond to requests for exercising the data subject's (as defined in the Data Protection laws) rights laid down in Chapter III of the GDPR;
- 6.5.8 where such cannot be achieved by the Client directly through the Application, reasonably assist the Client (each time subject to a reasonable cost-covering charge) in fulfilling its obligations to respond to requests for exercising the data subject's rights set out in Chapter III of the GDPR;

- 6.5.9 reasonable assist the Client in ensuring compliance with the obligations set out in this Clause 6 and contained in Articles 32 to 36 of the GDPR, taking into account the nature of the processing and the information available to PeopleFluent;
 - 6.5.10 comply with its obligations under Article 28(4) of the GDPR;
 - 6.5.11 at the option of the Client or on termination of this Agreement, either delete or return to the Client all Client Data (including any personal data which comprises the Client Data);
 - 6.5.12 make available to the Client all information reasonably necessary and, at the Client's costs and subject to prior agreement on scope and timing, contribute to audits and inspections reasonably carried out by the Client or on its behalf to demonstrate PeopleFluent's compliance with Article 28 of the GDPR and this Agreement; and
 - 6.5.13 inform the Client if, in PeopleFluent's opinion any instruction provided by the Client would infringe any Data Protection Laws.
- 6.6 Some of PeopleFluent's sub-processors as listed above are based outside of the European Economic Area. To provide for this, and in accordance with the requirements included in the Data Protection Laws, the parties agree on the attached Standard Contractual Clauses ("the Clauses") in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the Client to PeopleFluent the data the personal data specified in Appendix 1 to the Clauses. For the avoidance of doubt, PeopleFluent has the authority to enter into the Clauses on behalf of all data importer included in the Clauses.

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 Services 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 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 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 PeopleFluent-developed part 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' 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 a party under PeopleFluent's direct control; 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 prior to the commencement of each year of this Agreement. Payment of all additional charges falling due under this Agreement shall be made within 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.
- 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 5.7) 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 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 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 As between PeopleFluent and the Client, 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 of its marks, trademarks or any other relevant trade mark or promotional slogan used by PeopleFluent 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, 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.

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. For the purposes of this Clause 10, a party’s Confidential Information shall include any Confidential Information provided by it and relating to any of its affiliates or group entities.
- 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 financial liability of PeopleFluent (including any liability for the acts or omissions of its PeopleFluent Group Companies, and any of the respective employees, agents and sub-contractors) 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, 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 non-standard iReports and dashboards, results or other output obtained from the use of the Application, and its reports 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.

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 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,; and

11.5.2 PeopleFluent's total aggregate liability in contract (including in respect of any indemnity), 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 12 months preceding the date on which the claim arose.

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 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 10 days of receiving a written reminder from PeopleFluent provided that the sum has not been disputed in good faith in accordance with Clause 5.7.

12.3 PeopleFluent may also suspend the provision of the Services under this Agreement on giving not less than 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.

12.4 Client may suspend its payments under this Agreement on giving no less than 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; 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 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 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 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 Agreement 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 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 promptly notify PeopleFluent.

18 Governing Law and Disputes

This Agreement will be governed by and construed and interpreted in accordance with the laws of England, and each party irrevocably submits to the jurisdiction of the English courts.

Appendix 1 – Standard contractual clauses (controller to processors)
(Issued by EC Decision of 5th February 2010)

BETWEEN:

- (1) **CLIENT** (referred to as “exporter” or “data exporter”); and
- (2) **PEOPLEFLUENT**, acting in this regard on behalf of its following affiliate companies: NetDimensions, Inc., Leo Learning Inc., NetDimensions Limited, NetDimensions Asia Limited and NetDimensions Services Asia Limited (each NetDimensions, Inc., Leo Learning Inc., NetDimensions Limited, NetDimensions Asia Limited and NetDimensions Services Asia Limited hereinafter individually, as applicable, referred to as “importer” or “data importer”, and PeopleFluent, NetDimensions, Inc., Leo Learning Inc., NetDimensions Limited, NetDimensions Asia Limited and NetDimensions Services Asia Limited hereinafter collectively referred to as “PeopleFluent Group”);

In connection with the Agreement to which this is an attachment (“Hosting Services Agreement”);

AGREED

Clause 1
Definitions

For the purposes of the Clauses:

- (a) 'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) 'the data exporter' means the controller who transfers the personal data;
- (c) 'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25 (l) of Directive 95/46/EC;
- (d) 'the subprocessor' means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) 'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) 'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss,

alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2
Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3
Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent. unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4
Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clauses 4(a) to (i).

Clause 5
Obligations of the data importer

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
 - (ii) any accidental or unauthorised access; and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11:
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6 **Liability**

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. NOTHING IN THE CLAUSES WILL EXCLUDE OR LIMIT LIABILITY RESULTING FROM:
 - I. DEATH OR PERSONAL INJURY RESULTING FROM THE NEGLIGENCE OF EITHER OF THE PARTIES OR ITS EMPLOYEES WHILE ACTING IN THE COURSE OF THEIR EMPLOYMENT;
 - II. FRAUD OR FRAUDULENT MISREPRESENTATION; AND/OR
 - III. ANY CLAIM DIRECTLY BROUGHT TO THE DATA IMPORTER BY A DATA SUBJECT PURSUANT TO THE CLAUSES.
5. DATA EXPORTER AGREES AND ACCEPTS THAT IT SHALL NOT BE ENTITLED TO BRING A CLAIM UNDER BOTH THE HOSTING SERVICES AGREEMENT AND THE CLAUSES FOR DAMAGE OR LOSS CAUSED BY THE SAME EVENT GIVING RISE TO THAT CLAIM.
6. SUBJECT TO SECTIONS 4. AND 5. ABOVE, PEOPLEFLUENT GROUP'S AND (EACH OF THE) DATA IMPORTER'S ENTIRE AGGREGATE LIABILITY UNDER THE HOSTING SERVICES AGREEMENT AND THE CLAUSES SHALL BE AS STATED IN THE LIMITATION OF LIABILITY PROVISIONS AGREED BETWEEN DATA EXPORTER AND PEOPLEFLUENT IN THE HOSTING SERVICES AGREEMENT, AND PEOPLEFLUENT GROUP'S AND THE DATA IMPORTER'S (OVERALL) AGGREGATE LIABILITY EXPOSURE TOWARDS THE DATA EXPORTER SHALL THEREFORE NOT BE EXPANDED AS A RESULT OF ENTERING INTO THE CLAUSES.
7. FOR THE AVOIDANCE OF DOUBT, NO PARTY TO THE CLAUSES WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO ANOTHER PARTY TO THE CLAUSES FOR ANY LOSS OF REVENUE, BUSINESS, CONTRACTS, ANTICIPATED SAVINGS, PROFITS, DATA OR INFORMATION, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES, WHETHER ARISING FROM NEGLIGENCE, BREACH OF CONTRACT OR HOWSOEVER, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
 - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
 - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Co-operation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

Clause 9

Governing law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Sub-processing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil

its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.
5. THE DATA IMPORTER MAY NOT SUBCONTRACT ANY PART OF ITS OBLIGATIONS UNDER THE CLAUSES EXCEPT AS AGREED IN THE HOSTING SERVICES AGREEMENT, OR AS OTHERWISE APPROVED BY THE CLIENT.

Clause 12

Obligation after the termination of personal data-processing services

1. The parties agree that on the termination of the provision of data-processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

APPENDIX 1
to the Standard Contractual Clauses

This Appendix forms part of the Clauses and must be completed and signed by the parties

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

Data exporter

The data exporter is (please specify briefly your activities relevant to the transfer):

The Client of PeopleFluent under the Hosting Services Agreement.

Data importer

The data importer is (please specify briefly activities relevant to the transfer):

Part of the PeopleFluent group of companies, a cloud-based talent management system provider providing its hosted NetDimensions Talent Suite (NTS) solution to the data exporter through the relevant PeopleFluent entity as stated under the Hosting Services Agreement.

Data subjects

The personal data transferred concern the following categories of data subjects (please specify):

Data exporter NetDimensions Talent Suite Users (as outlined in the relevant NetDimensions Talent Suite SaaS Agreement) and "Users" as such term is defined in the Hosting Services Agreement.

Categories of data

The personal data transferred may concern the following categories of data (please specify):

As determined by the data exporter, but generally:

- User name, date of birth, job details including email addresses, telephone numbers, and other typical profile information;
- User training record details;
- courses taken or registered for by a User;
- marks or Users for taken courses;
- User department; and
- User attributes, certifications, licensing and performance histories in certain cases, responses to training and exercises, and session information

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data (please specify):

Not Applicable.

Processing operations

Any personal data transferred will be subject to the following basic processing activities (please specify):

In the course of data exporter's use of the Application, based on the Hosting Services Agreement, the data exporter may transfer personal data as described above to the data importer.

PeopleFluent provides a hosted environment for the data exporter's Application and data importer may access the data exporter's personal data where so required in the performance of the Services (e.g. as part of PeopleFluent's system administration responsibilities or Support provision).

APPENDIX 2 to the Standard Contractual Clauses

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c).

1. Information Security Policies and Standards

The importer will implement appropriate security requirements for staff and all subcontractors, service providers, or agents who have access to data exporter personal data (“Personal Data”). These are designed to:

- Prevent unauthorized persons from gaining access to Personal Data processing systems (physical access control);
- Prevent Personal Data processing systems being used without authorization (logical access control);
- Ensure that persons entitled to use a Personal Data processing system gain access only to such Personal Data as they are entitled to access in accordance with their access rights and that, in the course of Processing or use and after storage, Personal Data cannot be read, copied, modified or deleted without authorization (data access control);
- Ensure that Personal Data cannot be read, copied, modified or deleted without authorization during electronic transmission, transport or storage, and that the target entities for any transfer of Personal Data by means of data transmission facilities can be established and verified (data transfer control);
- Ensure that Personal Data are processed solely in accordance with the data exporter’s instructions (“Instructions”) (control of instructions); and
- Ensure that Personal Data are appropriately protected against accidental destruction or loss (availability control).

These rules are kept up to date, and revised whenever relevant changes are made to information systems that use, process, transmit or store Personal Data, or to how those systems are organized. Security policies and standards are monitored and maintained on an ongoing basis to ensure compliance.

2. Physical Security

The importer will maintain effective security systems at all data importer sites at which information systems that use, process, transmit or store Personal Data are physically located. The data importer restricts access to such Personal Data appropriately.

Physical access control has been implemented for all data centers used in the provision of the Services to prohibit unauthorized access. Accesses to all used data center sites are monitored 24x7 by security personnel and surveillance cameras. Visitor accesses to data importer sites are pre-registered.

3. Organizational Security

When media are to be disposed of or re-used, procedures have been implemented to prevent any subsequent retrieval of any Personal Data stored on them before they are withdrawn from the inventory. When media are to leave the premises at which the files are located as a result of maintenance operations, procedures have been implemented to prevent undue retrieval of Personal Data stored on them.

Importer implemented security policies and procedures to classify sensitive information assets, clarify security responsibilities and promote awareness for employees.

4. Network Security

The importer maintains network security using industry standard techniques, including firewalls, intrusion detection and prevention systems and access control lists.

5. Access Control

Access Personal Data is restricted to authorized users under secure protocols only. Only authorized staff can grant, modify or revoke access to information systems that use, process, transmit or store Personal Data.

User administration procedures define user roles and their privileges, how access is granted, changed and terminated; addresses appropriate segregation of duties; and defines the logging/monitoring requirements and mechanisms.

All relevant employees of the data importer are assigned unique user IDs. Access rights are granted based on “need-to-know” and “least privilege” principles. The data importer implements effective security measures on the whole lifecycle of user accounts and passwords.

6. Virus and Malware Controls

The importer installs and maintains an appropriate anti-malware solution.

7. Personnel

The importer implements a regular security awareness program to train relevant new joiners and existing personnel about their security obligations.

The importer has clearly defined roles and responsibilities for the employees. Appropriate screening checks are implemented before employment with terms and conditions of employment applied appropriately. Processes are in place to ensure timely revocation of leavers' access to Personal Data.

8. Disaster Recovery

The data importer implements appropriate disaster recovery plans. Data importer reviews such plans regularly.

9. Compliance

The data importer has regular checks and security tests conducted to ensure continuous compliance and effectiveness of security controls over the Personal Data.