

NETDIMENSIONS TALENT SUITE

SUPPORT AND MAINTENANCE AGREEMENT

(IN REGARD TO SUPPORT AND MAINTENANCE FOR PERPETUAL LICENSES ONLY)

Standard Terms and Conditions Schedule

This NetDimensions Talent Suite Support and Maintenance Agreement is entered into between the PeopleFluent group company identified on the Commercial Terms (“**PeopleFluent**”) and you (“**Client**”), the company or other legal entity who has purchased a perpetual license of the Application for use by Users, from either PeopleFluent, the Applicable Group Company, or a Reseller, and describes the terms and conditions pursuant to which PeopleFluent will provide support and maintenance to the Client. By placing an order referencing the terms of this Agreement or by accepting the related Commercial Terms (as defined below), 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 product NetDimensions Talent Suite shall continue to be used by PeopleFluent under its current name.

1 Definitions and Interpretation

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

“Agreement”	this Support and Maintenance Agreement for the Application entered into by and between PeopleFluent and the Client, comprising, where appropriate, an order form and/or signature section (in each case incorporating the Commercial Terms and this Standard Terms and Conditions Schedule;
“Applicable 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 PeopleFluent’s ultimate parent holding company, including any companies in the (former) NetDimensions group of companies or otherwise part of the Learning Technologies Group and such Applicable Group Company may provide any or all of the Support;
“Application”	PeopleFluent’s proprietary software application NetDimensions Talent Suite in machine readable form (as identified in the Commercial Terms and as (may be) further described on PeopleFluent’s online client pages), as applicable, including any error corrections, updates, upgrades, modifications and enhancements to it;
“Charges”	the fees for the Support;

“Client”	as defined above;
“Commencement Date”	the date of acceptance of the PeopleFluent click-wrap order form, or the date as specified the Commercial Terms;
“Commercial Terms”	the main commercial terms set out in the PeopleFluent click-wrap order form or signature section of this Agreement;
“Designated Server IP Address”	the Client’s server IP address agreed in the relevant perpetual license agreement for the Application or as otherwise agreed between the Client and PeopleFluent;
“Initial Term”	a period of one (1) year from the Commencement Date or such other period as may be specified in the Commercial Terms;
“Intellectual Property Rights”	any patent, right to patent, copyright, design (registered and unregistered), trade mark and service mark, trade and business names (including Internet domain names and e-mail address names), unregistered trademarks and service marks, database rights, trade secret, know-how and unpatented inventions and any other intellectual property rights in any relevant jurisdiction;
“New Version”	a new version of the Application which is offered publicly or to any existing licensee of the Application where the operation of the new version does not require the purchaser to possess already an existing or earlier version of the Application;
“Related Documentation”	the installation instructions, user guides, administrator guides and other related documentation supplied by PeopleFluent (whether physically or by electronic means, including through its online client pages, which may be updated by PeopleFluent in its sole discretion from time to time) in conjunction with or related to the Application, including any part or copy of such instructions;
“Renewal Term”	any renewal of this Agreement following the end of the Initial Term or any other Renewal Term, pursuant to Clause 2.1, and each Renewal Term shall be for twelve (12) months or such other period agreed between the parties in the Commercial Terms or otherwise in writing;
“Reseller”	an authorized reseller of PeopleFluent, through whom the Client has purchased a licence to use the Application;
“Support”	the standard maintenance and support services provided by PeopleFluent or the Applicable Group Company pursuant to Exhibit A;
“User”	has the meaning set out in the relevant perpetual license agreement for the Application.

- 1.2 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 Term

- 2.1 This Agreement will commence on the Commencement Date and will continue for the Initial Term and will renew automatically for subsequent Renewal Terms until it expires or terminates pursuant to this Agreement or until terminated by either party with effect from the end of the Initial Term or subsequent Renewal Term on serving not less than two months' written notice to the other party prior to the end of such Initial Term or Renewal Term.

3 Support

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

4 Fees and Payment

- 4.1 In consideration of PeopleFluent providing the Support to the Client under this Agreement, the Client will pay the Charges to PeopleFluent prior to the commencement of each year of this Agreement. Payment of all 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.
- 4.2 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.
- 4.3 Payment of all amounts due to PeopleFluent will be made by the Client in full, in the agreed currency and by wire transfer or by such other method as may be agreed by PeopleFluent.
- 4.4 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.
- 4.5 If the Client fails to make a payment (which has not been disputed in accordance with Clause 4.8 below) to PeopleFluent in accordance with this Clause 4, 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, (ii) suspend the Support, (iii) recover on demand from the Client the costs (including attorneys' costs) incurred by PeopleFluent in collecting or recovering the

payment due from the Client, and/or (iv) terminate this Agreement pursuant to Clause 8.2.

- 4.6 PeopleFluent may increase the Charges with effect from the end of the Initial Term or applicable Renewal Term with at least ninety (90) days' notice in writing before the end of the Initial Term and applicable Renewal Term. If the Client does not agree to the proposed Charges and an alternative revision to the Charges is not agreed by the parties within thirty (30) days of PeopleFluent's notice under this Clause 4.6, the Client may exercise its right to terminate pursuant to Clause 2.1.
- 4.7 Pricing and applicable terms for any products or services other than those provided under this Agreement shall be as may be agreed by the parties.
- 4.8 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.

5 Intellectual Property Rights

- 5.1 The Intellectual Property Rights in the Application and the Related Documentation, together with any Intellectual Property Rights created as a result of provision of the Support or any other software provided to the Client by PeopleFluent under this Agreement (including any modifications, alterations or additions made at the request of the Client to the Application) are and as between PeopleFluent and the Client will be owned by PeopleFluent or the Applicable Group Company.

6 Warranty

- 6.1 PeopleFluent warrants that the Support will be performed with reasonable skill and care.
- 6.2 EXCEPT AS SET OUT ABOVE AND TO THE EXTENT PERMITTED BY LAW, PEOPLEFLUENT AND THE APPLICABLE GROUP COMPANY DISCLAIM AND EXCLUDE ALL OTHER REPRESENTATIONS AND WARRANTIES PURSUANT TO CLAUSE 7.4.
- 6.3 If, during the term of this agreement, PeopleFluent receives written notice from the Client of any breach by PeopleFluent of the warranties contained in clause 6.1, PeopleFluent shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate this Agreement immediately on written notice to the Client and repay to the Client all sums which the Client has paid to PeopleFluent under this Agreement during the applicable twelve (12) month period in which the termination occurs, less a charge for the Support performed up to the date of termination. The Client shall provide all information reasonably necessary to enable PeopleFluent to comply with its obligations under this clause 6.3. This clause sets out the Client's sole remedy and PeopleFluent's entire liability for breach of clause 6.1.
- 6.4 No representation or warranty is given by the Supplier that all faults will be fixed, or will be fixed within a specified period of time.
- 6.5 Without prejudice to the generality of Clause 6.2, the Client acknowledges that software in general is not error-free and that PeopleFluent gives no warranty that the Application or Related Documentation will be uninterrupted or error-free. The Client further

acknowledges that the Application has not been developed to meet the individual requirements of the Client.

7 Limitation of Liability

- 7.1 NOTHING IN THIS AGREEMENT WILL EXCLUDE OR LIMIT LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM THE NEGLIGENCE OF EITHER OF THE PARTIES OR ITS EMPLOYEES WHILE ACTING IN THE COURSE OF THEIR EMPLOYMENT.
- 7.2 SUBJECT TO CLAUSE 7.1, PEOPLEFLUENT'S AND THE APPLICABLE GROUP COMPANY'S ENTIRE AGGREGATE LIABILITY TO THE CLIENT FOR ANY LOSS OR DAMAGE ARISING FROM ANY ACT OR OMISSION RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT (INCLUDING IN EACH CASE NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, IS LIMITED IN ANY ONE PERIOD OF TWELVE (12) MONTHS AFTER THE COMMENCEMENT DATE TO PROVEN DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID BY THE CLIENT TO PEOPLEFLUENT PURSUANT TO THIS AGREEMENT IN RESPECT OF THAT TWELVE (12) MONTHS.
- 7.3 PEOPLEFLUENT WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE CLIENT 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 PEOPLEFLUENT HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.
- 7.4 EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, PEOPLEFLUENT AND THE APPLICABLE GROUP COMPANY DISCLAIM AND EXCLUDE ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES WHATSOEVER (WHETHER EXPRESS OR IMPLIED) IN RESPECT OF THE APPLICATION, THE RELATED DOCUMENTATION AND THE SUPPORT TO THE MAXIMUM EXTENT PERMITTED BY LAW, INCLUDING (WITHOUT LIMITATION) WARRANTIES, REPRESENTATIONS OR CONDITIONS RELATING TO SATISFACTORY QUALITY, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

8 Termination

- 8.1 This Agreement will continue in effect unless terminated in accordance with the provisions of this Clause 8 or Clause 2. Either party may (without prejudice to its other rights) terminate this Agreement by notice in writing to the other if the other party:
- 8.1.1 defaults in due performance or observance of any material obligation under this Agreement and, in the case of a remediable default, fails to remedy such default within ten (10) days of having been notified of such default, and such termination will take effect either immediately or at a date specified in the notice; or
- 8.1.2 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 the notice.

- 8.2 PeopleFluent may (without prejudice to its other rights) terminate this Agreement and/or the continuation of the supply of the Support by reasonable notice in writing to the Client if the Client fails to pay any amount due under this Agreement 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 4.8. The termination of this Agreement and/or the continuation of the supply of the Support for whatever cause will not prejudice or affect the rights of either party against the other in respect of any breach of this Agreement or in respect of any monies payable by either party to the other in respect of any period prior to termination 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.
- 8.3 Upon termination of this Agreement for any reason all Support will cease forthwith.

9 Force Majeure

- 9.1 Neither party 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, or riot.
- 9.2 If either party wishes to rely upon this Clause it should promptly send written notice to the other party explaining the relevant force majeure circumstances.

10 General

- 10.1 This Agreement is personal to the Client and may not be assigned to any third party in whole or in part without the prior written consent of PeopleFluent.
- 10.2 The terms of this 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.
- 10.3 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions hereof 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 parties will immediately commence good faith negotiations to remedy such invalidity.
- 10.4 No failure or delay on the part of either party to exercise any right or remedy under this Agreement will be construed or operate as a waiver of such right or remedy nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.
- 10.5 The parties agree that 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 herein, supersedes all prior representations, writings, negotiations or understandings with respect to this Agreement.

11 Notices and Communications

- 11.1 Any notice or other document to be given under this Agreement must be in writing and will be deemed to have been duly given if left at or sent by hand, registered post, facsimile or email to the address, facsimile number or email address set out in the Commercial Terms or such other address, facsimile number or email address as one party may from time to time designate by written notice to the other.
- 11.2 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 other electronic means.

12 Anti-Corruption

- 12.1 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.

13 Governing Law and Disputes

- 13.1 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.

Response Expectations	Acknowledge -ment	Resolution and/or Action Plan	Criteria*
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 twelve (12) Business Hours.	Major functionality is impacted or significant performance degradation is experienced. No workaround available. Issue is persistent.
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. 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.