

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

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

1 Definitions and Interpretation

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

“Agreement”	this Software-as-a-Service Agreement to which the Client is required to agree before using the Services comprising, where appropriate, an order form and/or a signature section (in either case incorporating the Commercial Terms) and this Standard Terms and Conditions Schedule;
“Application”	PeopleFluent’s proprietary software application NetDimensions Talent Suite in machine readable form used in the Services provision (as identified in the Commercial Terms and as (may be) further described on PeopleFluent client wiki pages), including any applicable error corrections, updates, upgrades, modifications and enhancements to it, but excluding any Third Party Software;
“Charges”	the charges payable by the Client for the Services and other charges falling due in accordance with this Agreement;
“Client”	the Client that has purchased the Services, whether directly from PeopleFluent or indirectly through a Reseller;
“Client Data”	the information, data and content input into or used in the Software-as-a-Service by the Client or Users;
“Commercial Terms”	the main commercial terms set out in the order form and/or signature section of this Agreement;

“Confidential Information”	all materials and/or information, whether or not marked or otherwise identified as confidential, whether written, oral, graphic or ascertainable by inspection of tangible objects, including without limitation: specifications, formulae, samples, prototypes, devices, techniques, processes, methods, discoveries, inventions, ideas and improvements (whether or not patentable), data, compilations, algorithms, studies, computer programs, code, research, reports, patterns, designs, sketches, plans, drawings, photographs, know-how, trade secrets, marketing plans, business plans, financial information, commercial information, technical information, pricing information, market information, information relating to relationships with third parties, information relating to business models and/or business methods, customer, supplier and distributor lists, and any other subject matter which by its nature would be reasonably known to be confidential or proprietary, and all copies of such materials and information;
“Data Protection Laws”	all applicable data protection and privacy laws and regulations which might apply to the parties in the provision of the Services, including, but not limited to the General Data Protection Regulation (EU Regulation 2016/679) (the “GDPR”);
“Initial Term”	a period of 3 years from the Services Commencement Date or such other period as may be specified in the Commercial Terms. The Initial Term may also be referred to in the Commercial terms as “Commitment” or “Multi-year Commitment”;
“Intellectual Property Rights”	any patent, right to patent, copyright, design rights (registered and unregistered), trade mark and service mark (whether or not registered), trade and business names (including internet domain names and e-mail address names), database rights, know-how, trade secrets, unpatented inventions and any other intellectual property rights in any relevant jurisdiction;
“PeopleFluent Group Company”	PeopleFluent and any party that, directly or indirectly, partially or fully controls, is partially or fully controlled by, or is under partial or full common control with, PeopleFluent, including but not limited to direct and indirect subsidiaries of an ultimate parent holding company, and such PeopleFluent Group Company may provide any or all of the Services;
“Renewal Term”	the meaning set out in Clause 2;
“Reseller”	an authorised reseller of PeopleFluent;
“Service Level Terms”	the service level terms specified in Clause 4 applicable to the Services under this Agreement;
“Services”	the Software-as-a-Service provision, Support and other related services, as agreed, to be provided by PeopleFluent under this Agreement, unless otherwise specified in the Commercial Terms;

“Services Commencement Date”	the date specified as the Services Commencement Date in the Commercial Terms or, if earlier or in the absence of a date being specified, the date from which PeopleFluent starts providing any of the Services;
“Scheduled Maintenance Down-Time”	the meaning set out in Clause 4.5;
“Software-as-a-Service”	the services provided under this Agreement that PeopleFluent provides to allow Users to access and use the Application;
“Support”	the standard maintenance and support services provided by PeopleFluent in relation to the Application pursuant to Clause 4.2;
“Third Party Software”	where specified in the Commercial Terms, software provided by PeopleFluent to the Client, which is non-proprietary to PeopleFluent but which PeopleFluent is authorised to make available to the Client.
“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 Software-as-a-Service and/or Third Party Software under this Agreement. A User can have an active (identified in the Application as ‘Active’ or ‘Suspended’) or non-active (all user status categories in NTS other than ‘Active’ or ‘Suspended’) status in the Application.

- 1.2 In this Agreement words importing the singular include the plural and vice versa and words importing gender include any other gender.
- 1.3 The headings of Clauses are for ease of reference and will not affect the construction of this Agreement.
- 1.4 Anything agreed in the Commercial Terms takes priority over the terms and conditions set out in this Standard Terms and Conditions Schedule. Except as set out in this Agreement, no other terms shall apply, even where specified in the Client’s purchase order or otherwise.

2 Commencement and Duration

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

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

- 3.1 PeopleFluent will provide the Services to the Client. Where a Reseller is providing any related services, it will provide those services on terms agreed between the Client and

the Reseller, and PeopleFluent shall have no liabilities or obligations to the Client (and, for the avoidance of doubt, a Reseller has no authority to bind PeopleFluent).

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

- 3.8.4 save as expressly provided in Clause 3.7, use the Application or Services to provide services to third parties or attempt to obtain, or assist third parties in obtaining, access to the Application.
- 3.9 PeopleFluent may as part of the Services anonymize the Client's Users' Application usage data to create reports showing general usage statistics of its clients for research and analytics purposes, for sharing on an individualized basis with the Client or on a generalized basis with other PeopleFluent's clients. The Client agrees to the anonymizing and inclusion of its usage data in such reports. All Intellectual Property Rights in such reports shall at all times remain with and vest in PeopleFluent.
- 3.10 If the Commercial Terms state that GxP requirements are applicable, PeopleFluent will host the Application in a hosting environment where reasonable commercial efforts have been taken by the relevant third party hosting infrastructure provider to achieve compliance with GxP standards. PeopleFluent will respond promptly to any requests from the Client for information about or discussions relating to the relevant hosting environment.
- 3.11 If the Commercial Terms provide that PeopleFluent will provide access to Third Party Software as part of the Services, such access will be provided subject to the licence and/ or terms and conditions of use of the applicable third party licensor, as may be specified in the Commercial Terms, and Client is responsible for requesting a copy and familiarising itself with such terms and conditions and for ensuring compliance with such terms and conditions. No warranty, representation or other statement is made or given concerning such Third Party Software.

4 Service Level Terms and Support

- 4.1 Except in relation to Third Party Software, PeopleFluent will provide technical support as stated below and as (may be) further described in the support policies on PeopleFluent's online client pages (which PeopleFluent may in its sole discretion amend from time to time). This is PeopleFluent's standard support. PeopleFluent may provide additional technical support services to the Client upon terms and charges to be agreed. Where a Reseller is providing support, such support will be provided by the Reseller on such terms as may be agreed between the Reseller and the Client.
- 4.2 Except in relation to Third Party Software, maintenance for the Application is included as part of the Services. Maintenance includes Application software upgrades, 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 PeopleFluent's clients generally at no additional cost and any such upgrades, bug fixes, patches, error corrections and enhancements shall become part of the Application, the Intellectual Property Rights in which shall remain with and vest in PeopleFluent. Any maintenance or support provided in addition to the maintenance and support described in this Clause 4.2 will be charged in addition, in accordance with Clause 4.1. Telephone and on-site support do not form part of Support. PeopleFluent will not be obliged to provide Support for any release of the Application other than the current release and the two immediately preceding releases. To the extent that the Application comprises or includes NetDimensions Analytics or Third Party Software, PeopleFluent's standard support and maintenance Services and Service Levels Terms as described herein do not apply to NetDimensions Analytics or Third Party Software. To the extent the Client also makes use of one or more non-production instances of the Application, PeopleFluent's standard support and maintenance Services and Service Levels Terms do not apply in relation to such more non-production instances of the Application. Any support and maintenance requests related to such non-production instances of the

Application are subject to acceptance by PeopleFluent and may require additional charges as applicable.

- 4.3 PeopleFluent reserves the right to amend the Service Level Terms at any time upon 60 days' written notice to the Client to the extent that such amendment is necessary to meet any ISO 27001 (or equivalent accreditation), legislative or best practice requirements, so long as the amendment does not have a material adverse effect on the Client. The Service Level Terms are limited to those events and service levels within PeopleFluent's commercially reasonable control and do not include events or Services/services or security failures resulting from any actions or inactions of the Client or any third parties not under PeopleFluent's direct control (including but not limited to Client or third party equipment and internet or telecommunications providers).
- 4.4 Service availability is defined as the amount of time the Software-as-a-Service is available to Users and capable of performing operations, excluding Scheduled Maintenance Down Time (as defined below) and non-availability caused by actions or inactions of the Client or Users. Non-availability is the amount of time (excluding Scheduled Maintenance Down-Time) that the Software-as-a-Service is either not available or not capable of performing operations. The Software-as-a-Service will be available 99.5% of the time calculated over each year of this Agreement. Non-availability caused by the actions or inactions of the Client or Users (including the Client's equipment) will not be included when calculating the Software-as-a-Service's availability. If the Software-as-a-Service is unavailable for four or more hours in any 24 hour period, the Client will be credited with a total of one day's free hosting for every four hour period of unavailable hosting at the end of the Initial Term or applicable Renewal Term.
- 4.5 The Client accepts that PeopleFluent will require scheduled down-time periods from time to time to perform system maintenance, backup and upgrade functions for the Software-as-a-Service ("Scheduled Maintenance Down-Time"). Scheduled Maintenance Down-Time will usually consist of a weekly three hour maintenance window to take place at the weekend. The weekly maintenance window is required to allow PeopleFluent (or its third party contractors) to maintain and improve server or storage space and other facilities. The timing of the weekly maintenance window will be communicated in writing to the Client from time to time. Additional periods of Scheduled Maintenance Down-Time may be required by PeopleFluent which will be scheduled in advance by e-mail message or telephone call to the Client, and PeopleFluent will use its reasonable endeavours to ensure that Scheduled Maintenance Down-Time is at times and for periods which minimise inconvenience to the Client. The measurement for Scheduled Maintenance Down-Time is the time elapsed from when the Software-as-a-Service becomes unavailable to perform operations to the time when the Software-as-a-Service becomes available to perform operations again.
- 4.6 The Client may designate up to two Users as technical support contacts. Each technical support contact may document a technical support issue via PeopleFluent's customer support web-based tool (zendesk or such other tools used by PeopleFluent from time to time). Support will be provided at the times specified in this Agreement, as otherwise agreed between PeopleFluent and the Client or as may be reasonably communicated to Client by PeopleFluent from time to time. The Client may change the technical support contacts up to twice in any year of this Agreement free of charge.
- 4.7 PeopleFluent will in its sole discretion prioritize support requests related to the Application into four levels:

PRIORITY	DESCRIPTION	INITIAL RESPONSE TIME*	TARGET RESOLUTION TIME*
1.	Critical problem. System is down.	1 hour	12 hours
2.	Major problem. System 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. System 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 Services, or requests an administrative operation such as courseware uploading.	2 working days	As appropriate

*Priority 1 Initial Response Time and Target Resolution Time shall be calculated on a 24x7 basis; Priority 2,3 and 4 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 will communicate (by email, online case management system or telephone) with the Client in respect of the reported problem. It does not refer to the time in which the reported problem will be resolved by PeopleFluent.

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

For Priority 1 problems, PeopleFluent 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, 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 shall not commence.

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

5 Client's Obligations

- 5.1 The Software-as-a-Service is provided subject to an agreed disk space (permitted use is for training and learning content only) as specified in the Commercial Terms and subject to reasonable bandwidth use (as elaborated on below). The Client will not exceed this agreed disk space without the prior written consent of PeopleFluent and any agreed additional disk space shall be subject to paying additional charges as indicated in the Commercial Terms or as may be agreed. PeopleFluent shall use reasonable endeavours to inform Client when disk space or bandwidth utilised by the Client reaches 80% of the agreed level. Any additional disk space required or used will be provided in increments of the same amount and subject to an additional annual charge per increment as shown in the Commercial Terms or where this is not so specified, at PeopleFluent's then current list price, payable in advance (and where an increment is provided part way through a year, the initial payment will be pro rata to the next anniversary). If the amount of disk space is not specified in the Commercial Terms, the Client will be entitled to use a maximum of 50 gigabytes at no additional charge.
- 5.2 The Client will, without prejudice to its obligation not to exceed the agreed disk space or reasonable bandwidth, within five business days of receipt of a written notice from PeopleFluent, reduce its content so as to operate within the amount of disk space agreed with PeopleFluent (or, alternatively, agree to increased disk space available upon payment of an applicable charge within the said five Business Days). PeopleFluent will be entitled to suspend the Services forthwith without serving notice on the Client if the Client exceeds the agreed disk space and/or reasonably allowed bandwidth (bandwidth usage is deemed not reasonable if it causes harm or in PeopleFluent's sole opinion may cause harm to PeopleFluent's systems).
- 5.3 The Client will:

- 5.3.1 use the Services in accordance with PeopleFluent's reasonable operating instructions as made available to the Client in writing (including via email, wiki and support channels such as zendesk) from time to time and the terms of this Agreement;
 - 5.3.2 comply with any restrictions contained in this Agreement regarding the content or courseware that may be used with the Software-as-a-Service, the identity and number of Users and any bandwidth limitations;
 - 5.3.3 be responsible for ensuring that the Software-as-a-Service is not used for the sending, recording or storage of any defamatory, offensive, abusive, derogatory, blasphemous, racist, obscene or menacing material or in a manner which infringes the rights of any person (including rights of data privacy, copyright and confidentiality);
 - 5.3.4 be responsible for complying with its obligations under any applicable statutory provisions in any relevant jurisdiction in respect of data privacy or information processed and stored;
 - 5.3.5 be responsible for the acts and omissions of the Users;
 - 5.3.6 ensure that any User authorised to use the Services (as specified in the Commercial Terms) is bound by the terms of this Agreement prior to accessing the Services and complies with the same; and
 - 5.3.7 in a timely manner inform PeopleFluent if Client is planning to materially change its usage behaviour (which could affect the provision of the Services).
- 5.4 The Client will ensure that no one other than Users, and no more than the permitted number of Users in accordance with the Commercial Terms, access the Services. Without prejudice to the foregoing, the Client may add and switch Users in accordance with the following:
- 5.4.1 Adding Users: If the Client wishes to increase the number of Users accessing the Services, Client must request prior written consent from PeopleFluent (which will not be unreasonably withheld or delayed) and such increase will be subject to additional charges as may be agreed.
 - 5.4.2 Archiving Users: 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 times the agreed permitted number of active Users in the Commercial Terms. Once this maximum is reached, no additional active Users can be changed to non-active status unless other non-active Users are first permanently deleted or additional Users are added in accordance with this Agreement and/ or the applicable PeopleFluent purchasing process. For the avoidance of doubt, no reassignment of a User's account or use of an account by another User is permitted except in as far as permitted pursuant to this Clause. The Client will not allow or suffer any User account to be used by more than one individual authorized User, except to the extent that reassignment of a User account is permitted pursuant to this Clause.

- 5.4.3 The Client shall at all times maintain a written, up-to-date list of Users (active and non-active), and provide this, fully anonymized, to PeopleFluent within 5 Business Days of PeopleFluent's request at any time.
- 5.5 PeopleFluent may at any time, at its own expense, audit the Client's usage of the Application and Services and compliance with this Agreement (including with regard to the number of Users accessing the Services and/or registered on the Application and the amount of bandwidth or disk space used), and such audit shall be exercised in a manner so as to not substantially interfere with Client's normal conduct of business. If an audit reveals that the number of Users exceeds the number specified in the Commercial Terms, allowed under this Agreement or otherwise agreed with PeopleFluent (and paid for) or the bandwidth or disk space used, PeopleFluent is entitled to (in the case of bandwidth and/or disk space, in addition to the right to suspend set out in Clause 5.2) immediately invoice Client for the additional Users (regardless of the active or non-active status) or the additional bandwidth or disk space used for the remainder of the Initial Term or applicable Renewal Term in accordance with its current (per User) list price or such pricing as may be agreed with Client.
- 5.6 The Client will be responsible for maintaining the confidentiality of its Application/Services passwords and for procuring that all Users keep their own Application/Services passwords confidential. If the Client becomes aware of any unauthorised access to the Services by any person who uses a password without the Client's or PeopleFluent's authorisation, the Client will immediately notify PeopleFluent and disable such password.
- 5.7 With the Client's prior written approval, PeopleFluent and any Group Company may refer to the Client in PeopleFluent's websites and marketing materials.
- 5.8 Where the Client wishes to dispute an invoice or part of an invoice it will do so as soon as reasonably practicable and in any event within 15 working days of issuance of the applicable invoice.

6 Data Protection

- 6.1 If PeopleFluent processes any personal data, as defined in the Data Protection Laws, on the Client's behalf when performing its obligations under this Agreement, the Parties record their intention that the Client will be the data controller and PeopleFluent will be the data processor, and the following provisions shall in such case apply.
- 6.2 The nature and purpose of the personal data processing by PeopleFluent hereunder shall comprise the storage of Client personal data in the Application as stated in this Agreement, and such further processing as reasonably required for the Client to use and operate, and for PeopleFluent to support the Application for the term of, and in accordance with, this Agreement. Support to the Client's authorised support contacts as outlined in this Agreement may comprise PeopleFluent accessing Client personal data to the extent reasonable required to provide the Support.
- 6.3 The categories of personal data which may be processed under this Agreement may include, depending on the Client's use of the Application, User's names, email addresses, job titles, profile pictures, assessment results, internal comments, as well as other e-learning and performance related User personal data.
- 6.4 The Client, as data controller:

- 6.4.1 confirms that it has processed and will continue to process the relevant personal data in accordance with the relevant provisions of the applicable Data Protection Laws and the processing does not violate those laws;
 - 6.4.2 will reasonably instruct PeopleFluent throughout the duration of this Agreement to process the relevant personal data exclusively on the Client's behalf and in accordance with the applicable Data Protection Laws and PeopleFluent shall promptly comply with any request from the Client requiring PeopleFluent to amend, transfer or delete the relevant personal data insofar as that is under PeopleFluent's control;
 - 6.4.3 will ensure that it is entitled to transfer the relevant personal data to PeopleFluent so that PeopleFluent may lawfully process the personal data in accordance with this Agreement on the Client's behalf;
 - 6.4.4 shall take and maintain throughout the term of the Agreement appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage, including, but not limited to ensuring that it keeps the Application up to date.
- 6.5 PeopleFluent, as data processor shall:
- 6.5.1 at the Client's reasonable request, provide to the Client a copy of all relevant personal data held by it in the format and on the media agreed, provided that a reasonable use policy shall apply (beyond which, PeopleFluent shall be entitled to charge its relevant professional services charges);
 - 6.5.2 promptly inform the Client if any of the relevant personal data are lost or destroyed or become damaged, corrupted or unusable. Where reasonably possible, PeopleFluent will restore such personal data at its own expense;
 - 6.5.3 process any Client personal data (including any personal data which comprises Client Data) only on the written instructions of the Client. The Parties agree that the documented instructions are set out in this Agreement or may otherwise be agreed in connection with the performance of this Agreement, such as pursuant to any support requests raised by the Client;
 - 6.5.4 ensure that any of its staff authorised to process the Client personal data are bound by obligations of confidentiality;
 - 6.5.5 maintain and keep up to date a list of subprocessors at <https://www.peoplefluent.com/terms-and-conditions>. Where PeopleFluent intends to make changes to the use of any of its subprocessors or engage a new subprocessor, this list shall be updated 30 days prior to the date of the change or appointment. Client shall be responsible for ensuring it regularly checks this list for changes. Where the Client objects to such a change (acting reasonably), the Client shall notify PeopleFluent prior to the change or appointment date as applicable. In such case, PeopleFluent and the Client shall meet in good faith to discuss the objection, and if no agreement can be found, the Client shall be entitled to terminate the Agreement on no less than 30 days' written notice;

- 6.5.6 implement appropriate technical and operational measures to ensure a level of security appropriate to the general risks involved in the Services as required by Article 32 of the GDPR;
 - 6.5.7 taking into account the nature of the processing, assist the Client by implementing appropriate technical and organisational measures, in so far as this is reasonably possible, for the fulfilment of the Client's obligation to respond to requests for exercising the data subject's (as defined in the Data Protection Laws) rights laid down in Chapter III of the GDPR;
 - 6.5.8 where such cannot be achieved by the Client directly through the Application, reasonably assist the Client (each time subject to a reasonable cost-covering charge) in fulfilling its obligations to respond to requests for exercising the data subject's rights set out in Chapter III of the GDPR;
 - 6.5.9 reasonably assist the Client in ensuring compliance with the obligations set out in this Clause 6 and contained in Articles 32 to 36 of the GDPR, taking into account the nature of the processing and the information available to PeopleFluent;
 - 6.5.10 comply with its obligations under Article 28(4) of the GDPR;
 - 6.5.11 at the option of the Client, on termination of this Agreement, either delete or return to the Client all Client Data (including any personal data which comprises the Client Data);
 - 6.5.12 make available to the Client all information reasonably necessary and, at the Client's costs and subject to prior agreement on scope and timing, contribute to audits and inspections reasonably carried out by the Client or on its behalf to demonstrate PeopleFluent's compliance with Article 28 of the GDPR and this Agreement; and
 - 6.5.13 inform the Client if, in PeopleFluent's opinion any instruction provided by the Client would infringe any Data Protection Laws.
- 6.6 Some of PeopleFluent's sub-processors as listed above are based outside of the European Economic Area. To provide for this, and in accordance with the requirements included in the Data Protection Laws, the parties agree on the attached Standard Contractual Clauses ("the Clauses") in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the Client to PeopleFluent the data the personal data specified in Appendix 1 to the Clauses. For the avoidance of doubt, PeopleFluent has the authority to enter into the Clauses on behalf of all data importer included in the Clauses.

7 Warranties and Indemnification

- 7.1 PeopleFluent hereby warrants to the Client that it will provide the Services:
 - 7.1.1 with reasonable skill and care;
 - 7.1.2 using appropriately qualified and experienced personnel; and
 - 7.1.3 in accordance with current industry standards.

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

reasonably possible and in any event within 30 days of becoming aware of any alleged applicable infringement; (2) makes no admission or settles the claim, or otherwise does anything to prejudice PeopleFluent's conduct of the claim without PeopleFluent's prior written consent; and (3) provides all reasonable assistance in conducting all negotiations and litigation, if required to do so by PeopleFluent. PeopleFluent is authorised, at its own expense, to defend or, at its option, to settle such claims. In the defence or settlement of any claim, PeopleFluent will, at its own cost and sole option, either obtain the right for the Client to continue using the Services, or replace or modify the Services so that they are no longer infringing, or terminate this Agreement and reimburse the Client for the charges paid under this Agreement without any additional liability to the Client.

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

- 7.8.1 a modification of the Services by anyone other than PeopleFluent or a party under PeopleFluent's direct control; or
- 7.8.2 the Client's use of the Services in a manner contrary to the instructions given to the Client by PeopleFluent; or
- 7.8.3 the Client's use of the Services after notice of the alleged or actual infringement from PeopleFluent or any appropriate authority.

8 Charges and Payment

- 8.1 In consideration of PeopleFluent providing the Services under this Agreement, the Client will pay the Charges to PeopleFluent (or, where applicable, a Reseller) prior to the commencement of each year of this Agreement. Payment of all additional charges falling due under this Agreement shall be made within 30 days of the date of PeopleFluent's invoice.
- 8.2 All charges quoted by PeopleFluent are exclusive of any Value Added Tax and any other applicable local, regional or national taxes, levies or charges, for which the Client will be additionally liable at the rate applicable at the date of PeopleFluent's invoice.
- 8.3 Payment of all amounts due to PeopleFluent will be made by the Client in the agreed currency by wire transfer or by such other method as may be agreed or specified from time to time by PeopleFluent. The Client will be responsible for payment of all its bank charges. The Client and any Reseller shall agree their own payment provisions.
- 8.4 Payment of all sums due to PeopleFluent must be made by the Client in full without any set-off (whether at common law or otherwise), deductions or withholding for or on account of any taxes, fees, levies, imposts, duties or charges of any nature imposed by any governmental authority on any payment due hereunder, except as required by law.
- 8.5 If the Client fails to make a payment (which has not been disputed in accordance with Clause 5.8) to PeopleFluent in accordance with this Clause 8, PeopleFluent will be entitled to (i) charge interest on the overdue amount at a rate of 1.5% per month compounded monthly from 30 days after the invoice date until the date of payment, and (ii) recover on demand from the Client the costs (including attorneys' costs) incurred by PeopleFluent in collecting or recovering the payment due from the Client.

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

9 Intellectual Property Rights

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

10 Confidentiality

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

10.3.1 is in or enters the public domain other than by breach of Clauses 10.1 and 10.2;
or

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

11 Limitation of Liability and Disclaimers

- 11.1 This Clause 11 sets out the entire aggregate financial liability of PeopleFluent (including any liability for the acts or omissions of its employees, agents and sub-contractors (PeopleFluent Group Companies included)) to the Client:
 - 11.1.1 arising under or in connection with this Agreement;
 - 11.1.2 in respect of any use made by the Client of the Services, the Application, any Third Party Software or any part of them; and
 - 11.1.3 in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 11.2 Except as expressly and specifically provided in this Agreement:
 - 11.2.1 the Client assumes sole responsibility for results or other output obtained from the use of the Application, Third Party Software and the Services by the Client and the Users;
 - 11.2.2 PeopleFluent shall have no liability for any damage caused by errors or omissions in any Client Data or any other information, instructions or content provided to PeopleFluent by the Client in connection with the Services, or any actions taken by PeopleFluent at the Client's direction; and
 - 11.2.3 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement including, without limitation, that the Services will be uninterrupted or virus or error free, that any network or other services supplied by any operator other than PeopleFluent will be uninterrupted or virus or error free or that the Services will meet the Client's requirements other than as stated in this Agreement, or operate in combinations with hardware, software, platforms, systems or databases used by or on behalf of the Client. For the avoidance of doubt, no warranty, representation, condition or other term is given concerning or in relation to the Third Party Software.
- 11.3 Nothing in this Agreement excludes the liability of either party:

- 11.3.1 for death or personal injury caused by that party's negligence; or
 - 11.3.2 for fraud or fraudulent misrepresentation; or
 - 11.3.3 for any damages resulting from that party's wilful misconduct or gross negligence.
- 11.4 Subject to Clause 11.3, the Service Level Terms state the Client's full and exclusive right and remedy, and PeopleFluent's only obligation and liability in respect of, the performance and/or availability of the Services, or their non-performance and non-availability.
- 11.5 Subject to Clause 11.3:
- 11.5.1 PeopleFluent shall not be liable whether in contract, tort (including for negligence breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for (i) any loss of revenue, loss of profits, loss of business or contracts, loss of actual or anticipated savings, depletion of goodwill and/or similar losses or loss of or corruption to data or information, or pure economic loss, or for any special, incidental, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement, or (ii) any loss or damage arising out of or in connection with the Third Party Software or the Client's use of it, in each case even if it has been advised of the possibility of the same; and
 - 11.5.2 PeopleFluent's total aggregate liability in contract (excluding in respect of any indemnity, in respect of which PeopleFluent's aggregate liability shall be at the limit specified in clause 11.5.3), tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the charges paid by Client for the Services during the 12 months preceding the date on which the claim arose; and
 - 11.5.3 PeopleFluent's total aggregate liability under or in respect of any indemnity under this Agreement shall be limited to US\$100,000.

12 Suspension and Termination

- 12.1 Either party may (without prejudice to its other rights) terminate this Agreement by notice in writing to the other if the other party:
- 12.1.1 defaults in due performance or observance of any material obligation under this Agreement and (in the case of a remediable breach) fails to remedy the default within thirty days of receipt of the terminating party's notice so to do, and such termination will take effect either immediately or at a date specified in the notice provided that this provision will not apply to a failure to pay any sum by the due date; or
 - 12.1.2 becomes bankrupt or insolvent, or if the other party's business is placed in the hands of a receiver or trustee, whether voluntarily or otherwise, and such termination will take effect either immediately or at a date specified in such notice.

- 12.2 PeopleFluent will have the right to terminate this Agreement on serving written notice with immediate effect if the Client does not pay any sum within 10 days of receiving a written reminder from PeopleFluent provided that the sum has not been disputed in good faith in accordance with Clause 5.8.
- 12.3 PeopleFluent may also suspend the provision of the Services under this Agreement on giving not less than 2 Business Days' notice in writing if circumstances arise in respect of which it has the right to terminate this Agreement under Clause 12.1 or 12.2, and may continue the suspension until the relevant payment has been made or the relevant default has been cured.
- 12.4 Client may suspend its payments under this Agreement on giving no less than 2 Business Days' notice in writing if circumstances arise in respect of which it has a right to terminate this Agreement under Clause 12.1.

13 Consequences of Termination

- 13.1 On termination of this Agreement for any reason:
- 13.1.1 all licences granted under this Agreement shall immediately and automatically cease; and
- 13.1.2 the Client will immediately stop accessing the Services; and
- 13.1.3 each party shall return and make no further use of any equipment, property, materials, Confidential Information (excluding Client Data) and other items (including all copies of them) belonging to the other; and
- 13.1.4 PeopleFluent may destroy or otherwise dispose of the Client Data in its possession unless it receives, no later than 14 days after the effective date of termination of this Agreement, a written request from Client to allow it to download the Client Data from PeopleFluent's servers. In such case, PeopleFluent shall allow the Client to download its data within 10 business days of such request, provided that the Client has, at that time, paid all Charges outstanding.
- 13.2 Termination of this Agreement will not affect the obligation of the Client to pay PeopleFluent or the Reseller, as the case may be, any charges or other payments which are due and unpaid at the date of termination.
- 13.3 Any termination of this Agreement will not affect any accrued rights or liabilities of either party nor will it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

14 Force Majeure

- 14.1 Neither PeopleFluent nor the Client will be liable to the other under this Agreement for any failure to perform its obligations hereunder other than payment obligations or for any loss or damage which may be suffered by the other party due to any circumstances beyond its reasonable control including, without limitation, any Act of God, failure or shortage of power supplies, flood, lightning or fire, strike or other industrial action, the act or omission of Government or other competent regulatory authority, war, military operations, epidemic, quarantine restrictions or riot. PeopleFluent bears no responsibility for any adverse effect on the Services (including, but not limited to, server

failure or slow response time) caused by any acts of the Client in violation of this Agreement.

- 14.2 If either the Client or PeopleFluent wishes to rely upon this Clause 14 it will send written notice to the other party explaining the relevant force majeure circumstances as soon as reasonably possible.

15 General

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

16 Notices and Communications

- 16.1 Any notice or other document to be given under this Agreement will be in writing and will be deemed to have been duly given if left at or sent by hand or by registered post, or by facsimile or such other electronic media (including email) to a party at the address or facsimile number set out in the signature section of this Agreement or such other

(email) address or facsimile number as one party may from time to time designate by written (email) notice to the other.

- 16.2 Any such notice or other document will be deemed to have been received by the addressee three working days following the date of dispatch if the notice or other document is sent by registered post, or simultaneously with the delivery or transmission if sent by hand or if given by facsimile, or at the moment of receipt of a confirmation for receipt in the case of email or other electronic means.

17 Anti-Bribery and Anti-Corruption

- 17.1 Each party to this Agreement:

17.1.1 shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (the "Act") and the Modern Slavery Act 2015 (together also referred to as the "Relevant Requirements");

17.1.2 shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

17.1.3 has and shall maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with the Relevant Requirements;

17.1.4 has not, and no person associated with it has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of the other party'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;

17.1.5 shall immediately notify the other party in writing if a foreign direct official becomes an officer or employee or it acquires a direct interest in it, and warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the Services Commencement Date;

17.1.6 has taken all reasonable steps to ensure that there is no modern slavery or human trafficking in its supply chain or any part of its business; and

17.1.7 upon request, will certify to the other party in writing signed by one of its officers, compliance with this clause 17 by it and all persons associated with it.

- 17.2 For the purposes of this clause 17, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Act (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of the Act and section 8 of the Act respectively.

18 Governing Law and Disputes

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

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

BETWEEN:

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

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

AGREED

Clause 1
Definitions

For the purposes of the Clauses:

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

involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2
Details of the transfer

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

Clause 3
Third-party beneficiary clause

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

Clause 4
Obligations of the data exporter

The data exporter agrees and warrants:

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

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

Clause 5
Obligations of the data importer

The data importer agrees and warrants:

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

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

Clause 6 **Liability**

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

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

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

Clause 7
Mediation and jurisdiction

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

Clause 8
Co-operation with supervisory authorities

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

Clause 9
Governing law

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

Clause 10
Variation of the contract

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

Clause 11
Sub-processing

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

remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

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

Clause 12

Obligation after the termination of personal data-processing services

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

APPENDIX 1 to the Standard Contractual Clauses

This Appendix forms part of the Clauses

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

Data exporter

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

The client of PeopleFluent under the SaaS Agreement.

Data importer

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

Part of the PeopleFluent group of companies, a cloud-based talent management system provider providing its hosted NetDimensions Talent Suite (NTS) solution to the data exporter through PeopleFluent.

Data subjects

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

Data exporter "Users" as such term is defined in the SaaS Agreement.

Categories of data

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

As determined by the data exporter, but generally:

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

Special categories of data (if appropriate)

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

Not Applicable.

Processing operations

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

In the course of data exporter's use of NTS, based on the SaaS Agreement, the data exporter may transfer personal data of its Users to the data importer.

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

APPENDIX 2 to the Standard Contractual Clauses

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

1. Information Security Policies and Standards

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

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

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

2. Physical Security

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

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

3. Organizational Security

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

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

4. Network Security

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

5. Access Control

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

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

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

6. Virus and Malware Controls

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

7. Personnel

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

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

8. Disaster Recovery

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

9. Compliance

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