

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” means 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” 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 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” 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;

“Charges” means the fees for the Support;

“Client”	As defined above;
“Commencement Date”	means the date of acceptance of the PeopleFluent click-wrap order form, or the date as specified the Commercial Terms;
“Commercial Terms”	means the main commercial terms set out in the PeopleFluent click-wrap order form or signature section of this Agreement;
“Designated Server IP Address”	means 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”	means a period of one year from the Commencement Date or such other period as may be specified in the Commercial Terms;
“Intellectual Property Rights”	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 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”	means 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”	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”	means 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 12 months or such other period agreed between the parties in the Commercial Terms or otherwise in writing;
“Reseller”	means an authorized reseller of PeopleFluent, through whom the Client has purchased a licence to use the Application;
“Support”	means the standard support and maintenance service described in Clause 3 provided by PeopleFluent or the Applicable Group Company;
“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 Support will commence on the Commencement Date and will continue throughout the term of the Agreement.
- 3.2 Maintenance for the Application is included as part of the Support and includes new Application software releases, bug fixes, patches, error corrections and enhancements, at no additional charge, when any of them are developed by PeopleFluent and made available without customisation to its clients generally at no additional cost and any such new releases, 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 the Applicable Group Company. PeopleFluent or the Applicable Group Company, as appropriate, may also provide the Client with such additional services, such as new release upgrade support, as may be agreed in writing in respect of the Application and other related or unrelated software or systems. The Client acknowledges that the provision of such additional services is at PeopleFluent's sole discretion and may depend upon the availability of appropriate resources at the relevant time and further that the Client is not obliged to request or agree any such additional services. Any new license keys issued to the Client as part of the Support shall be subject to the provisions of the relevant perpetual license agreement for the Application and be issued at the Designated Server IP Address for single instance use for the permitted number of Users.
- 3.3 PeopleFluent or the Applicable Group Company in its sole discretion will prioritise support requests into four levels:

Priority	Description	Initial Response Time*	Target Resolution Time*
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1.	Critical problem. Application is down.	1 hour	12 hours
2.	Major problem. Application is functioning but operation is severely affected. Priority 2 problems may be resolved with a fix or a workaround. If a workaround is provided, the priority level will be downgraded to priority 3.	2 hours	24 hours
3.	Minor problem. Application is functioning and workaround is available. Priority 3 problems should be resolved with a fix or a workaround.	Next working day	As appropriate
4.	"How to" or administrative request. Client requests advice on how to use an existing function of the Application or requests an administrative operation such as courseware uploading.	2 working days	As appropriate

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

"Initial Response Time" refers to the targeted response time by which PeopleFluent or the Applicable Group Company 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 or the Applicable Group Company to enable it to replicate the error, the Target Resolution Time shall not commence.

3.4 For Priority 1 problems, PeopleFluent or the Applicable Group Company shall provide updates on the status of its efforts to fix the problem. These updates, which PeopleFluent shall aim to provide at least once every four hours, and the above target response times, shall start from the time the Client's designated support contact logs a problem by email or online case management system to PeopleFluent with sufficient information to enable it to replicate the error. Until necessary information, data and documents are provided to PeopleFluent to enable it to replicate the error, the updates and targeted resolution times shall not commence. PeopleFluent or the Applicable Group Company will use its reasonable endeavours to resolve all Application related problems identified in the problem log forms.

3.5 When a problem in relation to the Application is identified, a Client support coordinator (as defined in Clause 3.8 below) will raise the problem as a ticket in PeopleFluent's or the Applicable Group Company's online support tool. In the ticket raised, the Client support coordinator will document the problem in a problem log form (with sufficient information to enable PeopleFluent to replicate the error). PeopleFluent shall subsequently respond to such ticket in accordance with this Clause 3.

- 3.6 On-site and telephone technical support is not included in the Support except where so provided by PeopleFluent in its sole discretion on a case by case basis.
- 3.7 PeopleFluent will in any event not be under any obligation to provide the Support for any release of the Application other than the current release and the two immediately preceding releases. More details of the Support may be set out in PeopleFluent's support policy as published on PeopleFluent's online client pages.
- 3.8 The Client may designate up to two named employees, agents or contractors (additional named employees, agents or contractors are available upon prior written agreement and applicable charges) who will be responsible for the co-ordination of all matters relating to the Support on the Client's side and who will be the points of contact with the PeopleFluent support team. The Support will be provided only to the Client's designated Client support coordinators and does not cover general support to the Client's individual end users. The Support will only be provided in respect of the Application and does not cover any other hardware, software, operating system or environment.
- 3.9 The Support will only be provided in respect of the Application and does not cover any other hardware, software, operating system or environment. PeopleFluent will have no obligation to provide Support where support is necessitated as a result of any of the following causes:
- 3.9.1 failure, misuse or default of the Client or any of its Users, employees, agents or any third party not under PeopleFluent's direct control, including where the Client elects to implement any new release upgrade itself; or
- 3.9.2 act of riot, fire, flood, war, act of violence, or any other similar occurrence; or
- 3.9.3 any modifications to the Application made by any other person than PeopleFluent or the Applicable Group Company or their authorised agents or sub-contractors.
- 3.10 To the extent the Client also makes use of one or more non-production instances of the Application, Support does not apply in relation to such non-production instance(s) of the Application. Any support and maintenance requests related to such non-production instances of the Application are subject to acceptance by PeopleFluent in its sole discretion and may require additional charges as applicable.
- 3.11 PeopleFluent may provide the Support or any part of them through an Applicable Group Company but shall remain responsible for all acts and omissions of any such Applicable Group Company in the performance of the Support or any part of them.

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 30 days of the date of PeopleFluent's invoice.

- 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 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 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 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 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 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 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 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 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 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 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 will be governed by and construed and interpreted in accordance with the laws of England.
- 13.2 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.