

# APPLICATION LICENSE AGREEMENT

## (FOR NETDIMENSIONS TALENT SUITE)

### Standard Terms and Conditions Schedule

This PeopleFluent Application License Agreement for the Application (as defined below) is entered into between the PeopleFluent group company identified in the Commercial Terms (“PeopleFluent”) and the entity that wishes to purchase a license or request a trial license of the Application (as identified in the Commercial Terms) (“Client”) for use by Users from PeopleFluent, and describes the terms and conditions pursuant to which PeopleFluent is licensing the Application to the Client and the terms on which PeopleFluent or the Applicable Group Company (as defined below) will provide support and maintenance services to the Client. By installing, copying or using the Application or the Related Documentation (as defined below), the Client agrees to be bound by the terms and conditions of this Agreement. If the Client does not agree to the terms of this Agreement, the Client should immediately return the Application (license key) and the Related Documentation to PeopleFluent. Where an Application license is purchased from an authorized reseller of PeopleFluent, these terms and conditions do not apply, and the applicable Standard Terms and Conditions Schedule can be viewed at <http://www.netdimensions.com/terms-policies/terms-and-conditions.php> (“Application License Agreement (Excluding Support) (For NetDimensions Talent Suite (Version 20xx.x)”). For the avoidance of doubt, effective October 2018, the NetDimensions group of companies has become part of the PeopleFluent group of companies, and all current and former NetDimensions entities are now doing business under the name PeopleFluent, provided that the products NetDimensions Talent Suite 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”** means this Application License 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”** means 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, and such Applicable Group Company may provide any or all of the Support;
- “Application”** means 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;

<b>“Charges”</b>	means the License Fee and all other charges incurred by Client in connection with the Application licensing and Support in accordance with this Agreement;
<b>“Client”</b>	As defined above;
<b>“Commencement Date”</b>	means the date of receipt by the Client of the license key enabling it to use the Application or such other date as may be agreed in writing between PeopleFluent and the Client;
<b>“Commercial Terms”</b>	means the main commercial terms set out in the order form and/or signature section of this Agreement;
<b>“Confidential Information”</b>	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: the Related Documentation, specifications, formulae, samples, prototypes, devices, techniques, processes, methods, discoveries, inventions, ideas and improvements (whether or not patentable), data, compilations, algorithms, studies, computer programs, code, research, reports, patterns, designs, sketches, plans, drawings, photographs, know-how, trade secrets, marketing plans, business plans, financial information, commercial information, technical information, pricing information, market information, information relating to relationships with third parties, information relating to business models and/or business methods, customer, supplier and distributor lists, and any other subject matter which by its nature would be reasonably known to be confidential or proprietary, and all copies of such materials and information;
<b>“Designated Server IP Address”</b>	means the Client’s server IP address specified in the Commercial Terms or as agreed between the Client and PeopleFluent;
<b>“Group Company”</b>	any entity that directly or indirectly, controls, is under common control, or is controlled by 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, and may provide any or all of the Support;
<b>“Initial License Term”</b>	means a period of three (3) years from the Commencement Date or such other period as may be specified in the Commercial Terms;
<b>“Intellectual Property Rights”</b>	means 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 trade marks and service marks, database rights, trade secret, know-how and unpatented

inventions and any other intellectual property rights in any relevant jurisdiction;

**“License Fee”**

means the annual license fee payable by the Client pursuant to this Agreement;

**“Related Documentation”**

means 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”**

has the meaning set out in Clause 2.3;

**“Support”**

means the standard maintenance and support service provided by PeopleFluent or the Applicable Group Company described in Exhibit A;

**“User”**

unless otherwise specified in the Commercial Terms, means any employee, agent or contractor of the Client or where applicable, of a customer of the Client, authorised by the Client in accordance with this Agreement to access and use the Application under this Agreement in the ordinary course of the Client's business, for the sole purpose of accessing such training and assessment material or related functionality provided through or by the Application. A User can have an active (identified in the Application as 'Active' or 'Suspended') or non-active (all user status categories in NTS other than 'Active' or 'Suspended') status in the Application.

- 1.2 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 License**

- 2.1 PeopleFluent hereby grants to the Client, on and subject to the terms and conditions of this Agreement, a non-exclusive, non-transferable, non-sublicensable annual license to use and enable its Users to use the Application (in object code only) and the Related Documentation solely for the Client's legitimate business purposes with effect from the Commencement Date during the term of this Agreement. The licence is granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client. PeopleFluent acknowledges, however, that where specified in the Commercial Terms, a subsidiary or holding company, affiliated and/or client company of the Client may be supplying Users in accordance with the User definition.

- 2.2 The Client shall not, and warrants that its Users shall not:
- 2.2.1 (attempt to) copy, duplicate, modify, create derivative works from or distribute all or any portion of the Application or Related Documentation or merge or include the Application or Related Documentation with any other software or documentation; or
  - 2.2.2 (attempt to) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Application; or
  - 2.2.3 access all or any part of the Application in order to build a product or service which competes with the Application; or
  - 2.2.4 save as expressly provided in Clause 2.1, use the Application or Related Documentation to provide services to third parties or attempt to obtain, or assist third parties in obtaining, access to the Application or Related Documentation.
- 2.3 This Agreement will commence on the Commencement Date and will continue for the Initial Term and will renew automatically for subsequent twelve (12) month periods or such other period as agreed in the Commercial Terms (each a "Renewal Term") until it expires or is terminated 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 (2) months' written notice to the other party prior to the end of the Initial Term or such Renewal Term.
- 2.4 Unless otherwise specified in the Commercial Terms, the Application is licensed only for single instance use on a single server on the Designated Server IP Address. PeopleFluent may, at its discretion, require that the Client uses an alternative Designated Server IP Address from time to time. The Client will also ensure that no one other than the Users, and no more than the permitted number of Users set out in the Commercial Terms, accesses the Application. If the Client wishes to increase the number of Users, it shall request prior written consent from PeopleFluent (which shall not be unreasonably withheld or delayed) and such increase will be subject to additional charges, at PeopleFluent's then current list price or at such Charges as agreed in the Commercial Terms or otherwise and any additional fee shall be payable by the Client in accordance with the terms of Clause 4.
- 2.5 Users are named users authorized in the system. Subject to compliance with the provisions of this Clause, the Client is permitted to archive up to 50% of active Users during each year of this Agreement (by changing the status of (former) active Users to non-active Users and adding an equivalent number of new active Users) provided that the total number of named Users in the Application (the sum of all active and non-active Users) shall not be higher than three (3) times the agreed permitted number of active Users in the Commercial Terms. Once this maximum is reached, no additional active Users can be changed to non-active status unless other non-active Users are first permanently deleted or additional Users are added in accordance with this Agreement and/or the applicable PeopleFluent purchasing process. For the avoidance of doubt, no reassignment of a User's account or use of an account by another User is permitted except in as far as permitted pursuant to this Clause. The Client will not allow or suffer any User account to be used by more than one (1) individual authorized User, except to the extent that reassignment of a User account is permitted pursuant to this Clause.
- 2.6 The Client shall at all times maintain a written, up-to-date list of Users (active and non-active), and provide this in fully anonymized form to PeopleFluent within five (5) Business Days of PeopleFluent's request at any time.

- 2.7 The Client may not resell or sub-license the Application without PeopleFluent's express prior written consent or use it except as a platform from which to provide training, assessment and other functionality provided by the Application for the Users in accordance with this Agreement.

### **3 Support**

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

### **4 Fees and Payment**

- 4.1 In consideration of PeopleFluent licensing the Application and providing the Support to Client under this Agreement, the Client will pay the License Fee to PeopleFluent prior to the commencement of each year of this Agreement. Payment of all Charges falling due under this Agreement shall each time 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.
- 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 11.2.
- 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 or 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 this Agreement pursuant to Clause 2.3.
- 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 Client's Undertakings**

- 5.1 The Client will not remove the copyright notice, trade marks or service marks of NetDimensions or PeopleFluent from any copies, in any form, including partial copies or modifications of the Application or Related Documentation, made in accordance with this Agreement.
- 5.2 The Client will:
- 5.2.1 not provide or otherwise make available the Application or Related Documentation in whole or in part, in any form to any person other than the Users without PeopleFluent's prior written consent;
  - 5.2.2 notify PeopleFluent promptly if the Client becomes aware of any unauthorised use of the whole or any part of the Application or Related Documentation by any person;
  - 5.2.3 use the Application and Related Documentation only in accordance with PeopleFluent's reasonable operating instructions and the terms of this Agreement;
  - 5.2.4 use commercially reasonable efforts to keep the Application free from viruses;
  - 5.2.5 ensure that the Application is only used on the Designated Server IP Address on a single server, unless otherwise specified in the Commercial Terms; and
  - 5.2.6 ensure that no one other than Users, and no more than the permitted number of Users in accordance with the Commercial Terms access the licensed Application.
- 5.3 The Client is responsible for maintaining the confidentiality of its Application passwords and will use commercially reasonable endeavours to ensure that all Users keep their own Application passwords confidential.
- 5.4 PeopleFluent may at any time, at its own expense (unless the last sentence of this Clause applies), audit the Client's usage of the Application and compliance with this Agreement (including with regard to the number of Users accessing the Application and/or registered on the Application), and such audit shall be exercised in a manner so as to not substantially interfere with Client's normal conduct of business. If an audit reveals that the number of Users exceeds the number specified in the Commercial Terms, allowed under this Agreement or otherwise agreed with PeopleFluent (and paid for), Client shall be responsible for and pay for PeopleFluent's (reasonable) audit costs and PeopleFluent shall be entitled to immediately invoice Client for these audit costs and the additional Users (regardless of the active or non-active status) for the remainder of the Initial Term or applicable Renewal Term in accordance with its current per User list price or such pricing as may be agreed with Client.
- 5.5 The Client is solely responsible for ensuring compliance with all applicable import and export laws and regulations of the country of destination and any applicable foreign jurisdiction and will indemnify, defend and hold PeopleFluent and the Applicable Group Company harmless from any claims brought against PeopleFluent arising from the Client's export, import or handling of the Application and Related Documentation.

## **6 Intellectual Property Rights**

- 6.1 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.
- 6.2 PeopleFluent reserves the right to use, or require the use of, any of its and its group companies' (including NetDimensions') trade marks or any other relevant marks or promotional slogans used by it on the Application and/or the Related Documentation.

## **7 Warranty**

- 7.1 PeopleFluent warrants that:
- 7.1.1 it (or the Applicable Group Company) has full title to and ownership of the Application and has full power and authority to enter into this Agreement;
  - 7.1.2 the Application licensed and delivered pursuant to this Agreement will perform substantially in accordance with the Related Documentation for such version for a period of ninety (90) days from the Commencement Date; and
  - 7.1.3 the Support will be performed with reasonable skill and care.
- 7.2 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 8.4.
- 7.3 If the Client discovers any breach of the warranty at Clause 7.1.2 which substantially affects the Client's use of the Application and notifies PeopleFluent of the error within ninety (90) days from the Commencement Date, PeopleFluent will at its sole option either refund the License Fee or use reasonable endeavours to correct by free update or upgrade that part of the Application which does not comply, provided that the non-compliance has not been caused by any modification, variation or addition to the Application not performed by PeopleFluent or the Applicable Group Company, or caused by the Client's incorrect use, abuse or corruption of the Application, or by use of the Application with other software or on equipment other than PeopleFluent supported hardware and software configurations as agreed at the time of signing this Agreement or on a server IP address other than the Designated Server IP Address. This Clause states PeopleFluent's whole liability to the Client and the Client's sole remedy in the event of a breach of the warranty at Clause 7.1.2.
- 7.4 Without prejudice to the generality of Clause 7.2, 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.

## **8 Limitation of Liability**

- 8.1 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.

- 8.2 SUBJECT TO CLAUSE 8.1, 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, THE SUPPORT OR THE USE OF THE APPLICATION, 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 PURSUANT TO THIS AGREEMENT IN RESPECT OF THAT TWELVE (12) MONTHS PROVIDED THAT THIS SHALL NOT APPLY TO PEOPLEFLUENT'S LIABILITY UNDER CLAUSE 9, IN RESPECT OF WHICH PEOPLEFLUENT'S TOTAL AGGREGATE LIABILITY TO THE CLIENT SHALL BE LIMITED TO £100,000.
- 8.3 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.
- 8.4 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.

## **9 Indemnity**

- 9.1 The Client will indemnify and defend PeopleFluent and the Applicable Group Company and its and their directors, officers, employees, agents and sub-contractors against any claims made against PeopleFluent and/or the Applicable Group Company by a third party arising in connection with:
- 9.1.1 any claimed violation of laws, rules, policies and procedures by the Client's or its Users' use of the Application;
  - 9.1.2 liability resulting directly or indirectly from any content incorporated in the Application by the Client, Users or at the Client's or any User's request;
  - 9.1.3 information or data of the Client or Users that violates or allegedly violates any law or regulation, or is defamatory;
  - 9.1.4 any damage to or destruction of the Application or Related Documentation supplied by PeopleFluent to the Client under this Agreement to the extent that such damage or destruction is caused by the actions of the Client, its Users, employees, sub-contractors or agents,

provided that PeopleFluent:



- 9.1.4.1 notifies Client in writing as soon as is reasonably possible and in any event within thirty (30) days of becoming aware of any such claim;
  - 9.1.4.2 makes no admission of liability, agreement or compromise in relation to the claim referred to in Clause 9.1 without Client's prior written consent; and
  - 9.1.4.3 provides all reasonable assistance in conducting all negotiations and litigation, if required to do so by Client.
- 9.2 PeopleFluent agrees to indemnify and defend the Client and its and their directors, officers and employees against any claims made against the Client by a third party to the extent that such claims relate to the Application or Related Documentation infringing any third party copyright, trademark or confidential information, and provided that the Client:
  - 9.2.1 notifies PeopleFluent in writing as soon as is reasonably possible and in any event within thirty (30) days of becoming aware of any such alleged infringement;
  - 9.2.2 makes no admission of liability, agreement or compromise in relation to the claim referred to in Clause 9.2 without PeopleFluent's prior written consent; and
  - 9.2.3 provides all reasonable assistance in conducting all negotiations and litigation, if required to do so by PeopleFluent.
- 9.3 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:
  - 9.3.1 a modification of the Application or Related Documentation by anyone other than PeopleFluent; and/or
  - 9.3.2 the Client's use of the Application in a manner contrary to the instructions given to the Client by PeopleFluent; and/or
  - 9.3.3 the Client's use of the Application or Related Documentation after notice of the alleged or actual infringement from PeopleFluent or any appropriate authority.
- 9.4 PeopleFluent is authorised, at its own expense, to defend or, at its option, to settle the claims referred to in Clause 9.2 (as qualified by Clause 9.3). In addition, if any third party Intellectual Property Rights infringement claim is made, or in PeopleFluent's reasonable opinion is likely to be made, against the Client, in relation to the Application, PeopleFluent may, at its own cost and in its sole option, either obtain the right for the Client to continue using the Application, or replace or modify the Application so that it is no longer infringing, or terminate this Agreement and reimburse the Client for the amount paid under this Agreement (less a pro-rated sum in respect of the Client's use of the Application and Support prior to the date of termination).

## **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, "party" shall mean the Client for the one part and PeopleFluent and any other PeopleFluent Group Company, as appropriate, for the other part.

- 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 Termination**

- 11.1 This Agreement will continue in effect unless terminated in accordance with the provisions of this Clause 11 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:
- 11.1.1 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
  - 11.1.2 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.

11.2 PeopleFluent may (without prejudice to its other rights) terminate this Agreement and/or the continuation 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.

11.3 Upon termination of this Agreement for any reason:

11.3.1 all license rights granted hereunder will immediately and automatically cease; and

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

## **12 Force Majeure**

12.1 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.

12.2 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.

## **13 General**

13.1 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.

13.2 PeopleFluent has the right to assign the Support, this Agreement or any part of this Agreement or the Support to a PeopleFluent Group Company. PeopleFluent has the right to subcontract any part of the Support 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.

13.3 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.

13.4 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.

- 13.5 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.
- 13.6 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.

#### **14 Notices and Communications**

- 14.1 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.
- 14.2 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.

#### **15 Anti-Corruption**

- 15.1 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.

#### **16 Governing Law and Disputes**

- 16.1 This Agreement will be governed by and construed and interpreted in accordance with the laws of England.
- 16.2 The courts of England will have the exclusive jurisdiction to hear and determine all disputes or differences arising out of or in connection with this Agreement and the parties irrevocably and unconditionally submit to that jurisdiction

**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	Acknowledgement	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.</i> <i>Severity 4 code Issues that are agreed to be fixed will be resolved during a subsequent product release. Minor Severity 4 items reported requiring a code fix may be deemed to not be corrected with consultation and input from Customer.</i>

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

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

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

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

“**Available**” means the Subscription Services or Hosting Services are available (following Activation, defined below) 24 hours per day x 7 days a week, measured on a calendar month, subject to the exclusions set forth in section 2.1, less actual downtime for (a) scheduled maintenance performed during the regular planned maintenance window as PeopleFluent may reasonably designate from time to time; (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.